

Housing bill shuffles 'deck chairs on the Titanic'

Advocates worry Ontario legislation still leaves tenants unprotected

BY JUDY VAN RHIJN
For Law Times

While much of the new Housing Services Act aims to re-balance the relationship between municipalities and the provincial government with respect to social housing, tenants' advocates and lawyers were hoping it would go some way to address the significant problems in the area. While last-minute changes averted fears of privatization of public assets, there has been little movement on huge waiting lists, massive repair problems, and systemic justice concerns.

In a followup earlier this year to the passing of responsibility for affordable housing projects to municipalities under former premier Mike Harris, the current government downloaded more decision-making power in an attempt to streamline requirements and improve flexibility. Municipal service managers must now consult and develop comprehensive multi-year plans to address housing and homelessness and report annually on their progress. This idea is to allow community-based governance for non-profit and co-operative housing providers with provincial oversight.

Other measures aimed at simplifying the system consolidated more than 20 programs that operated independently; improved waiting-list administration; and reduced the long list of criteria for the current process of calculating rent geared to income.

None of these administrative measures addresses the conditions that exist in many affordable housing projects. "I'm not going to mince words," says Sarah Shartal, a lawyer at Roach Schwartz & Associates who instituted a class action against the Toronto Community Housing Corp. and the City of Toronto last year alleging negligence for failing to meet and enforce repair obligations amounting to \$300 million. "Social housing is a disaster. A significant number of buildings are dangerous in terms of repairs and security. There has never been a dispute that what I say is true. The argument is about who pays."

The class action wasn't successful at first instance as the court accepted submissions that it was a backdoor attempt to force action on maintenance. The advent of the new legislation makes an appeal difficult as the cause of action was clearly rooted in s. 18 of the now-repealed Social Housing Reform Act.

Shartal was heartened to hear that an extra \$100 million became available for repairs after her application forced the issue. Still, she says the essence of the problem remains. "Nothing I see in Bill 140 deals with this. It's all about how to organize the deck chairs on the Titanic. No one is dealing with the fact that the Titanic is sinking."

The future remains unclear for those on the enormous waiting list for public housing and those whose homes are crumbling into dereliction. "Where's our new affordable housing going to come from?" asks Kenn Hale, director of legal services at the Advocacy Centre for Tenants Ontario.

According to the legislation, the answer is basement apartments. Municipalities can't pass bylaws that prevent renting out private, self-contained residential units within a dwelling, garden or accessory structures. "It is progress, but we don't think that second suites are the optimal form of rental housing," says Hale.

The advocacy centre's submission on Bill 140 promoted the use of inclusive housing policies that require that a certain percentage of units in new developments be affordable to households with low and moderate incomes. Each municipality would have a choice as to

whether to adopt such policies or meet the objectives of their housing and homelessness plans in other ways.

"One of the provincial objectives is that a larger range of income earners should benefit from new developments, but there are not the teeth or the tools for municipalities to do it," says Hale. "A more robust response was warranted to this situation than addressing it just by second suites."

A proposed clause would have allowed municipal service managers to take control of or sell off co-operative housing upon the occurrence of a triggering event, but the government removed it after intensive lobbying and instead left the power with the minister of municipal affairs and housing. "They are maintaining provincial permission," Hale says. "We would have liked a clear statement that it is not the province's policy to allow the sale of social housing,

but at least the responsibility lies where it should be."

Tenant advocates were less successful in their submission that there should be an independent review process for unfair or unreasonable decisions by municipal providers. "There is a requirement now for a local review process but not much detail on how it is to be done," says Hale.

Tenant advocates have always objected to the inability of the Landlord and Tenant Board to review decisions in relation to waiting lists and evictions based on rent arrears and the difficulties tenants face in enforcing any orders they get. "Tenants have no effective remedy even if they get an order to repair," Shartal says. "The board does not have the authority to order repairs to be done. If a landlord gets an eviction notice, it can go to the sheriff, but who do the tenants go to? At best, they can deduct the amount of the repair from their rent, but

that still leaves them with a hole in the roof and a fight with the landlord."

The final version of Bill 140 contained another surprise that Hale believes will further erode the system of justice in this area. "Out of the blue, in the final portion of the act, they packed on changes to the Residential Tenancies Act that will allow the [board] to appoint an unspecified employee to hold hearings and issue orders."

Hale is bewildered by this inclusion given that the government has been moving to improve justice at administrative tribunals by passing the Adjudicative Tribunals Accountability, Governance, and Appointments Act. Hale believes it represents a "dumbing down" of the adjudicative process. "They are treating it as bureaucratic red tape for landlords, but these decisions can be life or death for the tenants." **LT**



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