Housing Rights in a Long-Term Affordable Housing Strategy

Submitted by:

Advocacy Centre for Tenants Ontario

December 2009

Advocacy Centre for Tenants Ontario
Centre ontarien de défense des droits des locataires

Contact Information:

For further information about this submission or about the Advocacy Centre for Tenants Ontario, please contact:

Kenneth Hale
Director of Advocacy and Legal Services
425 Adelaide Street West, 5th Floor
Toronto, ON M5V 3C1

416-597-5855, ext. 5163 (ph)
416-597-5821 (fax)
halek@lao.on.ca
www.acto.ca

I. INTRODUCTION

The Advocacy Centre for Tenants Ontario (ACTO) is a community legal clinic, funded by Legal Aid Ontario, focusing on residential tenancy issues. ACTO's mandate includes law reform, test case litigation, and support to other community legal clinics. Work on this presentation was co-ordinated by ACTO and included contributions from legal clinic staff and tenant groups from across Ontario, particularly members of the Legal Clinics Housing Issues Committee and the Inter-Clinic Public Housing Working Group. We also acknowledge the contribution of the Housing Network of Ontario in bringing tenants and housing groups together to discuss and debate how we can move forward together and we strongly endorse their submission to the consultation.

We are speaking as the legal representatives of the low-income tenants of Ontario, a significant proportion of the province's residents. We have come to understand their housing needs through years of working closely with them to enforce their right to a decent home. We represent their members in Courts and at Tribunals; we work with them to build their advocacy organizations; and we share our legal knowledge with them in training and education sessions about a patchwork of housing programs and justice services. Our advocacy with the Government of Ontario on their behalf has met with only mixed success. While we believe that the capacity exists to end housing insecurity and implement the recognition of a right to housing, we see that there is a reluctance to challenge the other government priorities that stand in the way. Perhaps more importantly, there is an unwillingness to confront the economic interests of those who benefit from things the way they are.

The Government's announcement that it is time to look at the systems which provide this basic need to the people of Ontario and to make sure that they work over the long term provide an opportunity to move beyond the policies that have left so many behind. We strongly support proposals to build more social housing but we recognize that there are many organizations that have more experience in carrying out that work. We endorse the proposals for new housing programs made by the Co-operative Housing Federation of Canada (Ontario Region), the Ontario Non-Profit Hosing Association and the Wellesley Institute. We know that those organizations share our frustration with the glacial pace of development in this sector while government policies spur on the building of high-end market housing at furious speed.

Our expertise is in the nitty-gritty of the laws that regulate the relationships between tenants and their landlords. Whether these tenancies are with non-profit agencies or with profit-oriented individuals and corporations, the rules governing them need to be updated if Ontario is to meet the challenge of making affordable housing available to everyone that needs it in the long term. Failing to address the gaps and the inequities found in these rules could undermine the bold plans to apply more public resources to housing for people who are not being served by the market.

We hope that our recommendations – which do not entail major government expenditure – will receive due consideration in this process. Our recommendations are based on our belief that the people of Ontario have a right to a secure, affordable home and that progressive laws and adequate funding can deliver that right.

II. REFORM OF THE *RESIDENTIAL TENANCIES ACT*

To provide some of the tools needed to enforce the right to stable, well-maintained and affordable housing for all Ontarians, ACTO proposes several amendments to the *Residential Tenancies Act, 2006* (the *RTA*).

The availability of acceptable housing for lower-income Ontarians has decreased dramatically. Rising rents, failure to maintain existing rental stock by landlords and lack of access to a meaningful process of justice for tenants continue to contribute to a deepening of poverty for many of Ontario's most marginalized citizens. The number of tenants who cannot access or maintain affordable, adequate and suitable housing is increasing.

In the long term, it is our view that a complete overhaul of the current residential tenancy legislation is needed in order to enshrine an enforceable right to acceptable housing in law. However, for now we would like to focus on recommending top-priority legislative amendments that would provide immediate assistance to the government in meeting its reform goals under the Long-Term Affordable Housing Strategy.

Our 14 priority recommendations cover the following four areas where improvements are urgently needed:

- Fair Rent Regulation;
- Extending *RTA* Protections to More Tenants;
- Improving Access to Justice for Tenants at the Landlord and Tenant Board (LTB); and
- Ensuring Quality of Existing and Future Rental Housing Stock.

A. FAIR RENT REGULATION

1. Put an end to vacancy decontrol.

Recommendation:

Vacancy decontrol should be eliminated. Rent regulation should apply to all rental units, whether vacant or occupied.

There is not enough affordable rental housing in Ontario. A significant and ever-growing number of tenant households cannot afford to rent in the existing private rental market.

Protection of security of tenure was one of the principal reasons for the introduction of rent regulation. However, the *RTA* allows a landlord to charge any amount of rent to new tenants when moving into vacant units. As a result, vacancy decontrol over time decreases the number of rental units that are affordable to seniors on fixed incomes,

young people just entering the job market, people who are unemployed, households on social assistance, sole-support families and newcomers to Canada.

According to the 2006 Census, 45% of Ontario tenant households (i.e. 580,265 households) pay 30% or more of their household income on shelter costs. One in five, or 20%, of Ontario tenant households (i.e. 261,225 households) pay 50% of more of their household income on shelter costs. The risk of homelessness increases greatly where rental costs consume more than 50% of pre-tax household income for a tenant household.

Moreover, rents have not lowered significantly even in current times of relatively high vacancy rates in the private sector. This, among other factors, has increased the demand for rent-geared-to-income (social) housing. There were 129,253 low-income households across Ontario on the active waiting lists for social housing at the beginning of 2009 – an increase of 4.2% or 5,221 households over the previous year. It is unrealistic to expect the social housing sector to meet this demand, even in the long term.

In order to be effective, Ontario's long-term affordable housing strategy must address the gap between low household incomes and market rents as well as the shortfall in the supply of new affordable rental housing. This requires that existing affordable rental housing remains affordable.

A housing allowance or benefit program for low-income households can help reduce housing costs to affordable levels. However, the public investment in a housing benefit program works at cross-purposes in a market setting where unregulated rent increases are allowed. A progressive long-term affordable housing strategy must ensure an end to vacancy decontrol.

Amendment Required:

RTA s.113 must be repealed in order to abolish vacancy decontrol.

2. Create a government record of registered rents.

Recommendations:

Landlords should be required to make a one-time filing of actual rents as of a prescribed point in time. This information should form the basis for an Ontario government record of registered rents.

The registry would include information from the LTB on Orders Prohibiting Rent Increases and Above-Guideline Rent Increases.

There should be a common annual rent increase date for every unit across the province.

In conjunction with our recommendation to eliminate vacancy decontrol, we propose a simplified system of registered legal rents, based on a one-time filing. In order to accomplish this, landlords would be required to list actual rents for every unit as of a

prescribed date. In addition to providing the actual rents, landlords would also be required to provide information on what is or is not included in those rents – for example, whether utilities, parking, etc. are services provided through rental payments or are charges over and above the rents paid directly by the tenants.

Landlords are currently required under *RTA* s.114 to inform a new tenant about Orders Prohibiting Rent Increases (OPRIs) for the rental unit where they will reside. It is difficult to determine of this obligation is being met. Thus, in addition to this disclosure to a new tenant on unit turnover, the LTB should be required to file information on OPRIs with the rent registry.

The filings should be verified against other information such as rental revenue information submitted to Revenue Canada or OPRIs issued by the LTB. It should be an offence, with substantial fines, to file false information.

To encourage compliance, landlords who do not file as required should face penalties such as:

- forfeiture of any rent increases (annual guideline increases or above-guideline rent increases);
- denial of access to the LTB for enforcement of tenants' obligations; or
- fines ordered by LTB.

As part of this process, the government would send each sitting tenant a copy of the rent information filed on the tenant's rental unit. Alternatively, landlords could be required to provide each sitting tenant with a copy of the rent information filed on the tenant's rental unit at the same time that it is provided to the provincial government. If tenants dispute the accuracy of the rent information on their unit that has been filed by the landlord, they should be able to make an application to determine the actual rent and what is or is not included in the rent charge.

The information in this rent archive should be made available to the public on the LTB or Ministry of Municipal Affairs and Housing web site. It would form the baseline for all legal rent increases and could be used to track the state of the housing market. Tenants would be able to determine the legal rent for their unit, with information on AGIs or OPRIs automatically calculated in to arrive at a figure for the registered rent plus allowed increases. Tenants who question the validity of the rent being charged would be able to bring an application to the LTB to determine the legal rent.

If a landlord does not raise the rent by the full amount of the annual guideline increase with a sitting tenant in any year, that landlord should not be able to "catch up" by adding the amount not taken to a rent increase in future years for that tenant. However, the landlord would be able to charge a new tenant a rent that reflects the baseline plus all annual guideline increases to that date.

A common rent increase date across the board (for example, February 1) would assist greatly in creating a new record of registered rents. It would also have the benefit of eliminating confusion for both tenants and landlords as to when annual guideline rent

increases should be demanded or are to take effect. The common rent increase date would also simplify any public educational campaigns to support the new rent registry.

Amendments Required:

Creating a rent registry system will require a number of new provisions including the imposition of a one-time filing requirement on all landlords for all units and penalty provisions for non-compliance.

The legislation will have to include a specific section overriding the Freedom of Information and Privacy Act to allow registry information to be accessible through a web site by rental unit number.

In addition, regulatory provisions will have to be drafted to provide transitional rules in converting to a prescribed annual rent increase date.

3. Remove rent regulation exemption for "new buildings".

Recommendation:

Rent regulation should apply to all private market rental units, regardless of date of construction.

At present, *RTA* s.6(2) contains exemptions from rent regulation rules for sitting tenants in "newer" buildings, some of which have now been rented for over eleven years. This provision in the *RTA* and predecessor legislation was intended to provide a financial incentive to foster the building of new residential rental complexes. However, the intended results have not materialized. Across Ontario, there has been little new purpose-built rental housing built. Ontario has averaged 2,901 rental starts annually over the years 1995-2008. By contrast, from 1988 to 1992, rental starts averaged 16,000 units annually.

Individually-owned condominium rental units in complexes built in the last ten years form an ever-increasing part of the secondary rental market in urban centres. Such units do not provide a long-term, stable supply of rental housing. In part, this is because there is less security of tenure in rented condominium apartments because these units tend to become owner-occupied after a few years, and the tenants can be evicted with just 60 days notice. Moreover, rents in such units tend to be high for a relatively small amount of space, making such units unaffordable for lower-income individuals or families.

Affordability concerns in such units are further compounded by the exemption contained in *RTA* s. 6(2)(a). This exemption now serves, practically speaking, to insulate owners of rental stock that is more than ten years old from rent regulations. This does not reflect the original legislative intent behind this provision. In addition, landlords are able to undermine security of tenure by arbitrarily increasing rents to force tenants to leave, creating a heightened possibility of economic eviction.

Amendment Required:

RTA s.6 (2) must be repealed in order to ensure fairness in the rent regulation process.

4. Extend existing rent regulation to market-rent tenants in residential complexes governed by the *Social Housing Reform Act* (*SHRA*).

Recommendation:

Tenants living in "market rent" units in residential complexes governed by the *SHRA* should not be exempted from the rent regulation protections available to tenants living in private market rental units and residential complexes.

At present, the *RTA* contains partial exemptions from rent regulation with respect to rental units contained in residential complexes governed under the *SHRA* (social housing complexes). However, many tenants living in social housing complexes do not have rents geared to their incomes – rather, they live in "market rent" units.

Consequently, tenants living in market rent units in social housing complexes are deprived of many protections, including:

- regulation of the lawful rent that the landlord can charge (*RTA* ss. 111-115);
- ability to obtain OPRIs from the LTB (portions of *RTA* s.30 and *RTA* s.117); and
- entitlement to a fixed annual rent guideline (*RTA* s.120).

The rationale for exempting tenants of social housing that qualify for rent geared to their income does not apply to social housing tenants living in "market rent" units. As such, market rent tenants should be entitled to the full protection of the *RTA* on issues of rent regulation.

Amendment Required:

RTA s. 7(1) must be amended in order to ensure fairness to market-rent tenants living in social housing.

B. EXTENDING RTA PROTECTIONS TO MORE TENANTS

5. Give the LTB the power to review decisions made under the *SHRA* to revoke or make changes to rent subsidies and to determine the lawful rent in these circumstances.

Recommendation:

The LTB must be given express jurisdiction to review subsidy revocation decisions under the *SHRA* and to determine a tenant's rent where the tenant is receiving or claims to be eligible for rent-geared-to-income assistance pursuant to the SHRA.

Section 203 of the *RTA* prohibits the LTB from considering rent determinations that have been made under the SHRA. In effect, if a social housing landlord makes an arrears

application to the LTB, the LTB has to accept, without question, what the landlord says the rent is. This is the case even in the face of evidence that the decision about the rent is wrong or where the landlord has not complied with the SHRA. Moreover, there is no right to an independent review of these decisions. The only review is internal - within the same organizational structure that made the original decision. Unjustifiable decisions are made and regularly confirmed on internal review.

In any other case where there is a claim for non-payment of rent the LTB must begin by determining the legal rent. For social housing tenants, the landlord's assertion as to the lawful rent is taken at face value. These tenants 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.

Amendment Required:

RTA s. 203 must be amended in order to ensure that tenants wishing to challenge decisions to revoke rent subsidies or otherwise challenge rent determination decisions can do so before the LTB.

6. Enhance security of tenure for spouses and family members.

Recommendations:

The definition of "tenant" should be clarified to ensure that spouses who ordinarily reside in the rental unit are deemed to be tenants.

The definition of "tenant" should be expanded to ensure that family members who ordinarily reside in the rental unit become tenants on the death or vacating of the tenant.

The LTB and its predecessor, the Ontario Rental Housing Tribunal, have ordered the eviction of family members, such as adult children, where a tenant vacates or dies. This causes significant hardship, especially when a family has been living in the home for many years. Family members who ordinarily reside in the rental unit should be able to continue to live there as tenants in these circumstances.

The current restrictions on the ability of a spouse to claim tenant status are too onerous. Spouses should automatically be considered tenants.

Moreover, the definition in O.Reg. 516/06 s. 3 draws an arbitrary distinction by depriving tenants living in buildings with three units or less of any protections. There is no sound policy reason for this, and it may affect disproportionately lower-income tenants.

Amendments Required:

Ensuring fairness to spouses and other family members would require amendments to the definition of "tenant" in RTA s. 2 as well as O.Reg. 516/06, s. 3. The amendments to the regulation would require including family members in ss. 3(1), (2) & (3) and removing ss. 3 (3)1, 3, 4, & 5.

7. Enhance security of tenure for tenants who rent from other tenants.

Recommendation:

Tenants (under-tenants) who rent from a tenant (head tenant) should be afforded protections under the *RTA* as "tenants".

Tenancies where a tenant rents from someone who is renting the residential complex from the owner are not covered under the *RTA*. This is by virtue of paragraph (c) of the definition of "landlord" found at *RTA* s. 2(1). It should be noted that this exemption did not exist prior to the enactment of the *TPA* in 1998.

A common example would be the situation where a tenant who has extra space rents out a bedroom or a basement to another tenant. The under-tenant has no rights either against his/her immediate landlord (the head tenant) or as against the homeowner/landlord. The under-tenant is subject to eviction without notice or cause, and has no access to a remedy through the LTB.

Tenants who are renting self-contained rental units should have the full protection of the RTA. Often these tenants do not even know that the person they are renting from is himself or herself a tenant, and they are surprised to discover that they have no legal protection.

We propose that this exemption from the *RTA* be removed by deleting paragraph (c) in the definition of "landlord".

Amendments Required:

Paragraph (c) in the RTA s. 2(1) definition of "landlord" must be deleted in order to ensure that as many tenants as possible enjoy protection under the RTA.

8. Clarify and improve the rights of co-tenants under the *RTA*.

Recommendations:

The *RTA* should specify that each co-tenant has a separate contract with the landlord (the terms of which will normally be identical) although they may be jointly and severally responsible for the rent.

Individual co-tenants should be able to terminate their tenancies on proper notice to the landlord, which should also be copied to the other co-tenants.

The *RTA* should provide for a contractual relationship between co-tenants, set out the default terms of these contracts, and provide for disputes to be resolved by the LTB.

Co-tenancies - where people rent a rental unit together from a landlord - are a very common form of residential tenancies. They are especially common among students and new immigrants and, of course, in spousal situations. However, the law governing these tenancies is unclear, particularly when one or some co-tenants vacate. One

interpretation of the current law is that co-tenants cannot end their tenancies without the agreement of all co-tenants, which could lead to an irrevocable obligation. Another interpretation is that termination of a tenancy by one co-tenant terminates it for all, leading to the unexpected and undesired termination of a person's tenancy.

Both of these interpretations lead to unfairness, which is particularly stark in the case of spouses. There have been cases where a woman has fled an abusive spouse, sought safety at a shelter and subsequently re-established a new home, but has been held liable for the rent arrears of the abuser. There have also been cases where a husband has left his family, given notice of termination to the landlord, and the wife and children have lost their home.

Our proposal provides a simple solution to these problems, bringing all tenants, whether sole or co-tenants, under the protection of the *RTA* in the same way. It ensures that a tenant can move on with his or her life upon giving proper notice, and can fairly limit their liability. This is achieved in a way that does not cause prejudice to the other tenants or to the landlord.

To illustrate with an example: under this proposal, where three tenants rent a rental unit together on a monthly tenancy, one of the tenants could give 60 days' notice of termination to the landlord and to his or her co-tenants. The departing tenant would thereby end her or his obligations to the landlord and the co-tenants. The remaining tenants would then have four choices: (1) to pay the full rent to the landlord; (2) elect to give notices of termination themselves; (3) bring in a new tenant approved by the landlord; or (4) bring in an under-tenant to assist with the rent payments. In the same example, were the tenancy for a period of one year, the departing tenant would be limited to terminating his/her tenancy at the end of the tenancy agreement.

Amendments Required:

The RTA should be amended to provide specifically that where tenants rent a rental unit together, each tenant is deemed to have a separate contract with the landlord.

C. IMPROVING ACCESS TO JUSTICE FOR TENANTS AT THE LTB

9. Allow lower-income people to apply to have LTB filing fees waived.

It has been recognized both by the courts in Ontario and tribunals in other jurisdictions that application fees impede access to justice for low income people. The Landlord and Tenant Board has said that based on s. 181 of the *RTA*, they are unable to waive fees to low income tenants.

Amendment Required;

Amend s. 181 to indicate that the Board may set, charge or waive fees.

10. Allow the LTB to set aside hearing orders where a party could not attend the hearing for a good reason.

Recommendation:

There should be a provision in the *RTA* allowing a party to apply to set aside an order when the party has not attended a scheduled hearing for a good reason.

Legitimate circumstances arise which prevent parties from being able to attend hearings before the Board. These include situations such as illness or hospitalization, or where a party has not received the hearing documents due either to the applicant's omission or the respondent's absence over a protracted period of time. In these circumstances, there should be a remedy available to the respondent.

At present the *RTA* contains no provision to allow a party to apply to the LTB to set aside a hearing order even when his/her failure to attend the hearing was due to circumstances beyond his/her control. By contrast, the Rules of Small Claims Court and the Rules of Civil Procedure provide that the Court may set aside or vary an order on such terms that are just where the party was not able to attend at trial.

The review process currently in place at the LTB does not satisfactorily address these scenarios. In order to access the review process, a party must be able to demonstrate that the LTB erred seriously in law or in material fact. LTB decisions on reviews where the tenant's position is that s/he was not "reasonably able to participate" have been very inconsistent. Moreover, the filing fee for a LTB review can be prohibitive for many lower-income tenants.

Thus, a set-aside process of this nature is fundamental to tenants' access to justice. Tenants who miss a hearing for good reason should have the opportunity to have the LTB examine the merits of the case and consider whether relief from eviction should be granted.

Amendments Required:

RTA s. 209 must be amended in order to ensure that every tenant enjoys full natural justice rights to a hearing on the merits.

11. Require the LTB to serve Notices of Hearing and/or require the LTB to provide more information in its notification letters to respondents.

Recommendations:

The responsibility for serving a Notice of Hearing on all parties to an application should rest with the LTB in addition to the applicant. More complete information about the hearing and the application should be provided in a notification letter to respondents than is provided at present.

Currently, in eviction applications, the LTB provides the landlord with the Notice of Hearing. The landlord is solely responsible for giving the Notice of Hearing and the

application to the tenant. Disputes about service are quite common and take up significant amounts of adjudication time.

The absence of a statutory obligation on the LTB to serve the Notice of Hearing on respondents arises pursuant to s. 188(2) of the *RTA*. This subsection overrides the application of s. 6 of the Statutory Powers Procedures Act, pursuant to which other Ontario tribunals are required to serve notices of hearings on respondents.

This recommendation will eliminate the potential for deliberate or inadvertent omission on the part of applicants to provide respondents with copies of the Notice of Hearing. Given that approximately 86% of all LTB applications are for eviction, the failure to deliver a Notice of Hearing can have devastating consequences for tenant respondents.

The legislation should provide that the LTB itself has responsibility to deliver the Notice of Hearing to respondents, as is the case with many other Ontario tribunals. Having the LTB assume the responsibility for mailing the Notice of Hearing directly to the tenant is a small price to pay to ensure that tenants are fully informed of their right to dispute the application, and the cost is likely to be offset in part by the savings resulting from fewer disputes about service.

The *RTA* was amended to provide that the LTB must notify respondents in writing that an application has been made. However, the content of this notification letter, governed by O. Reg. 516/06, s. 54(1), provides very limited information. At a minimum, the notification letter from the LTB should contain not only the date but the scheduled time and location for the hearing.

Amendments Required:

RTA ss. 182(2) and 189(1) must be amended to ensure that tenants and landlords get fuller information about upcoming hearings. Amendments to O.Reg 516/06, s. 54(1) should also be made to improve parties' understanding of hearing notices.

12. Achieve consistency in limitation periods for applications to the LTB.

Recommendations:

The limitation period on filing of tenants' applications should be expanded from one year to two years.

A two-year limitation period should be imposed upon landlords bringing claims before the LTB.

The *RTA* contains an explicit imbalance as between the right of tenants and landlords to bring issues to the LTB for determination. Specifically, tenants are subjected to a one-year limitation period by operation of the *RTA*, but the *RTA* contains no limitation period with respect to landlords' claims. This is unfair on its face and must be changed.

This drastic inequity was enacted by the Conservative government in 1998 as part of the *Tenant Protection Act*. Before that, the legislation was silent on limitation periods and

both landlords and tenants were governed in this regard by the *Limitations Act* which imposed the same limitation upon either party when bringing applications to the Court.

It is puzzling that landlords are not governed by any limitation within the *RTA* when pursuing claims for alleged arrears of rent and/or compensation to damage to a rental unit – especially given that a tenant's security of tenure is potentially at stake should the LTB issue an eviction order. Tenants, like landlords, should be entitled to some finality in dealing with allegations and landlords, like tenants, should be required to bring their claims within a reasonable time period. A two-year limitation period as per the *Limitations Act* would make the most sense to achieve these ends.

Amendments Required:

In order to achieve consistency in LTB limitation periods, RTA ss. 29(2), 130(5) and 135(4) should be struck and a new provision created to establish a two-year limitation period for bringing of tenant claims. RTA ss. 136(1) and (2) should be amended to replace the phrase "one year" with the phrase "two years". A new section imposing a two-year limitation period on landlords' claims should be added.

D. ENSURING QUALITY OF EXISTING AND FUTURE RENTAL HOUSING STOCK

13. Create a mechanism for tenants to enforce repair and maintenance orders made against landlords or LTB mediated settlements entered into by landlords.

Recommendation:

There should be enforcement provisions for tenants under the *RTA* to ensure that landlords carry out orders, or follow through on mediated settlements regarding repair and maintenance obligations.

Under *RTA* s. 30, the LTB can order landlords to comply with the requirements under *RTA* s. 20(1) to maintain their buildings and rental units in a good state of repair and fit for habitation. Landlords can, and do, ignore these orders. Tenants can receive a rent rebate to financially compensate them for the lack of repair and maintenance, but that does not get the work done. Tenants need enforcement provisions for such orders. The enforcement provisions should also be available to mobile home park tenants whose landlords are not in compliance with the obligations set out in *RTA* s. 161.

The *RTA* should have a section - comparable to s. 78(1) - allowing a tenant to apply to the LTB for an order enforcing a previous order with which a landlord has failed to comply made under *RTA* ss. 30(1) 1 – 9, and 31 (1), (2) and (3), or enforcing the provisions of a mediated settlement.

Remedies available through such an order could include:

- a substantial daily fine payable by the landlord to the LTB until such time as the landlord completes the repair work;

- an abatement of a substantial part of the rent obligation until such time as the landlord completes the repair work; and

- an order allowing the tenant to arrange for and pay for the repair work required and deduct any monies paid out from the subsequent rent obligation.

Amendments Required:

New RTA provisions must be enacted in order to make landlords fully accountable for their repair and maintenance obligations to tenants.

14. Allow rent rebates for substantial interference with reasonable enjoyment related to ongoing construction.

Recommendation:

Remove the current limitations on abatements of rent when there is substantial interference with a tenant's reasonable enjoyment arising from work undertaken by the landlord for maintenance, repairs or capital improvements.

A claim for substantial interference with reasonable enjoyment is a contractual claim based on the obligations a landlord has undertaken in a tenancy agreement. The landlord's intent, whether or not the landlord was negligent and the reasonableness of the landlord's actions are irrelevant and should not be issues as the essence of the claim is that the tenant is not getting what she or he had bargained for and is paying for.

Until 2001, it was clear that when a tenant suffered substantial interference with his or her reasonable enjoyment due to a landlord carrying out necessary repairs in a reasonable manner, the tenant was entitled to compensation. See, for example, *Offredi v. 751768 Ontario Ltd.*, [1994] O.J. No. 1204 O.A.C. 235, 116 D.LR. (4th) 757 (Div. Ct.), affg [1991] O.J. No. 1183 (Gen. Div.).

In 2001, additions were made to the regulations made under the *Tenant Protection Act* which severely restricted the ability of tenants to claim an abatement of rent when a landlord was carrying out repairs or maintenance (e.g. balcony repairs). These restrictions were carried over to the *RTA* regulations and are contrary to the contractual notion that a tenant should get what they pay rent for including reasonable enjoyment of the premises. These limitations, found in O.Reg. 516/06, also conflict with the statutory provisions at *RTA* s. 17 providing that covenants are interdependent.

Amendment Required:

Ensuring consistency in dealing with issues of substantial interference with the reasonable enjoyment of tenants requires the repeal of O.Reg. 516/06, s .8.

III. THE *SOCIAL HOUSING REFORM ACT*, REGULATIONS AND POLICIES

Ontario's social housing experience ranges from communities that are healthy and supportive, lifting individuals and families from disadvantage to those that are pockets of poverty and despair. These results come from the varied history of the development of social housing in our province and the extent to which the three levels of government gave support to these projects at their inception and over their lifespan.

In the long term, this collection of organizations, buildings and management philosophies must be organized into a coherent system that meets the variety of needs of people whose housing needs are not met in the market. There are plenty of strengths in this sector, from which those parts that are failing can learn. But appropriate and reliable funding support, for which the Government of Ontario must take primary responsibility, is an absolute necessity for success.

We strongly believe that the next step is a legislative framework that offers fairness and dignity to the people living in the housing. Based on the extensive experience of community legal clinics working with the residents of all kinds of social housing in all parts of the province, both before and after the implementation of the *Social Housing Reform Act*, we make the following recommendations for the improvement of that legislation.

1. There is a need for an expansive Preamble/ Purpose Statement to give guidance to service managers, housing providers and adjudicative bodies to ensure equity in housing and services.

Recommendation:

The purpose of this *Act* and the objects to be achieved are:

a) the provision of equitable access to affordable and appropriate housing for disadvantaged individuals and families;

b) the creation and maintenance of an allocation system that recognizes the diversity among and within disadvantaged groups, their needs, and which conforms to the requirements of human rights legislation with respect to housing and related services;

c) facilitating and improving access for members of disadvantaged groups who may have specialized needs or circumstances that require accommodation or priority access to housing;

d) facilitating and promoting the transition to long term housing stability for persons who have experienced homelessness and other groups who are particularly susceptible to experiencing homelessness;

e) providing housing that is in a good state of repair, fit for habitation and in compliance with health, safety housing and maintenance standards;

f) promoting security of tenure for existing tenants who require housing assistance due to their financial, social or other circumstances;

g) removing barriers to access to housing assistance for persons who are eligible due to their financial, social, or other circumstances; and

h) empowering tenants through active participation in their communities and in the making of decisions that affect them.

2. There is a need to remove barriers to access to affordable housing for recent immigrants, refugees and those with no legal status in Canada.

Recommendation:

Remove the requirement that persons without legal status cannot be eligible for housing assistance (RGI/ subsidy). Such persons already face significant barriers to access to housing and other essential services. Making them, or family members who house them, ineligible for housing assistance exacerbates this disadvantage. Furthermore, inquiries by a housing provider into the legal status of the applicant can lead to deportation or other onerous circumstances for the person or their family members.

3. There is a need for a meaningful and transparent complaints process for households.

At present, in most of the province, internal reviews of decisions that are prejudicial to tenants are conducted by the same decision-maker who made the initial decision. There is no external body to review these decisions, nor is there any route of appeal other than by judicial review which is not generally available to tenants. This impedes the principles of transparency and procedural fairness for tenants and may create further financial or other burdens for tenants whose resources, options and capacities are likely to be already limited.

Recommendation:

It is recommended that households should be provided with a clear breakdown of how rent and any other charges owing have been calculated, as well as any supporting documentation as appropriate in the circumstances.

In addition, all subsidy revocation/rent calculation decisions, as well those relating to damage, repairs, accommodation and rankings on the waiting lists must be reviewed by someone other than the original decision-maker. Reasons for the decisions - both before and after review - must be provided to the tenant and hearings and appeals must take place within clear timeframes.

It is further recommended that any appeals of internal review decisions be made by an adjudicator who is not employed by a housing provider or service manager and that the conduct of the parties (including staff or agents) be open to scrutiny as well, if relevant, to ensure that all factors are considered.

The Landlord and Tenant Board must be given jurisdiction over rent calculation/subsidy loss decisions as part of their obligation to determine the lawful rent on applications before them.

4. The grounds for ineligibility for housing assistance should be revised.

In recognition of the fact that tenants who meet the financial criteria for housing assistance have very few - if any - other options for finding affordable housing, barriers to access and continuing eligibility should be removed, except in where no other reasonable option exists to protect the public interest.

At present, households can be denied housing assistance for a number of reasons, including, but not limited to: problems with disclosure of financial information; assessment of arrears owing; assessments of damage to the unit; changes in household composition; and any other reason as determined by the housing provider within the parameters of the *Act* and O. Reg. 298/01. Along with the problems with the internal review process as noted in the foregoing section and the inappropriate use of discretion by housing staff, these barriers to access can lead to many problems for tenants, including homelessness and the consequences thereof.

Recommendation:

It is recommended therefore, that the Act and Regulations be amended to remove barriers that exist. Specifically, no outstanding debt to a housing provider should be a barrier to access if there is an opportunity for the household to resolve it in a way that fulfills their obligation over a time frame that is appropriate to the person's financial situation. Such repayment plans should never interfere with the ability of the household to meet other basic needs or financial obligations, or contain any other onerous terms that would likely result in a breach of the terms of the plan. The full particulars of any debts claimed should be disclosed to households with 7 days of the assessment being made.

No household should automatically become ineligible for housing assistance for the refusal of a member of the household to disclose income for rent calculation purposes. Any recalculation of rent should be based on reasonable estimates of the income of the household member who has not disclosed information. A household should not be made ineligible for refusing three offers of a unit as often the reasons for refusing a unit are related to the substandard condition of a unit or it's unsuitability to the household's needs.

Furthermore, no tenant or prospective tenant should be forced to pay for charges that are not otherwise lawfully claimable. Some examples of such charges are damages as a result of normal wear and tear to a unit during the course of a tenancy or arrears of rent that were accrued prior to or discharged as part of bankruptcy proceedings. Finally, it is recommended that the employment income of a child under the age of majority or who is actively pursuing their education should not be included for rent calculation purposes.

5. Tenants should be compensated for any overpayment of rent or other charges to the tenant.

There are no provisions in the *Act* or Regulations to allow for a tenant to be compensated when too much rent has been paid as a result of a calculation error or other mistake on the part of the tenant or housing provider.

Recommendation:

Any overpayment of rent should be credited to the tenant either as a refund or rent reduction on an ongoing basis until the overpayment is satisfied. In light of the financially vulnerable position of tenants receiving housing assistance, this obligation on the part of the housing provider should be clearly spelled out in the legislation and regulations. Tenants must be advised of the terms and timelines under which this credit will be given. Similarly, any overpayments pertaining to assessments of arrears, damages, or other charges should be credited to the household.

6. The discretion exercised by housing providers with respect to unit size must be limited.

The *Act* and Regulations set out the parameters by which a housing provider can allocate a specific unit based on household composition or accommodation of a tenant with special needs or special circumstances. In the private rental market, such arbitrary parameters have been found to violate the Ontario *Human Rights Code*, specifically as related to unit size and household composition.

Recommendation:

The parameters for allocation of unit size under the Act and regulations should be removed. Instead, the choice of unit size should be left to the discretion of the household, as it relates to their specific needs and circumstances, so long as the basis for the request for a particular unit size is reasonable. For example, an additional bedroom may be required for a person who is not a full-time member of the household or fewer bedrooms may be acceptable to parents who would allow more than two children to share a bedroom. Realistic assessment of these situations must be made without the necessity of formal proof being required. Additionally, households should not face eviction or subsidy revocation for adding a member to the household for the purpose of providing or receiving care.

7. Rent subsidy agreements with private-market landlords must protect tenants against breaches of the agreement.

Recommendation:

In light of the limited availability of social housing units and the economic vulnerability of low-income tenants receiving rent subsidies for private market housing units, there should be financial penalties for private-market landlords who unilaterally cancel rent subsidies, fail to provide housing in a good state of repair or otherwise violate the terms

of these agreements. It is usually not possible for a low-income tenant or a municipality to obtain alternate housing in less than 3 months. Thus a notice period based on this reality would be appropriate for the cancellation of a subsidy agreement and, in any event, landlords should not be permitted to cancel an agreement before the expiration of the term of a tenant's lease.

8. The current rent calculation formulae under the *Act* and Regulation 298/01 should be revised.

The cost of housing includes the cost of heat, electricity and water. Rent subsidy calculations must ensure that households are not paying more than 30% of their monthly income on housing. While households in receipt of Ontario Works and Ontario Disability Support Program benefits may receive additional shelter allowance funds to pay the full cost of utilities, this is not the case for many other households receiving rent subsidies. This means that their housing costs can often far exceed the 30% affordability measure. The actual utility cost depends on the source of heat, the condition of the property and various other factors which are beyond the tenants' control.

Recommendation:

Rent calculation for households receiving rent subsidies should include the cost of utilities, whether or not these are provided directly by the landlord. Also, as previously indicated, tenants should be provided with a clear breakdown of how rent has been calculated, and specifically which portion is attributable to utility costs.

9. Remove or otherwise limit housing provider discretion with respect to suitability as tenants as a barrier to access or as the basis for subsidy revocation/ evictions

Housing providers can refuse to offer a rental unit to a household if there are "reasonable grounds to believe, based on the household's rental history, that the household may fail to fulfill the obligation to pay rent for the unit in the amount and at the times it is due" (O. Reg. 339/01, para. 18(1)(b)). This section is often being used to deny a unit based on poor credit, arrears to previous landlords, lack of references, and unrelated criminal histories. These are not legitimate grounds for the use of discretion to refuse housing to a person or family that is otherwise eligible. There are many reasons why households in need of housing assistance would face these issues, not all of which can predict future failure to meet their obligations.

Recommendation:

This provision should be repealed. In the alternative, very specific direction as to the circumstances under which housing can be denied and how discretion must be used in those circumstances must be set out in the regulation so that this discretion cannot be used inappropriately as a barrier to access.

10. There is a need to establish clear timelines under which housing providers and service managers must make decisions, follow procedures and provide information to households

Recommendation:

A housing provider should be required to respond within 30 days in situations where the lack of clear timelines has presented problems or created prejudice for households. These include, but are not limited to:

a) decisions on requests to transfer;

b) decisions about repayment of arrears;

c) disclosure of charges to the household and particulars, including rent;

d) decisions relating to disclosure of and calculation of household income;

e) decisions about eligibility and re-instatement;

f) disclosure requirements for households on the waiting list; and

g) requests for and scheduling of internal reviews and appeals and decisions resulting from these reviews

In addition to the above recommendations, there is a need for clear policy directives in a number of other areas which require consultation with and participation by tenants and limits on the discretion exercised by service managers and housing providers. Such areas include, but are not limited to:

a) requests for transfers;

b) periodic status updates and eligibility reviews;

c) grounds for ineligibility, subsidy revocation, and eviction;

d) rankings on waiting lists, timings of updates and removal from the list (including the fact that the date of eligibility is to be used, not the date of selection of specific housing projects or changes to these selections);

e) repair and renovations of units and accommodation of existing tenants;

f) disclosure by housing providers of charges to tenants;

g) damage deposits;

h) transfer fees;

i) fee waivers;

j) satisfaction of disclosure requirements by households;

k) time limits as to when disclosure can be requested or within which arrears and other charges can be assessed; and

l) definition of "guest" so that households are not inappropriately being reassessed or faced with subsidy loss or eviction.

IV. CONCLUSIONS AND SUBMISSIONS ON THE SUPPLY OF SOCIAL HOUSING

In the introduction to the submission we acknowledged that we did not have the expertise to design a new social housing program or to offer detailed commentary on the complex funding and management systems currently in place. We offered our support for the recommendations of the organizations that have this expertise and who want to see social housing programs succeed. We know that the Government of Ontario must create and administer a permanent program that supports the building and maintenance of non-market housing funded from revenue sources that are based on the ability to pay. From that premise, we offer some further observations about housing need and some recommendations directed toward achieving that goal.

New supply of social housing

The need for new affordable rental housing is undiminished and well-documented. We believe that a provincially-funded stable social housing supply program with a targeted number of units to be built annually (8,000 to 10,000 units per year, depending on sector capacity) is central to a long-term affordable housing strategy. The supply program should include municipal non-profit, private non-profit and co-op housing, with a special focus on supportive housing.

The private market has been engaged in strong production of new ownership housing, but has not delivered a significant amount of new, purpose-built rental properties. According to ONPHA and CHFC-Ontario, rental housing has accounted for only 5% to 6% of all housing starts in Ontario since 2002. Just 3,687 new rental homes were built in 2008. This falls far short of the need which is estimated to be in the range of 10,000 to 12,000 units annually for the ten-year period from 2009 to 2019.

Preservation of existing social housing

Municipalities simply do not have enough money to carry out sorely needed major repairs and upgrades to the aging social housing stock which they administer. The replacement cost of existing social housing is estimated at $40 billion and the capital repair deficit is well over $1.3 billion. Tenants bear the brunt of disrepair in the social housing sector through compromised health, safety and security because of leaks, infestations, out-of-service elevators, and broken entry-doors.

The Ontario government has taken steps in the 2008 and 2009 Budgets to address this funding shortfall. The measures included:

- a new investment of $100 million allocated to all 47 municipal service managers to repair existing social housing units, including improvement of energy efficiency;

- $1.2 billion in combined Federal and Provincial funding over two years for renovation and retrofitting of social housing stock;

- social housing providers are now eligible to apply to the Ontario Strategic Infrastructure Financial Authority (OSIFA) to access up to $500 million in low-cost loans for capital repairs (both ONPHA and CHFC-Ontario Region noted the OSIFA loan program is limited since many social housing providers with aging stock are not in a financial position to take on more debt); and

- $1 million to set up an Asset Management Centre which is run jointly by social housing sector organizations.

However, the funding shortfall is not completely addressed and we need a long-term solution to deal with the long-term liability. These problems can be fixed – and non-profit housing advocates (such as ONPHA and CHFC-Ontario Region) are making solid recommendations on the program changes needed to do this. For example, CHFC is recommending that the province change program rules to allow co-ops and non-profits to borrow additional funds against their equity for capital repairs. Mortgages would be extended so that housing providers would be able to pay back the additional debt.

ACTO further recommends that the government create and fund a long-term capital planning program for the dedicated supportive housing portfolio administered by MOHLTC and MCSS.

Planning and Zoning

Millions of scarce housing dollars have been spent by developers of social housing in battles at municipal councils and the Ontario Municipal Board to overcome outdated planning barriers. The Province must work with municipalities to bring these barriers down. Such work would include the limits on the use of parking requirements to exclude supportive housing; the elimination of distancing requirements for residential uses that meet the needs of disabled and other disadvantaged people; and the abuse of interim by-laws, planning studies and downzoning to exclude supportive housing from residential communities. In all these cases, the right to housing is being overruled by attempts to maintain or increase the values of property owners. In most cases, these attempts bear no relation to actual changes in property values and are based on little more than prejudice and stereotyping.

The Province could also ensure that affordable housing goals are met by enacting legislation that would allow municipalities to adopt mandatory inclusionary housing policies that would define the rights and responsibilities of developers and builders in contributing to the creation of affordable housing. These policies would require a certain percentage of the new units to be affordable to households with low and moderate

incomes. Social housing groups could purchase or operate the affordable units and rent them according to local social housing eligibility policies. If subsidies are required for deeper affordability for low-income households, the cost would not be as great. Such policies can be an effective planning tool to add to the supply of affordable housing in Ontario and to combat the "not in my backyard" syndrome as affordable housing becomes a normal part of any new development. If municipalities were unwilling to exercise such powers, they could be imposed on a Provincial level.

Housing and Support Services

The Ontario Auditor General noted in his 2008 annual report that there is a critical shortage of supportive housing units in Ontario, with one- to six-year wait times. The federal government's 2006 report ***Out of the Shadows at Last*** called for the development of 57,000 more affordable housing units in Canada over the next 10 years to address this shortage. On the basis of Ontario's population, the Auditor General estimated that about 23,000 of these units would be needed in Ontario.

Stable housing with appropriate support services is fundamental to the health, well-being and successful treatment and recovery of individuals with mental illness and addictions. People with physical and developmental disabilities need supports to access and maintain their housing. As well, ONPHA has highlighted the need to address the increasing demand for supports to seniors who are the largest and fastest-growing group in our communities and in social housing.

A long-term affordable housing strategy should include sustained and adequate funding for support services, and there should be coordination between MMAH, MCSS and MOHLTC to ensure that funding for the support services is obtained up front, at the same time as the "bricks and mortar" funding for the supportive housing.

ONPHA has recommended that a housing support funding formula be explored to help social housing providers purchase such services from other community agencies or internally develop capacity to deliver such services.

Conclusion

Real action on affordable housing for low-income Ontarians has been delayed for far too long. Despite the availability of funds from the Federal government and repeated promises from the Government of Ontario, the lack of a vision and a strategy has kept hundreds of thousands of Ontario's tenants households from fulfilling their potential by denying them a decent home that they can afford.

The commitment to developing a long-term strategy holds out the hope that these days of inaction will soon be behind us. With a recognition that decent housing is a right; a goal of building communities that are truly inclusive and the means to hold the responsible institutions accountable for the success of the strategy, the Government of Ontario can ensure that families and individuals enjoy the security and support in their homes that are essential to full participation in community life.

Appendix "A"

List of Recommended Legislative Reforms

Residential Tenancies Act

A. Fair Rent Regulation

1. *Put an end to vacancy decontrol.*

2. *Create a government record of registered rents.*

3. *Remove rent regulation exemption for "new buildings".*

4. *Extend existing rent regulation provisions to market-rent tenants in residential complexes governed by the SHRA.*

B. Extending *RTA* Protections to More Tenants

5. *Give the LTB the power to review decisions affecting decisions to revoke rent subsidies or otherwise challenge rent determination decisions made under the SHRA.*

6. *Enhance security of tenure for spouses and family members.*

7. *Enhance security of tenure for tenants who rent from other tenants.*

8. *Clarify and Improve the rights of co-tenants under the RTA.*

C. Improving Access to Justice for Tenants at the LTB

9. *Allow lower-income people to apply to have Board filing fees waived.*

10. *Allow the LTB to set aside eviction hearing orders where a party could not attend the hearing for a good reason.*

11. *Require the LTB to serve Notices of Hearing and/or require the LTB to provide more information in its notification letters to respondents.*

12. *Achieve consistency in limitation periods for applications to the LTB.*

D. Ensuring Quality of Existing and Future Rental Housing Stock

13. *Create a mechanism for tenants to enforce repair and maintenance orders made against landlords or LTB mediated settlements entered into by landlords.*

14. *Allow rent rebates for substantial interference with reasonable enjoyment related to ongoing construction.*

Social Housing Reform Act

1. *There is a need for an expansive Preamble/ Purpose Statement to give guidance to service managers, housing providers and adjudicative bodies to ensure equity in housing and services.*

2. *There is a need to remove barriers to access to affordable housing for recent immigrants, refugees and those with no legal status in Canada.*

3. *There is a need for a meaningful and transparent complaints process for households.*

4. *The grounds for ineligibility for housing assistance should be revised.*

5. *Tenants should be compensated for any overpayment of rent or other charges to the tenant*

6. *The discretion exercised by housing providers with respect to unit size must be limited.*

7. *Rent subsidy agreements with private-market landlords must protect tenants against breaches of the agreement.*

8. *The current rent calculation formulae under the Act and Regulation 298/01 should be revised.*

9. *Remove or otherwise limit housing provider discretion with respect to suitability as tenants as a barrier to access or as the basis for subsidy revocation/ evictions.*

10. *There is a need to establish clear timelines under which housing providers and service managers must make decisions, follow procedures and provide information to households*