Recommended Amendments to Second Reading of Bill 109, *Residential Tenancies Act, 2006*

Submission of:
Advocacy Centre for Tenants Ontario
Legal Clinics Housing Issues Committee

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Advocacy Centre for Tenants Ontario
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Index text refers to margin notes from Tenant Protection Act. References are to page numbers.

ACTO/LCHIC Proposed Amendments to Bill 109, *Residential Tenancies Act, 2006*

Following introduction of Bill 109, *Residential Tenancies Act, 2006* on May 3, 2006, the Legal Clinic Housing Issues Committee (LCHIC) and the Advocacy Center for Tenants Ontario (ACTO) have prepared the following document with recommended changes to the bill.

The recommendations below focus primarily on changes to the bill; ACTO and LCHIC also have considerable concern regarding the fact that there are relatively few changes to the previous legislation. The most significant failure of this legislation, which considerably diminishes the impact of some of the improvements in the new bill, is the fact that vacancy decontrol remains in place. The improvements to the rent control provisions with respect to sitting tenants will have minimal impact on the general affordability of rents as long as the vacancy decontrol policy introduced by the previous government remains in place.

This document highlights important changes that ACTO/LCHIC have identified in the *RTA, 2006*. The first column contains the text from the RTA at first reading, the second column contains (in a different font) proposed revisions, in **bold** if there are suggested additions to existing wording, and the third column explains why the changes are needed.

***RTA, 2006* First Reading**	***ACTO/LCHIC Proposed Amendment***	***Explanation***
Purposes of Act 1. The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.	*The purpose clause should delete the phrase "from unlawful rent increases and unlawful evictions"* **Purposes of Act** 1. The purposes of this Act are to provide protection for residential tenants, to establish a framework for the regulation of residential rent, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.	The purpose clause as worded undermines over 35 years of remedial legislation and interpretation by the courts of the underlying purpose of residential tenancy law. The underlying rationale for the introduction of residential tenancy legislation in 1970 was to redress the imbalance that exists in favour of residential landlords. The courts have consistently acknowledged that residential tenancy legislation is remedial legislation that should be given a broad interpretation consistent with its tenant protection focus. We propose that the purpose clause be worded broadly to be consistent with the remedial nature of residential tenancy legislation.

Setting Hearing Order Aside *There is no provision in RTA to set-aside order where tenant does not attend scheduled hearing.*	**Setting Hearing Order Aside** 205.1 (1) If at a hearing the Board issues an order where the Respondent did not appear, the Respondent may make a motion to the Board, on notice to the Applicant, to have the order set-aside within 10 days after the Order is issued. (2) An order is stayed when a motion to have an order set-aside under subsection (1) is received by the Board, and shall not be enforced under this Act or as an order of a court during the stay. (3) On a motion under subsection (1), the Board shall hold a hearing, and may set-aside the order where satisfied that the respondent has a reasonable explanation for not having attended the hearing and has a defence on the merits, or there are grounds for granting relief from eviction under s.83. (4) If the Board sets aside the order, it shall then proceed to hear the merits of the application.	It is a serious failing of the new legislation to not anticipate that there will be legitimate circumstances that prevent a tenant from being able to attend at the hearing through not fault of their own. Particularly given that a hearing date is set on short notice without consulting the respondent, this issue must be addressed. In situations such as illness, or where a tenant is on vacation, or where a tenant has not been served by the landlord with the requisite hearing documents the tenant will not be able to attend at the Board for his or her hearing. There are also innumerable other circumstances in which it may not be possible for a tenant to attend their hearing or to even contact the Board beforehand to let the Board know they cannot be present at hearing. In such a situation, where a tenant's failure to attend at the hearing is without fault, the RTA contains no provision to allow the tenant to apply to the Board to set aside the hearing order. Pursuant to the *Rules of Small Claims Court* that court may, by way of motion set aside or vary, on such terms as are just, a judgment obtained against a party who failed to attend at the trial. A set aside process of this nature is fundamental to a tenant's access to justice. If this change is not made to the RTA all of the good that the government has intended to accomplish by eliminating the default eviction process will be lost.

Determinations related to housing assistance 203. The Board shall not make determinations or review decisions concerning, (a) eligibility for rent-geared-to-income assistance as defined in the Social Housing Reform Act, 2000 or the amount of geared-to-income rent payable under that Act; or (b) eligibility for, or the amount of, any prescribed form of housing assistance.	*Two Options:* *A. If the jurisdiction to review social housing decisions is to be given to the board:* **203. (1) In an application based on s.58(1)2, or an application based on arrears of rent that arose due to the cancellation or reduction of rent-geared-to-income assistance under the Social Housing Reform Act, 2000, the Board may review the decision of, and substitute its decision for, that of service manager, supportive housing provider or lead agency under that Act with respect to any issue concerning,** (a) eligibility for rent-geared-to-income assistance as defined in the Social Housing Reform Act, 2000 or the amount of geared-to-income rent payable under that Act; (b) eligibility for, or the amount of, any prescribed form of housing assistance, or (c) whether the tenant has ceased to meet the qualifications required for occupancy of the rental unit. *B. If the jurisdiction to review social housing decisions will be given to another independent tribunal, section 203 should not be proclaimed until that jurisdiction is established, with the addition of the following section to the existing s.203*: 203. (2) Despite section 263, subsection (1) shall not take effect until a date to be named by proclamation of the Lieutenant Governor.	The RTA prevents the Board from considering rent determination that have been made under the Social Housing Reform Act. In effect, if a social housing landlord makes an arrears application to the Board, the Board has to accept, without question, what the landlord says the rent is, even in the face of evidence that the decision was wrong or that the landlord has not complied with the SHRA. Currently, a social housing tenant has no right to an independent review of decisions relating to rent subsidies. The only review is an internal review within the same organizational structure who made the original decision. The new provision allowing for a further review of housing provider decisions by the service manager is an improvement, but is still a far cry from an independent review. Unjustifiable decisions are made, and confirmed, regularly. The RTA should be amended to either give the Board express jurisdiction to review SHRA decisions, or, if the SHRA is amended to provide an independent review in another forum, the provisions taking the ability to review SHRA decisions away from the Board should not be proclaimed until that other independent review process is in place.

Termination for cause, reasonable enjoyment of landlord in small building 65. (1) Despite section 64, a landlord who resides in a building containing not more than six residential units may give a tenant of a rental unit in the building notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the conduct of the tenant, another occupant of the rental unit or a person permitted in the building by the tenant is such that it substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord or substantially interferes with another lawful right, privilege or interest of the landlord. **Notice** (2) A notice of termination under this section shall set out the grounds for termination. **Non-application of s. 64 (2) and (3)** (3) Subsections 64 (2) and (3) do not apply to a notice given under this section.	*This section should be amended to limit the application to buildings with two units* **Termination for cause, reasonable enjoyment of landlord in small building** 65. (1) Despite section 64, a landlord who resides in a building containing **not more than two residential units** may give a tenant of a rental unit in the building notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given if the conduct of the tenant, another occupant of the rental unit or a person permitted in the building by the tenant is such that it substantially interferes with the reasonable enjoyment of the building for all usual purposes by the landlord or substantially interferes with another lawful right, privilege or interest of the landlord.	This section provides for a fast-track eviction process with no opportunity to remedy where a landlord resides in the same building that has not more than 6 units. The section captures a significant percentage of rental units across the province. A six-unit building is not a “small building”. This may result in eviction, as there is no chance to remedy, for an isolated incident. The special status may be appropriate for duplex or basement apartment situations, and the recommended change is to reduce the number of units from 6 to 2.

Tenant's responsibility for repair of damage 34. The tenant is responsible for the repair of undue damage to the rental unit or residential complex caused by the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant. . . . **Compensation for damage** 89. (1) A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.	*This section should be amended include wilful or negligent damage.* **Tenant's responsibility for repair of damage** 34. The tenant is responsible for the repair of undue damage to the rental unit or residential complex caused by the **wilful or negligent** conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant. . . . **Compensation for damage** 89. (1) A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex **wilfully or negligently** causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.	Under the RTA a tenant would be strictly liable for undue damage, as there is no longer a requirement that the damage be wilful or negligent, as there was under the TPA. This lowers the threshold for liability well below the general civil standard in tort law. The modern approach to liability in tort bases liability on fault, not on causation. The exceptions to this rule in tort law are very narrow, limited to extreme situations, such as where a person is keeping something inherently dangerous such as wild animals and that thing escapes causing injury. To extend this principle to place liability on residential tenants who are not at fault is a huge departure from the common law of liability in tort. There is no rational basis for this fundamental change in liability. The effect of this change is to make a tenant insurer for the landlord's property. This is also inconsistent with the mobile home provisions under s. 161(f) of the RTA where a landlord is only liable for *wilful and negligent* damage to a tenant's property. Under both sections, liability should be consistent with the general law of tort.

Unauthorized occupancy 100. (1) If a tenant transfers the occupancy of a rental unit to a person in a manner other than by an assignment authorized under section 95 or a subletting authorized under section 97, the landlord may apply to the Board for an order terminating the tenancy and evicting the tenant and the person to whom occupancy of the rental unit was transferred. **Time limitation** (2) An application under subsection (1) must be made no later than 60 days after the landlord discovers the unauthorized occupancy. **Compensation** (3) A landlord who makes an application under subsection (1) may also apply to the Board for an order for the payment of compensation by the unauthorized occupant for the use and occupation of the rental unit, if the unauthorized occupant is in possession of the rental unit at the time the application is made.	*The following sections should be added after s. 100(1) and 100(4), respectively:* **Unauthorized occupancy** s. 100 (1.1) If a tenant of rental unit dies or otherwise vacates a rental unit, and there is another person or persons residing in the rental unit, a landlord may apply to the Board for an order evicting the occupants. . . . **Exemption, Family Members** s.100 (5) In an application under (1) or (1.1), an occupant who is a spouse, or a parent or child of the tenant who has been living with the tenant for at least one year prior to the tenant dying or vacating the unit, the occupant may elect to become a tenant under the same terms and conditions of the existing tenancy agreement.	Currently there are no protections for a spouse or family member who resides with the lessee to continue occupancy of the unit after breakdown of a relationship or death. Though this may be addressed by amendments to the definition of tenant, a more workable solution may be to amend the unauthorized occupant sections to allow for family members to elect to remain.

Interpretation 2. (1) In this Act, . . . "landlord" includes, . . . (c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; ("locateur")	*Delete the phrase "other than a tenant occupying a rental unit in a residential complex":* 2. (1) In this Act, . . . "landlord" includes, . . . (c) a person who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; ("locateur")	A person who rents a house with a basement apartment, and lives in the house and rents out the basement, would not be considered a landlord under this definition. This means the tenant in the basement does not benefit from any of the protections in the RTA. In earlier consultations, the previous government indicated that the above result was inadvertent. Any tenant who rents a self-contained unit should be protected under the Act.
Exemptions related to social, etc., housing	*Delete these references.*	Tenants in social housing paying market rent should have the same protections as private market tenants. There is no rationale for their exclusion from, for example, rules limiting the amount of rent increases. Social housing tenants should also have the same protections with respect to compensation for eviction as private market tenants. Unlike the exemptions for rent rules, this is not an issue relating to their status as non-profit, rent-geared-to-income tenants.
Entry with notice 27. (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances: . . . 4. To carry out an inspection of the rental	*This section should be amended to Indicate that entry with notice only where reasonable.* **Entry with notice** 27. (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances:	This section is ripe for abuse. The ability to inspect must be qualified by the word 'reasonable'

unit for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161.	. . . 4. **Where reasonable,** To carry out an inspection of the rental unit for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161.	
Time limitation 29. (2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.	*This section should be amended to a two year limitation period.* **Time limitation** 29. (2) No application may be made under subsection (1) **more than two years** after the day the alleged conduct giving rise to the application occurred.	Limitation periods for tenant applications should be consistent with the general 2-year limitation period for civil actions under the Limitations Act. Similar changes should be applied to sections 57(2), 98(2), 115(2), 130(5) and 135(5)
Where eviction order enforced 41. (2) Despite subsection (1), where an order is made to evict a tenant, the landlord shall not sell, retain or otherwise dispose of the tenant's property before 72 hours have elapsed after the enforcement of the eviction order. **Same** (3) A landlord shall make an evicted tenant's property available to be retrieved at a location close to the rental unit during the prescribed hours within the 72 hours after the enforcement of an eviction order. . . .	*This section should be amended to provide for 14 days to recover possessions following an eviction.* **Where eviction order enforced** 41. (2) Despite subsection (1), where an order is made to evict a tenant, the landlord shall not sell, retain or otherwise dispose of the tenant's property **before 14 days have elapsed** after the enforcement of the eviction order. **Same** (3) A landlord shall make an evicted tenant's property available to be retrieved at a location close to the rental unit during the prescribed hours **within the 14 days after the enforcement** of an eviction order. . . .	The RTA section provides for an additional 24 hours (up from 48 hours) for a tenant to retrieve their property once an eviction order has been enforced. 72 hours continues to be too short of a time frame for a tenant to retrieve possessions. This time limit should be extended to at least 14 days. Furthermore the RTA continues the flaw in the TPA of failing to provide a practical remedy for tenants where landlords fail to comply with this section. Disputes arising over access to property in the period immediately following execution of an eviction order should be resolved expeditiously before the Board.

Agreement (5) A landlord and a tenant may agree to terms other than those set out in this section with regard to the disposal of the tenant's property.	**Agreement** (5) A landlord and a tenant may agree to terms other than those set out in this section with regard to the disposal of the tenant's property. *The sections below should be added/amended to give the Board jurisdiction to resolve disputes regarding recovery of property after enforcement of an eviction order* **Tenant applications** 29. (1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders: . . . **7. An order determining that the landlord, superintendant or agent of the landlord has breached an obligation under subsection 41 (2), (3), or (5)** . . . **Other orders re s. 29** 31. (1) If the Board determines that a landlord, a superintendent or an agent of a landlord has done one or more of the activities set out in **paragraphs 2 to 7** of subsection 29 (1), the Board may,	

Notice, landlord personally, etc., requires unit 48. (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by, . . . (d) a person who provides care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse.	*This section should be amended to state that the person providing care services must live in the same residential complex as the person requiring care.* **Notice, landlord personally, etc., requires unit** 48. (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by, . . . (d) a person who provides care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse**, where the person who will be receiving care services lives in the same residential complex as the rental unit for which the notice is being served.**	Presumably, the purpose is to allow the caregiver to be close to the person needing care. This should be made clear in the section. A similar change will be required for s. 49(1)(d) & 49(2)(d)
Former tenant's application where notice given in bad faith 57. (1) The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that, (a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice, and no person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after that termination;	*Amend to clarify section applies equally to tenants who leave following an application to the Board* **Former tenant's application where notice given in bad faith** 57. (1) The Board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the Board determines that, (a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice **or following from an application to the Board based on the notice,** and no person referred to in clause 48 (1) (a), (b), (c) or (d) occupied the rental unit within a reasonable time after that termination;	This section clarifies that a tenant may be entitled to compensation whether or not the landlord brings an application to terminate based on a notice under s.48 or 49. Whether or not the tenant leaves voluntarily after receiving a notice, or challenges the notice at the Board, if the landlord was not acting in good faith the tenant should be entitled to compensation.

Exception, notice under s. 63 80. (2) Despite subsection (1), an order evicting a tenant may provide that it is effective on a date specified in the order that is earlier than the date of termination set out in the notice of termination if, (a) the order is made on an application under section 69 based on a notice of termination under clause 63 (1) (a) and the Board determines that the damage caused was significantly greater than the damage that was required by that clause in order to give the notice of termination; or (b) the order is made on an application under section 69 based on a notice of termination under clause 63 (1) (b).		This section provides that an order can be enforceable prior to the termination date in the notice under s. 80(2), where the notice is given for wilful damage or if the premises are being used in a manner inconsistent with residential use, and the use has caused, or may cause, significant undue damage to the premises. The greatly expedited procedure maybe subject to abuse by 'bad landlords', and be able to obtain and enforce an eviction order based on a mere allegation, before an innocent tenant may even be aware that eviction proceedings have been commenced. The fast-track provision may also have an adverse impact on tenants with disabilities, particularly where the case involves mental illness, who are unable to respond in the short time frames. Furthermore, the fact that a fast-track eviction order may be obtained on a hypothetical future event under s. 63(1)(b) is also open to abuse.

Demolition, conversion, repairs 73. The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 50 unless it is satisfied that, (a) the landlord intends in good faith to carry out the activity on which the notice of termination was based; and (b) the landlord has, (i) obtained all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, or (ii) has taken all reasonable steps to obtain all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, if it is not possible to obtain the permits or other authority until the rental unit is vacant.	*Delete 73(b)(ii)*	The proposed section allowing an eviction to be granted when a permit has not been issued will undermine municipal by-laws that are designed to protect rental housing. Some municipalities have passed valid by-laws that only permit demolition or conversion on buildings not occupied by residential tenants. This section effectively allows landlords to circumvent such municipal by-laws, by permitting them to evict tenants where the city refuses to issue permits.

Circumstances where refusal required 83. (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that, . . . (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards; etc....	*This section should be changed to "a" reason …* **Circumstances where refusal required** 83. (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that, . . . **(b) a reason** for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards; etc....	The TPA changed the mandatory evictions from the previous legislation, which provided that one of the items listed be "a" reason, as opposed to "the" reason. The use of the word "the" sets too high a threshold in these cases. Similar changes should be made to 83(3)(c)-(e)
Rent deemed lawful 136. (1) Rent charged one or more years earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged and the lawfulness of the rent charged is in issue in the application. **Increase deemed lawful** (2) An increase in rent shall be deemed to be lawful unless an application has been made within one year after the date the increase was first charged and the lawfulness of the rent increase is in issue in the application.	*Delete this section*	The deeming provision makes even the attempt to collect illegal rents legal, if the landlord can keep the tenant in the dark long enough. This section caused considerable injustice under the TPA, particularly because the section deems the rent lawful even where the unlawful rent has been disputed by the tenant. Where the landlord claims an illegal rent, and the tenant has refused to pay the illegal charge, the tenant has no application to bring to the Tribunal. After one year, the rent the landlord 'charged' would nonetheless be deemed lawful. This section would even apply, in conjunction with s. 115, to effectively approve of a landlord who fails to advise a tenant of an order prohibiting rent increase under s. 114.

Smart meters		The regulations regarding the circumstances in which electricity sub-metering can occur, and the energy conservation steps required of a landlord, must be sufficient to account for the increased costs that will be transferred to tenants.
Apportionment of utility costs	*Delete the section.*	There is no evidence that the proposed section has any correlation to the Ministry's stated goal of energy conservation.
Notice by Board 189. (1) Where an application is made to the Board, the Board shall notify the respondent in writing that an application has been made. **Exception** (2) Subsection (1) does not apply in the circumstances prescribed.	*This section should be amended to state that the notice to respondents sent by the Board should also include information related to the hearing.* **Notice by Board** 189 (1) Where an application is made to the Board, the Board shall notify the respondent in writing that an application has been made **and include the information relating to the hearing.**	To be most effective the notice to respondents should also indicate the hearing date. It is not clear what circumstances would justify the Board not sending a notice to respondents.

ACTO/LCHIC Proposed Amendments to Bill 109, *Residential Tenancies Act, 2006*

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