RAVENLAW

OTTAWA • KINGSTON • WINNIPEG

1600-220 Laurier Avenue W
Ottawa ON, K1P 5Z9
☎ 613.567.2901
613.567.2921
info@ravenlaw.com

CLAIRE MICHELA
Direct | 613.567.2939
cmichela@ravenlaw.com

BY EMAIL [ottawa@acorncanada.org]

Ashley Reyns
Head Organizer
Ottawa ACORN
404 McArthur Ave
Ottawa, ON
K1K 1G8

Dear Ms. Reyns:

Re: Municipal Powers to Regulate Against Renovictions

We write further to your request for our opinion regarding the scope of the City of Ottawa's power to reduce "renovictions". A renoviction is a type of eviction in which a tenant is displaced due to extensive renovations in the rental unit. While the *Residential Tenancies Act* (RTA) in Ontario provides that a landlord can evict tenants in order to perform major renovations,[1] ACORN's campaigns have encouraged the City of Ottawa to uphold landlords' maintenance standards proactively and at the local level, thereby reducing renovictions.

In this opinion, we were asked to assess whether the City of Ottawa has the authority to implement certain regulatory instruments that other municipalities have implemented to reduce renovictions and uphold maintenance standards, including (1) an Anti-Renovictions By-Law like the one in New Westminster, BC; (2) a landlord licensing by-law, like the one in Toronto; or (3) a Tenant Assistance Policy, like the one in Burnaby, BC. Further, we have been asked to respond to the City of Ottawa's statements which imply that it cannot enact such by-laws within the scope of its municipal powers.

For the reasons which follow, it is our view that nothing prevents the City of Ottawa (the "City") from enacting similar by-laws or policies. If properly drafted, such by-laws would not run afoul of the City's authority within the *Municipal Act*, nor would they frustrate the purpose of the RTA. The case law has consistently confirmed that the scope of municipal authority is broad and challenges to cities' by-law making powers are rarely successful. In cases from Ontario and BC, courts have been clear that, within legal limits, municipalities do have the authority to regulate residential tenancies by enacting by-laws.

[1] *Residential Tenancies Act*, SO 2006 c 17 [RTA], s 50.

FACTS

In preparing this opinion, we have spoken with ACORN to understand the circumstances of recent tenant renovictions in Ottawa. ACORN's Municipal Housing Platform elaborates that maintenance issues continue to create difficulty for low-income families who rent in Ottawa.[2]

As an example of a recent renoviction in Ottawa, ACORN pointed out the displacement of Herongate residents, which occurred in 2019 and earlier. According to documents filed with the Human Rights Tribunal of Ontario on behalf of the Herongate Tenant Coalition, Herongate residents were renovicted because landlords had allowed maintenance issues to fester into total disrepair, which eventually required extensive renovations.[3] The Herongate Tenant Coalition's human rights complaint named a corporate landlord and the City of Ottawa as Respondents. The City of Ottawa's response to the complaint stated:[4]

> Under the RTA, the City of Ottawa has no role, and no authority, to intervene with respect to the issue of evictions for the purpose of demolition, which remains within the purview of the provincial legislature and the LTB [Landlord and Tenant Board] constituted under the RTA … Simply put, the City has no role in the eviction process, and no authority to govern or otherwise influence the process even if it wished to.

We have reviewed several City of Ottawa publications, and some of its communications with ACORN, to ascertain the City's political position and legal view on the scope of its authority. The City has made the following statements:

1) Renovictions By-Law

On May 14, 2022, in an email to ACORN the City of Ottawa stated that:

> Section 50 of the RTA specifically allows "renovictions", as long as the landlord gives at least 120 days' notice and informs the tenant of their right of first refusal to re-occupy the unit once the renovations are completed. Staff had considered the authorities that are available to regulate Renovictions, such as the proposed Renovictions or anti-renoviction bylaw. The main limitation with that approach is that an outright prohibition on all renoviction, including legal renovictions, would be interpreted as frustrating the purposes of the RTA, and therefore is not within scope of Ottawa's Municipal Authority. Additionally, prohibiting illegal renovictions municipally would be redundant, as it is already illegal in the RTA.

---

[2] ACORN Canada, "Ottawa ACORN's Municipal Housing Platform" at points 2 and 3, online: <https://acorncanada.org/resource/ottawa-acorns-healthy-homes-platform>.
[3] Herongate Tenant Coalition, "Original Submission to the HRTO", online: <https://herongatetenants.ca/human-rights/>.
[4] City Clerk & Solicitor Department, *[Redacted] et al v Timbercreek Asset management Inc, TC Core, GO, TC Core LP, City of Ottawa*, online: <https://tinyurl.com/5n78er22>.

2) Tenant Assistance Policy

In an October 12, 2021 Memo to City Council, the City stated that it already has by-laws and inclusionary zoning policies in place, in combination with existing provincial legislation and educational initiatives. Further, the City stated that "…there is no clear authority under which the City could implement a policy such as the Burnaby tenant assistance policy." Furthermore, the City concludes, "…it would likely be more helpful to tenants to have a clear and effective Province-wide system of regulations to ensure protections are in place against illegal evictions than a patchwork system of municipal regulations in addition to provincial legislation."[5]

3) Landlord Licensing

In its October 12, 2021 Memo to City Council, the City stated that "there is legal uncertainty about whether municipalities in Ontario are permitted to license residential rentals under their business licensing power" due to the Province's Regulation 583/06, under the *Municipal Act*.[6] This Regulation prohibits business licensing with respect to "the business of trading in real estate."[7]

A November 5, 2019 report declined to recommend that City Council implement a landlord licensing by-law, despite the fact that Mclaren Municipal Consulting had recommended that the City begin licensing landlords on a trial basis.[8] The City's avoidance of landlord licensing disregards the fact that it already requires business licenses for certain landlords that own rooming houses, and the City has already enacted several by-laws which intervene in landlords' businesses, particularly landlords' maintenance obligations.[9]

---

[5] October 12, 2021, City of Ottawa, Memo to Mayor and Members of Council re "Review of Tools to Prohibit or Prevent "Renovictions" at 16 ["October 12, 2021 Memo to Mayor"].
[6] *Ibid* at 13-14.
[7] November 5, 2019, City of Ottawa, Report to Community and Protective Services Committee "Report on Rental Accommodations Study and Regulatory Regime" at 57 ["November 5, 2019 Report to Committee"]; O Reg 583/06 "Licensing Powers".
[8] November 5, 2019 Report to Committee, *supra* at 32. Note: while this page of the Report states that the primary reason for rejecting landlord licensing is "cost and affordability", the City's subsequent Memo from October 12, 2021 focuses on the "legal uncertainty" about the scope of municipal powers.
[9] City of Ottawa, By-Law 2002-189, "Licensing" s 9(27); See additional by-laws at City of Ottawa, "Tenants – rights and responsibilities", online: <https://ottawa.ca/en/living-ottawa/rental-housing/tenants-rights-and-responsibilities>.

ANALYSIS

The City's view overall appears to be that it already has some by-laws in place to deal with tenant issues, and in addition, the province is in the best position to regulate further protections for tenants.[10] However, the City's view obfuscates the fact that it has already regulated alongside the RTA.[11] Further, the case law clearly indicates that municipalities are entitled to regulate in matters like housing which raise local concerns.

The *Municipal Act* confers broad powers of municipal regulation

The Supreme Court and courts of appeal have repeatedly emphasized that municipalities are allowed a broad scope of power to regulate local concerns, as authorized by the legislation under which they operate.[12] The City's authority to enact by-laws is derived from Ontario's *Municipal Act*.[13]

In Canada's leading case on municipal law, *Spraytech*, the Supreme Court ruled that a town in Quebec had jurisdiction to prohibit pesticide use through a by-law. The Court's ruling was clear that the town had jurisdiction despite the fact that municipal legislation in Quebec did not provide municipalities with express authority to regulate pesticide use.[14] The Supreme Court in *Spraytech* further analyzed whether any provincial legislation conflicted with the by-law. The Court ruled that "[a]s a general principle, the mere existence of provincial (or federal) legislation in a given field does not oust municipal prerogatives to regulate the subject matter".[15]

The Supreme Court emphasized that a by-law would have to "directly" contravene the purpose of a statutory scheme in order to be inoperable. By-laws that aim to "enhance" the purpose of the statutory scheme or provide "stricter" regulations that "coexist" with other legislation are appropriate exercises of municipal authority.[16] The Court found that the by-law in *Spraytech* did not contravene any statute and its enhancement of existing legislation was entirely within the scope of the municipality's regulatory power, even though it did not have express authority to enact a by-law limiting pesticide use.

---

[10] October 12, 2021 Memo to Mayor, *supra* at 1-2 and 16.
[11] City of Ottawa, "Rooming House Licensing By-law Review", online: <https://ottawa.ca/en/city-hall/public-engagement/projects/rooming-house-licensing-law-review>.
[12] *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40 ["*Spraytech*"] at para 42; *United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)*, 2004 SCC 19 ["*Taxi Drivers v Calgary*"] at paras 6-7; *Toronto Livery Association v Toronto (City)*, 2009 ONCA 535 at paras 44-49; *Croplife Canada v Toronto (City)*, 2005 CanLII 15709 (ON CA) ["*Croplife*"] at paras 36-37; *1193652 BC Ltd v New Westminster (City)*, 2021 BCCA 176 (CanLII) ["*New Westminster* BCCA"] at para 79; *Toronto & City of Hamilton v Goldlist*, 2003 CanLII 50084 (ON CA) ["*Goldlist*"] at paras 55-56 and 67.
[13] *Municipal Act*, SO 2001 c 25 ["*Municipal Act*"], ss 7 and 8-10.
[14] *Spraytech*, *supra* at paras 22-23.
[15] *Ibid* at para 39.
[16] *Ibid* at paras 36-37 and 42.

By-laws will be struck down where the purpose of other legislation is frustrated

A by-law limiting renovictions would not frustrate the purpose of the RTA because the RTA does not require or even encourage renoviction, it merely provides conditions for when renoviction is permissible. Limiting those conditions are within a municipality's authority.

When a court analyzes whether a municipality has exceeded its powers in enacting a particular by-law or legislative instrument, it will read the by-law alongside the legislation to determine whether it is impossible to comply with both.[17] The "impossibility of dual compliance" test, used to determine whether it is possible to comply with both provincial and municipal regulatory schemes, is well-established in law and is derived from basic principles of statutory interpretation. In particular, the legal test requires that courts first attempt to read the statutory instruments together before deciding to quash a by-law.[18]

In the City's October 12, 2021 Memo, the City correctly frames this legal test as follows:[19]

a. Is it impossible to comply simultaneously with the by-law in question and the superior legislation (in this case the *Residential Tenancies Act*)? and;
b. Does the by-law frustrate the purpose of the Ontario Legislature in enacting the superior legislation in issue?

The City's Memo goes on to state that an outright prohibition on renovictions through a by-law would likely be regarded as frustrating the RTA. It is our understanding that ACORN has not advocated for prohibiting renovictions altogether, but rather, ACORN has advocated for the kind of enhancement to existing legislation which courts regularly allow, particularly in the form of a renovictions by-law. Since a municipal by-law would add conditions to the process of renovictions, it is unlikely that a provincial purpose would be frustrated.

In general, by-laws are rarely struck down on the basis that they were enacted outside of the scope of municipal authority. Even when a city's by-law does frustrate provincial legislation, it will only be invalidated to the extent of its breach. For example, in *Cash Converters*, Oshawa's by-law requiring second hand stores to collect personal information from customers was invalid only to the extent that its provisions conflicted with the *Municipal Freedom of Information and Protection of Privacy Act*, and only the offending sections were quashed.[20] *Eng v Toronto* is the exception that proves the rule. In that case, the court struck down a by-law prohibiting the consumption of shark fin food products. The court found that the by-law exceeded the city's authority because it had no proper municipal purpose. The by-law was truly aimed at dealing with shark-finning practices themselves, which the city could not regulate because shark finning did not occur within the city, and thus the by-law was outside of the city's regulatory power.[21] This type of case

---

[17] *Brantford Public Utilities Commission v Brantford (City)*, 1998 CanLII 1912 (ON CA) at 20-25.
[18] *Ibid* at 20.
[19] October 12, 2021 Memo to Mayor, *supra* at 6.
[20] *Cash Converters Canada Inc et al v The Corporation of The City of Oshawa*, 2007 ONCA 502 (CanLII).
[21] *Eng v Toronto (City)*, 2012 ONSC 6818 at paras 80-85.

is difficult to find, and its unusual facts convey how rare it is that local governments enact by-laws that are entirely inoperable because they exceed municipal authority.

The RTA expressly contemplates municipal regulation

The RTA contemplates that municipal by-laws could be enacted regarding maintenance issues[22] and vital services.[23] For example, the City of Ottawa's recent "Rental housing property management" by-law regulates in these areas by requiring landlords to develop a maintenance plan and a procedure for maintaining tenant service requests.[24]

With respect to renovictions, municipalities can go further, because the RTA section 50 specifically contemplates that certain permits may be required in order to renovate a unit. In addition, the Notice that a landlord must provide when evicting a tenant due to renovations under section 50 of the RTA is clear that building permits may be required before a renoviction is possible.

The Notice, in Form N13, includes the following section:[25]

> Necessary permits
> I have shaded the circle to indicate whether
> - I have obtained any necessary building permits.
> - I have obtained the necessary building permits or other authorization to convert, demolish or repair the rental unit.
> - I will obtain the necessary building permits or other authorization to convert demolish or repair the rental unit.
> - No permits or other authorization are necessary in this case to convert the rental unit or demolish it.

As a result, a court is unlikely to find that a by-law limiting renoviction would frustrate the RTA. Rather, the RTA, both as a whole and within section 50, operate to allow municipal regulation alongside this provincial legislation.

1) Anti-Renoviction By-Law in New Westminster

New Westminster's anti-renovictions by-law requires landlords to maintain their buildings and obtain all necessary permits before the municipality will authorize a landlord to renovate or repair the building.[26] The by-law further requires that the landlord either enter

---

[22] RTA, *supra*, s 224.
[23] RTA, *supra*, ss 215-216.
[24] City of Ottawa, By-law no 2020-255, "Rental housing property management by-law"; See other by-laws at City of Ottawa, "Tenants – rights and responsibilities", online: <https://ottawa.ca/en/living-ottawa/rental-housing/tenants-rights-and-responsibilities>.
[25] Landlord and Tenant Board, "Notice to End your Tenancy because the Landlord Wants to Demolish the Unit, Repair it or Convert it to Another Use N13", online: https://tribunalsontario.ca/documents/ltb/Notices%20of%20Termination%20&%20Instructions/N13.pdf>.
[26] Corporation of the City of New Westminster, Bylaw No 8085, 2019, "A Bylaw to Amend Business Regulations and Licensing (Rental Units) Bylaw No 6926, 2004".

into a new tenancy agreement with the tenant "on the same terms as the tenancy agreement pertaining to the dwelling unit being renovated or repaired, or terms that are more favourable to the tenant, in respect of a comparable dwelling unit in the same building…" or make "other arrangements in writing for the tenant's temporary accommodation during the during the course of the renovation or repair, and for their return to the original dwelling unit following completion of the renovation or repair…"[27] The New Westminster by-law also prohibits a rent increase after the renovation is complete.

This by-law was challenged twice in BC, and courts found that the municipality did not exceed its authority. Particularly, the British Columbia Court of Appeal found that the by-law did not frustrate BC's *Residential Tenancy Act*, which limits bad faith evictions for renovations in the same way as Ontario's RTA.[28] Rather, the Court found that the city was within its authority when it enacted its by-law which legislated additional requirements to supplement BC's *Residential Tenancy Act*. We have quoted at length from this case because it represents a sound assessment of how a similar by-law would likely be analyzed by a court in Ontario:[29]

> [79] To repeat, under the subsidiarity principle the level of government closest to a subject matter may choose to respond to local needs by introducing complementary legislation in an area of jurisdictional overlap. The City has a long-standing concern with the need to preserve local affordable rental housing and has recently become particularly concerned with a perceived increase in the risk of renovictions in New Westminster. In my view, the City's conclusion that it was authorized by the *Community Charter* to address those local concerns by enacting the Impugned Bylaw aligns with Justice L'Heureux-Dubé's statement in *Spraytech* that "the mere existence of provincial … legislation in a given field does not oust municipal prerogatives to regulate the subject matter": at para. 39. It also aligns with Chief Justice McLachlin's statement in *Reference re Assisted Human Reproduction Act* that, so long as complementary local laws do not frustrate other legislation, "in an area of jurisdictional overlap, the level of government that is closest to the matter will often introduce complementary legislation to accommodate local circumstances": at para. 70.
>
> [80] In addition, as the Chief Justice [of the BC court below] recognized, s. 10 of the *Community Charter* contemplates overlapping municipal and provincial jurisdiction by providing that a municipal bylaw is inconsistent with a provincial enactment only if it requires contravention of that enactment: at paras. 70, 75–77. Accordingly, it was reasonable for the City to conclude that the Impugned Bylaw would not frustrate the *Residential Tenancy Act* scheme unless it required contravention of the provisions of that Act, which it did not.
>
> [81] Further, as the Chief Justice [of the BC court below] stated, regardless of whether the *Residential Tenancy Act* scheme is all-inclusive regarding the circumstances in which a landlord may terminate a residential lease, that Act contemplates the applicability of other legislative and regulatory schemes in the residential tenancy context. In other words, like the *Community Charter*, the *Residential Tenancy Act* contemplates the prospect of overlapping and

---

[27] *Ibid*.
[28] *Residential Tenancy Act*, SBC 2002 c 78, s 49; RTA, *supra*, s 50. Note: A challenge that New Westminster exceeded its power in enacting the by-law with respect to condominium law in BC also resulted in the by-law being upheld in *VIT Estates Ltd v New Westminster (City)*, 2021 BCSC 573 (CanLII). In the condominium context, a similar by-law was upheld in Ontario in *Toronto & City of Hamilton v Goldlist*, 2003 CanLII 50084 (ON CA).
[29] *New Westminster* BCCA, *supra*.

> complementary jurisdiction. In addition, regardless of what the common practice may be among landlords, the *Residential Tenancy Act* does not expressly grant them a statutory right to charge market rent when a tenant exercises the right of first refusal following a renoviction. Had the Legislature intended to grant such a significant right, in my view it is reasonable to conclude that it would have said so. In the absence of an express provision to this effect, there is no "statutory disharmony" or operational conflict of potential concern.

New Westminster was successful in arguing that it did not exceed its jurisdiction under the province's *Community Charter*, which confers broad rights on municipalities to regulate in certain areas of local concern.[30] Ontario's *Municipal Act* conveys a similarly broad scope of by-law making power as articulated by the British Columbia Court of Appeal.[31]

2) Tenant Assistance Policy in Burnaby

The Tenant Assistance Policy (the "Policy") in Burnaby is unique in that it provides a mechanism compensating tenants during renoviction who are required to find lodging while their unit is being renovated. In that way, the Policy discourages renoviction because it limits the financial benefit to landlords. The Policy applies when a landlord is renovicting tenants and the landlord is also applying for a zoning application. We are not aware of any legal challenge to Burnaby's policy, but based on our review of the case law in this area, we do not know of a specific basis on which a similar by-law or policy in Ottawa would be successfully challenged.

While the City maintains that it has no clear authority to enact a similar policy, clear authority is not what's required for municipalities to enact valid by-laws. Rather, municipalities must enact by-laws to respond to a local issue without frustrating the purpose of provincial statutes. That said, the City does have explicit power to regulate and provide for "the adequate provision of a full range of housing, including affordable housing" under the *Planning Act*.[32]

3) Landlord Licensing By-Laws in Ontario

Licensing is a commonly exercised municipal power.[33] In Ontario, several municipalities have enacted landlord licensing by-laws, including Toronto, Mississauga, London, Waterloo, Oshawa, and North Bay.[34] As discussed, Ottawa has also required landlord licensing, but

---

[30] *Community Charter*, SBC 2003 c 2, s 8(g).
[31] *Municipal Act*, *supra*, ss 8-10, and in particular ss 8(1) and 151.
[32] *Planning Act*, RSO 1990 c P.13, s 2(j).
[33] *Taxi Drivers v Calgary*, *supra* at paras 9-14; *Unifor Local 1688 v The City of Ottawa*, 2018 ONSC 3377 at paras 11-12.
[34] City of Oshawa, By-Law 120-2005, "Business Licensing By-Law" at Schedule "K": Rental Housing; City of London, By-Law C-19, "Residential Rental Units Licensing: A By-law to provide for the licensing and regulation of Residential Rental Units in the City of London"; The Corporation of the City of Waterloo, By-Law 2011-047, "Being a By-Law to Provide for the Licensing, Regulating and Governing of the Business of Residential Units in the City of Waterloo"; The Corporation of the City of North Bay, By-Law 2012-55 [unconsolidated], "Residential Rental Housing Licensing By-Law"; City of Toronto, By-Law 448-2017, "To adopt City of Toronto Municipal Code Chapter 354, Apartment Buildings, to regulate the renting of apartment building rental units".

only for rooming houses.[35] Landlord licensing by-laws operate by requiring compliance with existing by-laws and legislation before the municipality will issue a license to landlords. These by-laws also provide for fines for landlords who do not comply, and enforcement mechanisms like inspections by by-law officers to ensure compliance. Toronto's by-law is quite specific about what kinds of maintenance standards must be met before a license will be granted, and it requires follow-up, documentation, and strict timelines for landlords to respond to tenant service requests. It also requires that landlords proactively prevent maintenance issues like pests through regular cleaning and inspections.

Ontario courts have consistently held that these by-laws represent a valid exercise of municipal authority. Challenges to by-laws were rejected in Waterloo, London, North Bay, and in an earlier iteration of a tenant protection by-law in Toronto.[36] For example, in London, a corporate landlord applied to quash the municipality's landlord licensing by-law under section 273 of the *Municipal Act*, an Ontario court found that the by-law did not frustrate the RTA because the RTA and the by-law could operate together, under the dual compliance test.[37] In addition, a corporate landlord applied for judicial review of the City of Waterloo's licensing bylaw and alleged that Waterloo had exceeded its powers mainly by imposing an "indirect tax." The Divisional Court found that Waterloo's licensing scheme was designed to be revenue neutral, and even though it imposed fees, it used those fees for the implementation of the by-law in a manner that constituted a fee and not a tax, within the City's authority.[38]

The City of Ottawa has previously reviewed the possibility of landlord licensing, and it has taken the position that landlord licensing may not be feasible because of a Regulation under the *Municipal Act* that limits licensing of "the business or trading in real estate".[39] In our view, a landlord licensing by-law does not, on its face, constitute licensing the "real estate" business, because it would not limit landlords' abilities to buy and sell their properties, rather, it would limit and track whether landlords were meeting their maintenance obligations to tenants.

CONCLUSION

The City has taken the position that it cannot or should not regulate in this area. However, our review of the case law shows that, with a properly drafted by-law, the City *can* take action to prevent renovictions.

---

[35] City of Ottawa, By-Law 2002-189, "Licensing" s 9(27).
[36] *London Property Management Association v City of London*, 2011 ONSC 4710 ["*City of London*"]; *Fodor v North Bay (City)*, 2018 ONSC 3722 ["*Fodor*"]; *1736095 Ontario Ltd v Waterloo (City)*, 2015 ONSC 6541 ["*Waterloo*"]; *Goldlist*, *supra.*
[37] *City of London*, *supra* at paras 46-62; see also *Fodor, supra* at paras 55-63.
[38] *Waterloo*, *supra* at paras 54 and 60-61.
[39] O Reg 583/06 "Licensing Powers".

We trust this is responsive to your request. Please do not hesitate to contact the undersigned in the event that you have any questions regarding any aspect of the foregoing.

Yours truly,

RAVENLAW LLP/s.r.l.

Claire Michela