PH10.10 - Renovictions By-Law
Submission to the Planning and Housing Committee
February 28, 2024

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Through my job as researcher with the Canadian Housing Evidence Collaborative (CHEC), an affordable housing research organization based at McMaster, I was given the opportunity last year to work with City of Hamilton staff on their anti-renoviction policies, a suite of interconnected policies that included the Renovation Licence and Relocation By-law that was unanimously approved last month.

I have a report coming out very shortly through CHEC that does a deep dive into the policies Hamilton and municipalities in B.C. have developed to deal with renovictions, which includes some insight into how Hamilton got to their policy that I hope will be helpful in developing Toronto's policy, that I hope will be helpful in developing Toronto's policy.

Hamilton's bylaw came about after Hamilton City Council directed City staff in December 2022 to find the "ways and means" of implementing a New Westminster-style anti-renoviction bylaw.

New Westminster's bylaw has received considerable attention across the country for its innovative and bold attempt to address renovictions. For decades, the City had required rental housing businesses to be licenced and to comply with property standards that were set out in the licencing bylaw. In 2019, the City added new rules to the bylaw that licenced landlords had to follow when undertaking building renovations:

Before issuing a notice to terminate the tenancy for renovations, landlords were required to have either a) entered into a new tenancy agreement with the tenant for a comparable unit at the same terms in the same building, or b) have made other arrangements for the tenant's temporary accommodation during the renovation or repair and for their return to their original rental unit at the same rent once renovations were done.

By ensuring the landlord had already made arrangements to relocate the tenant and for the tenant's return to the unit before the landlord was able to issue an eviction notice, New Westminster hoped to stop landlords from evicting tenants to do renovations and to encourage landlords to do renovations without ending the tenancy agreement. However, the policy only addressed renovictions where a formal eviction notice was issued, and so informal renovictions continued unabated.

When Hamilton staff reported back in April of last year with the results of that earlier Council direction to find the ways and means of implementing a New Westminster-style bylaw, they told Councillors that, in the City Solicitor's opinion, a New Westmister-style bylaw wasn't within the City's jurisdictional authority. This was not the first time staff had avoided pursuing an anti-renoviction bylaw; Councillors had been pressing them for years to pursue one, and staff had found various ways over the years to avoid doing so.

City Councillors had to literally insist at that April meeting that staff follow Council direction, and explicitly tell staff that, and I quote, "*We're willing to have the fight if someone comes after us and sues us*" before staff would take that direction seriously. That Council meeting is really something to see.

Even still, when staff came back with a draft bylaw in August, it still didn't include those New Westminster provisions because, again, staff claimed it couldn't be done.

The bylaw staff proposed, however, did something novel: it used the City's business licencing authority under the Municipal Act to require landlords who wished to evict tenants for renovations and repairs that were so significant that vacant possession was required, to get a specific business licence to do those renovations and repairs. Instead of first requiring a licence to operate a rental housing business and putting conditions on that licence regulating renovations, which is how anti-renoviction policies have been done in B.C., given that many cities already require rental housing businesses citywide to be licenced, Hamilton requires landlords (who may or may not be subject to separate business licencing requirements) to obtain a licence to do renovations in rental housing when vacant possession is required.

It took ACORN actually taking that draft bylaw with its novel approach and writing in the changes they wanted to see, and then Council directing staff to revisit the proposed bylaw–yet again–and see if ACORN's changes could be incorporated, to finally produce a bylaw that actually includes New Westminster-style provisions. When staff came back with this new bylaw, they presented it to Councillors saying that the bylaw–with its New Westminster style provisions–are within the scope and authority of the Municipal Act and complements (rather than conflicts with) the RTA. In other words, they found a way to do what they claimed was impossible. Imagine that.

I'm telling you this story to illustrate how important political will and tenant advocacy are in creating good public policy. The only reason that the policy Hamilton approved was developed and passed was because of persistent advocacy by tenants and because of the dogged determination and tenacity of members of Council.

This is important because while there are great things about Hamilton's bylaw, there are also weaknesses that Toronto should avoid and opportunities that Toronto could seize.

A key weakness of Hamilton's approach is that it only applies to landlords who choose to issue their tenant an N13 notice. There are many other ways to renovict a tenant that don't involve going through the formal eviction process, so landlords are likely to circumvent the bylaw entirely and just use these other methods to evict tenants. Another weakness is that the bylaw is triggered by the issuing of an N13 notice, which means the bylaw doesn't kick in until the formal eviction process under the RTA is already underway, making it much harder to prevent renoviction.

The town of Ladysmith, B.C. has a policy that I think may be helpful in addressing both of these issues. Although it has received no notice and no fanfare, I think it's likely that in this one policy, Ladysmith has the strongest anti-renoviction AND anti-demoviction policy in Canada in terms of the protections and support it provides tenants. Those requirements are to a) enter into a new tenancy agreement with the tenant for a comparable rental unit and enter in a new tenancy agreement for the tenant to return to their unit following renovations or repairs, b) enter into a new tenancy agreement for a comparable rental unit for the long term; or c) provide the tenant compensation of a year's worth of rent plus one months rent for every year of the tenancy, prior to proceeding with eviction efforts.

But the part that's particularly relevant to Toronto is the design of the policy. Instead of using the issuance of an eviction notice for renovations or repairs as the trigger, as every other anti-renoviction policy has done, the trigger for Ladysmith's policy is a landlord taking "any steps to evict a tenant from a rental unit for the purposes of a renovation or demolition." This makes the policy apply to a broader scope of eviction attempts, and because it intervenes before any action is taken, it is designed to stop landlords from pursuing formal eviction.

I think in developing our bylaw, we should find out from municipal staff, tenants, tenant advocates and support services in Ladysmith how well their policy is working and then figure out how to develop a novel policy based on what we can learn from Hamilton, Ladysmith, and others. We won't know for at least another year whether Hamilton's novel approach will hold up in court. But what we will get from that court challenge–if there is one–is a better understanding of the limits of municipal authority which will help us make better policy. That's an important contribution we'll be able to thank Hamilton City Councillors for.

But regardless of the outcome of that court challenge, to develop a bylaw that will be effective in preventing eviction and preserving the affordability of our existing rent protected rental housing stock, City staff will need to consider an approach that tests the limits of municipal jurisdictional authority, just as Hamilton staff were pushed to do. Any municipality that wishes to meaningfully address predatory eviction requires its elected officials to recognize that taking legal risks is a necessary part of making good and effective public policy, especially in a policy environment constrained by an unhelpful and unsupportive provincial government.

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