

Advocacy Centre for Tenant Ontario (ACTO)  
Submission to Legislative Assembly Committee hearings on Bill 14,  
***Non-profit Housing Co-operatives Statute Law Amendment Act, 2013***

ACTO is a community legal clinic, funded by Legal Aid Ontario, with a province-wide mandate. We work for the advancement of human rights and social justice in housing for low-income Ontarians through legal advice and representation, law reform, community organizing, and education and training. The clinic also coordinates the Tenant Duty Counsel Program across Ontario which provides legal information assistance to self-represented tenants appearing at the Landlord and Tenant Board.

ACTO's agrees that the Landlord and Tenant Board – not the costly Superior Court process – is the appropriate place for resolving tenure and payment disputes involving tenants and members of non-profit housing co-operatives. However, we urge the committee members to consider adopting the following additional reforms in Bill 14 that will bring greater fairness to social housing tenants.

### **1. Landlord and Tenant Board Oversight for Housing Subsidy Decisions**

The Landlord and Tenant Board will be taking jurisdiction to hear cases concerning a new group of subsidized housing units. This is the opportunity to give the Board the power to review decisions about rent subsidies that affect individual tenants and members of housing co-operatives. These decisions must be correct before an eviction can be considered. Judicial review is an inappropriate process for determination of housing subsidy disputes.

ACTO's concerns are identical to those expressed by former Chief Justice Patrick LeSage in his on page 79 in his ***Report on the eviction of Al Gosling and the Eviction Prevention Policy of Toronto Community Housing Corporation:***

*“This legislative restriction on the Landlord and Tenant Board’s authority over rent-geared-to-income decisions removes a safeguard for vulnerable tenants facing the final stage of the legal process....It is possible that a vulnerable tenant could find themselves facing eviction proceedings at the Landlord and Tenant Board for non-payment of arrears that were never rightfully owed, due to a rent miscalculation and an unsuccessful internal review. In such a case, the Board’s hands would be legislatively tied since it cannot review the correctness of rent calculations. In this way the vulnerable tenant faces the additional indignity of appearing before an adjudicative body with the power to evict, but with no power to examine what may be the root cause of the tenant’s problem.”*

Former Chief Justice LeSage went on to recommend that Toronto Community Housing Corporation should take steps to seek an amendment to the RTA to allow the Landlord and Tenant Board to assess the appropriateness of rent-geared-to-income decisions.

Currently, section 203 of the *Residential Tenancies Act* prohibits the Board from considering rent determinations that have been made under the *Housing Services Act*. The proposed section 203.1 would extend this prohibition to individual subsidies for

members of non-profit housing co-operatives. In effect, if a social housing provider makes an application to the Board based on non-payment of rent, the Board must accept, without question, what the housing provider says the rent is. This is the case even in the face of evidence that the decision about the rent is wrong.

In any other case where there is a claim for non-payment of rent the Board must begin by determining the legal rent. Social housing residents are among the poorest of the poor and an eviction order based on non-payment will also mean loss of the rent subsidy. The consequences for these families are so enormous that they should not be left with less procedural and substantive protection than other tenants.

The Ontario Human Rights Commission, at page 46 of its 2008 report entitled ***Right at Home: Report on the Consultation on Human Rights and Rental Housing in Ontario***, has also expressed concern about the impact of s. 203, noting the submission of a legal clinic that “the only way to get an independent review of the subsidy decision is for the tenant to file an application for judicial review in the courts – an option that may not be feasible for most low-income tenants.” They have also recommended changes to s. 203 in view of its human rights implications.

The intent of Bill 14 is to consolidate tenure disputes for tenants and co-operative members at one accessible forum. The change we propose to s. 203 and the proposed s. 203.1 would further that goal and enhance the Board’s ability to carry out its responsibilities.

**Amendment required:** Proposed new s. 203

Determinations related to housing assistance and non-profit housing co-operative housing charges

203. (1) In making findings on an application, the Board may make determinations or review decisions concerning,

- (a) eligibility for rent-geared-to-income assistance as defined in the *Housing Services Act, 2010* or the amount of geared-to-income rent payable under that Act;
- (b) eligibility for, or the amount of, any subsidy established for the regular monthly housing charges in a non-profit housing co-operative; or
- (c) eligibility for, or the amount of, any prescribed form of housing assistance to a tenant or member of a non-profit housing co-operative.

(2) Subsection (1) does not apply so as to permit the Board to review the amount of housing charges that have been established by a resolution of the members of a non-profit housing co-operative or, where authorized by the by-laws of the co-operative, by the board of directors of the co-operative.

While our proposal would permit the Board to review the application of subsidy policies to the housing charges of individual members, it would ensure that the democratic decisions about general housing charge amounts would be respected. It would also

provide the Government with flexibility to include review of other types of housing assistance for tenants and co-operative members by regulation where appropriate.

**2. Members of co-operatives need an impartial process to ensure that co-operatives meet their responsibilities to provide safe, quality housing**

The proposed legislation does not permit members of co-operatives to make applications to the Landlord and Tenant Board to address interference with their occupancy or harassment by the co-operative or its employees or non-repair of their homes. Furthermore, members of co-operatives are not permitted to raise these issues as defences to claims for arrears, putting them at a serious disadvantage vis-à-vis tenants. This leaves co-operative members without any effective remedy for a co-operative's failure to meet its obligations.

**Amendment needed:** Co-op members should have the same rights as tenants to make applications under s. 29 of the *Residential Tenancies Act* and to raise defenses to an eviction application pursuant to section 82.

**3. All eviction applications by co-operatives should be heard by the Landlord and Tenant Board**

Continuing some evictions in the courts makes no sense. The eviction grounds proposed for co-operatives under the *Residential Tenancies Act* - which mirror the applicable grounds for ending tenancies in the private rental, private non-profit and municipal non-profit housing sectors - provide sufficient scope for protecting the legitimate interests of co-operatives and their members. Given the acknowledged problems with the process in the Superior Court, there is no reason to continue to have any of these cases heard there.

For example, the issue of pets is addressed comprehensively in the RTA, balancing the interests of all parties in recognition that pets serve an important social role, particularly for those who live alone, the elderly and people with disabilities. It is bad policy to permit co-operatives to pass by-laws banning pets and use the "costly and time-consuming" court process to evict a member for breaching this by-law,

Section 31 of the Bill gives co-operatives the power to obtain an eviction Order from the Landlord and Tenant Board on numerous grounds after giving a notice of termination to a member. These grounds include the situation where the member has "ceased to meet the qualifications required for occupancy of the member unit". This provision could address a number of issues beyond non-payment and anti-social conduct that might arise in a co-operative. There is no need to give the Court an open-ended eviction power in view of the problems currently experienced with that process.

**Amendment needed:** Make changes to sections 8 - 16 of the Bill so that the **Co-operative Corporations Act** is amended to:

- eliminate paragraph 2 of the proposed s. 171.12 (1);
- make consequential amendments to ss. 171.12 (1) and 171.12.1 (1), ;
- eliminate all of ss. 171.13 – 171.25.

#### **4. LTB fee waiver for low-income tenants**

Fee waivers for low-income people are not a new idea and are allowed in several tribunals across Canada that deal with landlord and tenant issues (for example in Alberta, British Columbia, Saskatchewan and Nova Scotia). Following a constitutional challenge, fee waivers are now granted in Ontario courts. Fee waivers may also be granted by the Ontario Municipal Board and the Assessment Review Board. The underlying basis for providing fee waivers is that everyone should have access to justice, regardless of financial circumstances.

More than one third of tenant households in Ontario live at or below the “poverty line”. Low-income tenants are disproportionately single mothers, seniors, Aboriginal, newcomers, physically or mentally disabled, and/or members of racialized communities. Many of the tenants who have difficulty making timely rent payments are in receipt of social assistance.

The failure to allow for fee waivers at the LTB has a discriminatory impact on groups protected by Ontario Human Rights Code and Charter grounds because members of these groups risk losing their homes when:

- an eviction Order issued by the Board contains a serious error in fact, law or both but cannot be contested because the tenant does not have the \$50 filing fee to file a Request to Review; or
- a tenant lives in a state of serious disrepair because he or she does not have the requisite \$45 to file a Tenant Application About Maintenance at the Board

The Landlord and Tenant Board claimed, based on a legal opinion they obtained, that they did not have the jurisdiction to grant fee waivers. Bill 14 addresses this absence of statutory authority with an RTA amendment that permits the Board to waive or defer fees for low-income individuals. ACTO strongly supports this proposed amendment and urges its adoption.