

CC8.5 - CONFIDENTIAL ATTACHMENT

made public on November 26, 2025

CONFIDENTIAL INSTRUCTIONS TO STAFF

The City Solicitor recommends that:

1. City Council instruct the City Solicitor to accept the Province's settlement offer and discontinue the City's court application regarding Bill 184, *Protecting Tenants and Strengthening Community Housing Act, 2020*, on a without-costs basis.

CONFIDENTIAL INFORMATION OR ADVICE

This confidential attachment provides legal advice on a settlement offer the Province has made in the course of the City's legal challenge to certain provisions of Bill 184.

Background and Litigation Progress

On July 21, 2020, the Province passed Bill 184, *Protecting Tenants and Strengthening Community Housing Act, 2020*. Among other things, it made amendments to the *Residential Tenancies Act, 2006* that changed some of the procedural rules for landlord and tenant applications brought before the Landlord and Tenant Board.

Briefly, these Amendments are as follows:

Amendment 1 added a requirement that tenants provide their landlords with advance notice if they wish to raise their own issues at a hearing in opposition to an eviction application. If the tenant fails to provide such notice, the tenant may still bring a motion to explain this failure and, if the explanation is accepted, raise their issues at a hearing.

Tenant advocates feared that this amendment might preclude tenants from raising their own issues in opposition to an eviction application if they are unable or not knowledgeable enough to meet the advance notice requirement.

Amendment 2 introduced the option for the Board to mandate mediation, or another form of dispute resolution, with or without the consent of the parties. This process is non-binding. If a tenant (or landlord) is not satisfied with a proposed settlement, that individual can choose to proceed to a full hearing before the Board.

Tenant advocates feared that a mandatory (as opposed to a voluntary) mediation or alternative dispute-resolution process that was not led by a Board member could lead to a tenant entering into a settlement agreement without adequate protections.

Amendment 3 authorized the Board to order that a landlord may apply ex-parte for an eviction where the tenant fails to abide by the terms of a written agreement for the repayment of rental arrears. If such an eviction order is made, the tenant has 10 days to bring a motion to set it aside on the basis that it was incorrectly issued.

Tenant advocates feared that the negotiated agreement could be reached informally between tenants and landlords, and that tenants may not understand the potential implications of an ex-parte eviction order should they fail to repay the agreed arrears.

In a confidential attachment submitted to City Council's meeting of July 28 and 29, 2020, the City Solicitor recommended against the City bringing a legal challenge to the Amendments, because legally they do not ultimately remove or undermine a tenant's right to a fair hearing. For example, in judicial proceedings parties (including self-represented litigants) are often required to provide advance notice of issues they wish to raise at a hearing and participate in mediation prior to a court hearing or trial. The City Solicitor also advised City Council that the court might not grant the City standing if it brings a legal challenge. This is because a court could conclude that the case does not raise serious issues and the Amendments only indirectly affect the City's interests.

City Council directed the City Solicitor to commence a legal challenge to the Amendments on the basis that they are contrary to the rules of procedural fairness and natural justice, or any other grounds deemed appropriate by the City Solicitor.

On March 30, 2021, the City issued a Notice of Application in Superior Court. It challenges the validity of the Amendments on the basis that they contravene s. 7 of the *Canadian Charter of Rights and Freedoms*, which entitles an individual to security of the person, because an eviction can lead to serious effects on an individual's health. It also asserts that the Amendments do not accord with the principles of fundamental justice.

In support of its application, the City has delivered materials including affidavits from:

1. A lawyer employed by the Centre for Equality Rights in Accommodation (CERA), an organization that provides legal information and referrals to tenants;
2. A lawyer employed by the Advocacy Centre for Tenants Ontario (ACTO), a specialty legal clinic that manages the Tenant Duty Counsel Program across Ontario, which provides legal advice and representation to tenants before the Board;
3. A City staff member who works in the Housing Secretariat, regarding the City's role in providing housing and homelessness services and the impact of tenant evictions; and
4. An expert psychiatrist who works at the Wellesley Institute and the Centre for Addiction and Mental Health in the area of the social causes of illness, regarding the impact of evictions or eviction notices on the health and well-being of tenants.

The province has delivered responding materials, including an affidavit from an Assistant Deputy Minister in the Ministry of Municipal Affairs and Housing. It speaks primarily to the Province's public consultations on and stated policy reasons for making the Amendments and its efforts to provide the public with information about the *Residential Tenancies Act, 2006*, the Landlord and Tenant Board's procedures, and the availability of legal resources to assist landlords and tenants.

The parties are currently engaged in cross-examinations on this affidavit evidence. Following this, the parties will set dates for the exchange of their written legal arguments and schedule a hearing date with the court, according to its availability at the time.

The Settlement Offer and Amendments to the Residential Tenancies Act, 2006

During the course of cross-examinations, the Province made a settlement offer to the City, which would require the City to discontinue its court application. If the offer is accepted prior to August 1, 2023, neither party would seek its legal costs to date.

In addition, on April 6, 2023, the Province introduced Bill 97, *Helping Homebuyers, Protecting Tenants Act, 2023*, which, among other things, proposed amendments to the *Residential Tenancies Act, 2006* aimed at providing tenants with additional protections from "renovictions" by landlords. With respect to the City's court application, Bill 97 proposed an amendment that would require any written agreement for the repayment of rental arrears between a landlord and tenant to be in a form approved by the Board.

Currently, the Board-approved repayment agreement form advises tenants that the agreement is voluntary, they may wish to seek legal advice, and that the landlord may seek eviction (in the normal course, or ex-parte) if a tenant fails to make payment.

On June 5, 2023, Bill 97 was adopted, including the above amendment related to repayment agreements. On June 8, 2023, Bill 97 received Royal Assent.

Legal Advice and Recommendations

The City Solicitor recommends that the City accept the Province's settlement offer, and discontinue the City's court application on a without-costs basis.

The City has put forward its best and most creative legal arguments. However, there is little prospect that the City will successfully challenge the Amendments, as a court is unlikely to conclude that they have been the direct cause of tenant evictions or have deprived tenants of their right to a fair hearing.

The Amendments have now been in place for almost three years. The City has obtained affidavits and up-to-date information from helpful, competent lawyers employed by CERA and ACTO (non-profit organizations that work directly with and/or provide legal advice to tenants). However, despite the City's request for individual examples, the tenant groups have been unable to produce evidence that the Amendments have resulted in actual evictions caused by the anticipated procedural fairness or natural justice issues that the City's challenge was aimed at preventing.

Notably, the notice requirements put in place by Bill 184 do not differ significantly from those in place for other types of legal proceedings. Also, the Board has not instituted a dispute-resolution process that differs greatly from the mediation program that was previously in place. Finally, the Province has now adopted Bill 97. The main amendment, which requires a repayment agreement to be on a Board-mandated form alleviates the concern that a tenant might enter into an informal agreement without understanding the potential consequences if they fail to make payment.

As such, the City will likely not be able to demonstrate that the Amendments engage s. 7 of the *Charter of Rights and Freedoms*, nor that they violate the principles of fundamental justice. Even if the City could demonstrate a violation of tenants' *Charter* rights, the Province will be able to point to the lack of evidence of a disproportionate negative effects on tenants.

Furthermore, this lack of evidence likely weakens the City's argument that it has standing to pursue its application. Without evidence that the amendments have resulted in actual evictions, it will be difficult to argue that the City's interests or services are directly affected. If the City cannot establish standing, it will be prevented by the court from arguing its case and will likely be ordered to pay the Province's legal costs.

By accepting the settlement offer, the City will avoid significant costs. To date, the City has incurred costs in bringing its application, including the use of staff resources, paying court and filing fees, and the cost of hiring an expert witness. These will grow as the litigation continues. If the City is unsuccessful on its application, it will likely be ordered to pay a portion of the Province's legal costs, which will be significant.