



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Supplementary Report - Bill 184 - Protecting Tenants and Strengthening Community Housing Act, 2020 - Legal Advice

Date: July 26, 2020

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

At its meeting of July 13, 2020, the Planning and Housing Committee adopted Item PH15.10 - City of Toronto Submission on Bill 184 - Protecting Tenants and Strengthening Community Housing Act, 2020, with amendments, directing the City Solicitor to report directly to the July 28-29, 2020 meeting of City Council with advice on the possibility of legally challenging those provisions of Bill 184 which undermine the rights of tenants to a fair hearing. This report responds to this direction.

RECOMMENDATIONS

The City Solicitor recommends that:

2. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege and that the confidential recommendation only be released at the discretion of the City Solicitor.

FINANCIAL IMPACT

There is no financial impact arising from these recommendations.

DECISION HISTORY

At its meeting of July 13, 2020, Planning and Housing Committee considered Item PH15.10 - City of Toronto Submission on Bill 184 - Protecting Tenants and Strengthening Community Housing Act, 2020. The Item was adopted with amendments including direction for the City Solicitor to report directly to City Council to its meeting on July 28 and 29, 2020 with advice on the possibility of legally challenging those provisions of Bill 184 which undermine the rights of tenants to a fair hearing.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH15.10>

Item PH15.10 contains the more extensive Decision History.

COMMENTS

As of the date of this report Bill 184 - Protecting Tenants and Strengthening Community Housing Act, 2020 (the "Bill") was in Third Reading. The Bill amends a number of statutes including the Residential Tenancies Act, 2006 (the "RTA"). The direction from Planning and Housing Committee asks for advice regarding the potential to legally challenge the amendments to the RTA which may undermine the rights of tenants to a fair hearing. The public portion of this report only outlines the amendments to the RTA insofar as they may affect the rights of tenants to be heard. The confidential attachment provides related legal advice.

Amendments introduce additional procedural requirements for tenants wishing to oppose eviction orders for non-payment of rent

The RTA provides tenants with rights to apply to the Landlord and Tenant Board (the "Board") for various orders concerning their rights. For example, a tenant can apply for an order determining that the landlord has substantially interfered with the reasonable enjoyment of the rental unit. Under the RTA, landlords can also bring applications before the Board. One such application is for an order evicting a tenant for non-payment of rent. Currently, at a hearing for an order evicting the tenant for non-payment of rent, the tenant may raise any issue that could be the subject of an application made by the tenant under the RTA.

Under section 82 of the RTA, as proposed to be re-enacted under the Bill, a tenant's ability to raise other issues in a hearing seeking an eviction for non-payment of rent will be more limited. A tenant will be required to provide advance written notice to the landlord of their intent to raise these issues within a timeline and in a form as set out in the Board's Rules (the "Rules"). The Rules have not yet been amended to reflect the

proposed legislative amendments so the required form and timelines are currently not known.

The amendment provides that if the tenant fails to give notice of the issues it intends to raise within the timelines and in a form as set out by the Rules, the tenant has the opportunity to provide an explanation satisfactory to the Board explaining why proper notice was not provided. If the Board does not accept the explanation, the tenant will not be able to raise those issues in the context of the hearing seeking an eviction for non-payment of rent.

The transition provisions relating to this amendment state that the amendment applies in respect of any hearing held after the amendment comes into force including applications filed prior to the amendment coming into force. The applicability of this amendment to applications that are already in progress may introduce further confusion for tenants and increase the likelihood for procedural error.

If a tenant is barred from raising other issues in the course of a hearing seeking eviction for non-payment of rent, that individual may lose the opportunity to present a full case to the Board. The tenant would still be able to present their case in relation to the issue of non-payment of rent.

Amendments introduce the option for the Board to mandate mediation, with or without the consent of the parties

The Bill proposes to amend RTA section 194(1) so that that the Board may require that settlement discussions occur through mediation or another dispute resolution process. The Board may exercise this power without the consent of the parties. This means that a tenant (or a landlord) could be forced into a mediation or other dispute resolution process even if they do not consent, and would prefer proceeding to a hearing without first attempting mediation or alternative dispute resolution. There are no provisions in the RTA or in the proposed amendments to it that indicate a landlord or tenant will be bound or required to resolve a dispute at mediation or through the alternative dispute resolution method directed by the Board.

Amendments allow the Board to order eviction on an ex parte application where tenant fails to abide by the terms of Board approved settlement agreements

Parties have an opportunity under the RTA to reach agreements to resolve disputes around non-payment of rent or rent arrears or both. The legislation does not compel the parties to reach settlement, but if the parties voluntarily arrive at terms of settlement, agreements may be signed by the parties and may be approved by order of the Board. The amendments allow the Board to include a provision in its order approving such agreements that allows a landlord to make an application without notice to the tenant for eviction if one or more of the terms of the order (agreement) are breached. In turn, the Board may order an eviction without holding a hearing.

The tenant does have the opportunity to request that the eviction order be set aside by bringing a motion to the Board, with notice to the applicant. This motion must be made

within 10 days after the eviction order is issued and will afford the tenant an opportunity for a hearing.

CONTACT

Abbie Moscovich, Solicitor, Legal Services, Tel: 416-392-6905, Fax: 416-397-5624,
Email: Abbie.Moscovich@toronto.ca

Rodney Gill, Solicitor, Legal Services, Tel: 416-392-8051, Fax: 416-397-5624, Email:
Rodney.Gill@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Legal Advice