Advocacy Centre for Tenants Ontario (ACTO)

Submission to the Standing Committee on General Government on
Bill 124, Rental Fairness Act, 2017

Introduction

The Advocacy Centre for Tenants Ontario (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 public legal education.

The issues addressed in the Bill are central to justice in rental housing and we applaud the government for bringing them forward. We have some suggestions about further refinement of the proposals for your consideration. But we want you to know that we believe much stronger measures are needed, both in support for social housing and in tenant protection, to address the growing crisis that low-income people are facing in putting and keeping a roof over their heads.

Post-1991 Exemption

This is the most significant change that the current government has made to residential tenancies. We commend the government for taking this long-overdue step in the face of unrelenting ill-informed opposition from the real estate industry and their supporters in the media. We also commend the third party for repeatedly proposing this policy in private member's bills, most recently in Bill 106 put forward by MPP Peter Tabuns.

We would like to remind the members of the Committee what is being accomplished with this proposed reform. Tenants whose homes were first occupied any time in the last twenty-six years can no longer be forced out by the landlord's unlimited right to raise the rent at the end of each lease term. The security of tenure that the *Residential Tenancies Act* seeks to provide to tenants through requiring just cause for evictions and prohibiting bad behavior by landlords will come closer to reality for over 200,000 Ontario households. The rest of Ontario's private rental housing has been operating under the rent rules in Part VII of the *Act* and its predecessor legislation all this time and has been highly profitable. These profits have not been re-invested in expanding the supply of rental housing, but into an ongoing consolidation of ownership. The unfettered right to increase rent has provided no incentive at all to change this pattern and relieve the relative scarcity of supply in most of the province. We appreciate the government's belated recognition of this fact and of the important role that limiting rent increases plays in an overall strategy to ensure decent homes for all Ontarians.

Prescribed Form of Lease

The introduction of a mandatory prescribed lease form is a welcome and necessary protection for all tenants. As this government has correctly pointed out, every jurisdiction in Canada other than Alberta and Ontario has some form of standard lease. In our experience, a standard lease is sorely needed. It has become routine industry practice for landlords to misinform tenants about their rights and obligations by using leases with illegal and misleading clauses.

We carried out a clause-by-clause study of the standard-form tenancy agreement developed and promoted by the Greater Toronto Apartment Association, a well-known landlord lobby group. This lease contains many provisions that are plainly contrary to the *Residential Tenancies Act*, including:

- a clause prohibiting pets of any kind;
- a clause requiring the tenant to pay for pest control under any circumstance, no matter who may have caused the infestation;
- a clause stating that the tenant can never sue the landlord for disruptions caused during repair work no matter how unreasonable the disruptions may have been.

This lease has been signed by tens of thousands of unsuspecting tenants. And it is merely the most common example of what is routinely put into evidence at the Landlord and Tenant Board. This should not be allowed to continue. Tenants should be able to trust that their leases conform with the law. The requirement of a standard lease, if drafted properly with input from all affected parties, will ensure that tenants and landlords - especially unsophisticated landlords - clearly understand what their rights and responsibilities are.

We are concerned with the process which sitting tenants must undertake in order to benefit from the standard lease. Many tenants will choose to live with their misleading leases rather than confronting their landlords by withholding rent or giving up their homes. Once the standard lease comes into effect, the legislation should deem any provisions of existing leases that are inconsistent with the standard lease to be void and of no effect. This is similar to the approach taken by other jurisdictions including Manitoba, Nova Scotia, Prince Edward Island, the Northwest Territories and Nunavut, where every tenancy agreement is deemed to include all of the provisions in their standard form agreement. As well, British Columbia, Saskatchewan and Yukon deem standard clauses to be included in every written tenancy agreement. We think this approach would ensure that all tenants would benefit from the standard lease regardless of whether or not they can actually compel their landlord to sign it.

Eviction Based on Landlord's Requirement for Occupation

Eviction for use by owners and purchasers stands in stark contrast to the eviction grounds that arise from misconduct by tenants – be that non-payment or anti-social behavior. Landlord's own use evictions punish Ontario's exemplary tenants – the tenants who pay their rent on time, who maintain their units in a good state of cleanliness, who become part of the community in which they live. As property values rise and neighbourhoods gentrify, abuse of this provision appears to be growing and these are the people who are being victimized.

One way to deal with the abuse would be to eliminate this ground for eviction. But we understand that the exemption is there to give flexibility to legitimate "mom and pop" situations – the child that requires occupation of the condo for university, the parent that is widowed and needs to move in with an adult child or the family that is downsizing and wants to occupy their condominium unit. In our experience, when the evidence and common sense support that the notice is actually being given in good faith, most tenants will just move out on receiving the notice.

But what should be a very narrow exception to security of tenure for good tenants has become part of the tool kit for landlords who want to increase rental revenues or change the character of their residential complexes - no matter what falsehoods are spun and who gets hurt. When the Court of Appeal decided that corporations - legal persons who have no children, parents or spouses - could evict on this ground, multi-residential landlords began using it in a way that was never intended. The Divisional Court has upheld corporate evictions of long-standing tenants for the mother of a sole shareholder whose corporation owned 152 rental units and for a superintendent of a condominium corporation so he could occupy as a "caregiver" to that corporation.

We applaud the steps proposed in this Bill to re-focus this section on real people who have personal needs and children, parents and spouses. It is only individuals that have the ability to occupy residential units and provide the evidence for their requirement to occupy it. In this regard, we note that there is no public record of shareholders in private Ontario corporations, so tenants and the Board would have no way to verify a claim that a corporation had a "sole-shareholder" or was "closely held". As you know, business people choose the form of business organization that best fits the kind of enterprise that they operate. We think that the Divisional Court had it right in 1983 when they said in the case of *D.E.S.K. Properties Ltd. v. Skene*:

> "She cannot say that in a case of this kind she is entitled to take the benefit of any advantages that the formation of a company gave her, without at the same time accepting the liabilities arising therefrom".

The requirement that a landlord must intend that the new occupant will live in the unit at least a year is another important check on improper use of this eviction ground. It removes some of the confusion in the case law which has held that the landlord's intentions do not have to be reasonable or definite. But some confusion still remains about who must complete the affidavit or other document attesting to the good faith of the application. In our view, the person who actually intends to occupy the residential unit should sign this document. It is their direct knowledge and evidence – not just the landlord's - that is needed in order to demonstrate the good faith of the claim.

The requirement that landlords compensate tenants for some of their costs in having to vacate through no fault of their own is necessary for fairness to tenants and to discourage false claims. While one month may be appropriate for homeowners, those with larger rental businesses should have obligations consistent with the provisions for demolition and conversion in sections 52 and 54. Where the residential complex has five units or more, the tenants should be paid an amount equal to three months' rent.

This ground for eviction needs to be tightened up to try and put an end to false claims. But there will still be some false claims and there should not be roadblocks to tenants seeking compensation for moving and increased rent costs. When former tenants make these claims, it should be the fact that the landlord advertised or re-rented the unit within the one-year period that creates the presumption of bad faith, even if the new rent is not higher. Making false statements to get an eviction is wrong, whatever the landlord's motive, so the requirement that the tenant prove a higher rent should not be imposed.

Finally, we urge you to expand these provisions so they apply not only to requirements by landlords for possession but also for purchasers. Allowing evictions for purchasers was an important clarification of the law which facilitated the purchase and sale of properties. We should apply the same high standards of good faith and fairness to those notices as well.

Above-guideline Rent Increases

In putting forward proposals to further limit rent increases in excess of the annual guideline, the government is recognizing that these increases can pose a serious threat to the housing security of low-income people. Elimination of extra increases for utility costs is a small but significant step that will help to keep housing affordable for some tenants. Please do not allow the critics to forget that tenants will pay for any increases in utility costs in the next year. They form part of the calculation of the Consumer Price index on which the annual guideline is based. Cutting out extra claims for these costs brings a little more fairness to the system and takes a bit of the workload off the overburdened Landlord and Tenant Board.

We strongly agree that you need to do something about landlords' appalling record on elevator repairs. We know from bitter experience that the Board and the Courts do not recognize the importance of reliable elevator service to tenants and are unwilling to compensate tenants when landlords fail to meet this part of their obligations. Can changes to rent regulation force landlords to provide better elevator service? It is certainly worth trying.

But if we think that landlords will be more willing to meet their legal obligations about elevator service because of the threat of denying or postponing their above-guideline rent increases, why stop at elevators? All available evidence shows that tenants have a difficult time enforcing ANY of their landlords' obligations around repair and maintenance. We recommend that the further restrictions on rent increases proposed in s. 22 of the Bill be applied to ALL outstanding municipal work orders and orders of the Landlord and Tenant Board relating to disrepair of the residential complex.

Post-termination Rent Claims

The changes proposed in s. 24 of the Bill to prevent landlords from making unauthorized claims for rent are a useful and simple way to address a problem that has been largely created by poor landlord record-keeping and unclear laws. The proposed changes to s. 134 will bring some much-needed clarity, but we still see a gap here that could continue to create problems in this area.

Landlords are prohibited from claiming money from former tenants who have vacated for periods "after the tenancy has terminated". This works well when tenants vacate pursuant to an Order from the Board or when they vacate on or before the termination date in a notice of termination. But tenant's personal circumstances and a low vacancy rate sometimes join up so that a tenant who is leaving is still in the unit past the termination date in their notice. They may still be vulnerable to the post-termination claims the legislation is trying to eliminate because, in the absence of an Order from the Board, their tenancy is not terminated if they stay past that termination date.

This creates problems for landlords, who don't know if and when the tenant is leaving. The *Act* solves that problem by allowing landlords 30 days after the termination date to bring an eviction application to the Board. We recommend that the same 30-day period apply to tenants who are leaving "in accordance with the notice" in the words of s. 37(2). By s. 86 of the Act, the landlord is still entitled to be paid for any overholding period, which will often be covered by the last month's rent anyway. And we won't have tenants being chased for "phantom" rent arrears anymore.

Affidavits

The legal system and legal proceedings such as those before the Landlord and Tenant Board are predicated on the truth. Witnesses cannot give their evidence in a false or misleading way and it is a criminal offence to make a false statement by way of an affidavit. Affidavits help to ensure the integrity of these processes and give more weight and meaning to them. Attacking the affidavit and how they are commissioned can be a significant way to get to the truth in a Board proceeding. Professionals who swear false affidavits can face serious consequences for their behavior.

The *Act* requires affidavits in only a very few circumstances. The one of most concern to us occurs when landlords are seeking to evict a tenant for personal occupation – an area where it is acknowledged that there has been some abuse. Other circumstances occur where landlords or tenants are making applications without notice to the other party and there is no opportunity at that stage for the other party to provide "the other side of the story". These circumstances require a high degree of reliability in the statements made.

It is thus difficult to see why the Board should be allowed to dispense with the formal proof that an affidavit provides and to create a simpler method that is more likely to be inaccurate. The law empowers a wide variety of respected people to be commissioners of oaths because it is believed that parties are less likely to make a false statement to them than when filling out a form on the internet. Despite the need to streamline the Board's procedures, this is one safeguard that we should not give up in the name of efficiency.

Transitional Housing

We appreciate that there are good intentions behind the proposal to create a new exemption for transitional housing. But after rigourous consultation, detailed research and sharing of submissions with several stakeholders, we remain concerned that the exemption will fail in meeting its proponents' objectives. Being exempt from the *Act* means that there is no meaningful way for the occupants of this living accommodation to enforce the long list of specified requirements or ensure that best practices are employed by the provider in the delivery of the housing and services they have contracted for.

There are real human rights implications when people who are fit enough to reside independently are protected by legislation from arbitrary eviction and interference with the enjoyment of their accommodation while those who require supports are denied these rights. We believe that the existing provisions of the *Act*, including provisions related to care homes, provide these rights and do not unduly interfere with delivery of the programs that are needed to rehabilitate and support people with special needs. Many service providers agree with us that a

lack of agency and compromises in dignity and housing security can undermine recovery.

Problems with the lack of affordable, permanent housing and with the Landlord and Tenant Board's processes will not be solved by taking rights away from vulnerable people. We heard the concerns by transitional housing providers about the complexity of the Board's eviction process. It is a complaint that is echoed by most landlords and tenants who deal with the Board – and particularly those who think they are right, the other side is wrong and that should be it. The complexity of the wording of the proposed exemption, to later be supplemented by regulations on three major issues illustrate that this is an area with a lot of nuance. We do not believe that making each provider responsible for drafting their own policies that comply with the specified safeguards will be any easier for them than participating in the Board's pre-existing dispute resolution system.

We share the goal of making housing and service available that truly meet the needs of vulnerable people. We are committed to working with program participants and transitional housing providers to develop fair regulations and to make the system work once it is in place.

Conclusion and a Word on the Missing Pieces

We recognize that it is difficult to bring forward changes in a business environment where vast amounts of money have been committed based on certain rules. We appreciate the fact that the government has recognized that the existing rules are not resulting in fair outcomes for many tenants and that they are willing to change some of those rules. But there is so much more to be done in so many areas of this legislation to realize our goal of "a right to housing", or even the more modest goal stated as one of the purposes of the *Act* – "to balance the rights and responsibilities of residential landlords and tenants".

Security of tenure and the related issue of continued affordability are vital to the achievement of stable homes and inclusive communities. Yet the existing regime of rent regulation continues to encourage tenant turnover and increasing average rents by permitting unlimited rent increases between tenants. This policy of "vacancy de-control" remains a central failing of our system of tenant protection, a full generation after it was introduced by the Mike Harris Conservatives. For twenty years before that, we had rent regulation programs under governments of all three of the parties on this Committee that provided for stable rents as tenants changed. This meant there was no incentive for falsifying a claim that your daughter wanted to move in, or for moving as quickly as possible when a tenant was facing a temporary financial crisis. And there was a general moderation of rent increases across the entire market, leading to more affordability despite the higher inflation rates of those times.

If you want to complete the job that you have started here and make serious inroads into addressing the growing crisis we are facing, these are the measures that you must take. The alternative is a commitment to build and subsidize enough non-market housing that it has a real impact on the vacancy rate and market rents. The Premier has indicated that the current level of commitment to social housing is all that Ontario can afford. But this still leaves hundreds of thousands of households on the waiting lists for an affordable home and the existing social housing in a grievous state of disrepair.

The changes proposed in this Bill will address some of the symptoms of this crisis and may stop things from getting worse in the near term. But you owe it to the people of Ontario to work with the other levels of government to implement a real housing strategy that addresses the needs of all.

Schedule "A"
Proposed Amendments to Bill 124

Prescribed Form of Lease

Section 1

Strike out the proposed s. 1 and substitute the following:

1. Subsection 4 (1) of the Residential Tenancies Act, 2006 is amended by striking out "Subject to section 194" at the beginning and substituting "Subject to subsection 12.1 (11) and section 194" and by striking out the words "or the regulations" and substituting "the regulations or the provisions of the tenancy agreement provided for in s. 12.1 that applies to that class of tenancies".

Transitional Housing

Section 2

Strike out this section in its entirety.

Eviction Based on Landlord's Requirement for Occupation

Section 7

(3) Subsection 49 (1) of the Act is amended by adding "for a period of at least one year" after "residential occupation" in the portion before clause (a).

(4) Section 49 of the Act is amended by adding the following subsection:

Application

(5) This section does not authorize a landlord to give a notice of termination of a tenancy with respect to a rental unit unless,

(a) the rental unit is owned in whole or in part by an individual; and

(b) the landlord is an individual.

Section 8

Replace the proposed wording with the following:

48.1 A landlord shall compensate a tenant in an amount equal to
(a) one month's rent; or
(b) three months' rent if the residential complex in which the rental unit is located contains at least five residential units

or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48.

Section 10

Strike out the words "for a higher rent than was last charged" where it appears in proposed paragraphs (5) (a) and (b)

Section 13

Replace the proposed wording with the following:

13 Subsection 72 (1) of the Act is repealed and the following substituted:

Landlord or purchaser personally requires premises

(1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on,

(a) a notice of termination given under section 48 on or after the day section 13 of the Rental Fairness Act, 2017 comes into force, unless the landlord has filed with the Board an affidavit sworn by the person who it is proposed will personally occupy the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use; or

(b) a notice of termination under section 49, unless the landlord has filed with the Board an affidavit sworn by the person who it is proposed will personally occupy the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use for a period of at least one year.

Same

(1.1) 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 given under section 48 or 49 before the day section 13 of the Rental Fairness Act, 2017 comes into force, unless the landlord has filed with the Board an affidavit sworn by the person who it is proposed will personally occupy the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use.

Above-Guideline Rent Increases

Section 22

Replace the proposed wording of subsections (2) (4) and (5) with the following:

(2) Section 126 of the Act is amended by adding the following subsections:

Summary of work yet to be completed

(3.1) The landlord shall include with an application under this section a summary of each of the following, if applicable:

1. Any item in a work order that relates to the residential complex and that has not yet been completed, regardless of whether or not the compliance period has expired.

2. Any item in an order made under any Act or bylaw that relates to the standard of repair or maintenance of the residential complex and that has not yet been completed, regardless of whether or not the compliance period has expired and regardless of whether the order was made against the landlord or another person or entity.

3. Any specified repairs or replacements or other work ordered by the Board under paragraph 4 of subsection 30 (1) in the residential complex and that has not yet been completed, regardless of whether or not the compliance period has expired.

Same

(3.2) A summary referred to in subsection (3.1) shall include the following information:

1. A description of the work that was ordered to be carried out.

2. The person or entity who was ordered to carry out the work and the time for compliance specified in the order.

3. The person or entity who made the order and the date the order was made.

4. Such additional information as may be prescribed.

(4) Subclause 126 (12) (a) (ii) of the Act is repealed and the following substituted:

(ii) has not completed specified repairs or replacements or other work ordered by the Board under paragraph 4 of subsection 30 (1) for which the compliance period has expired and which are found by the Board to be related to a serious breach of the landlord's obligations under subsection 20 (1) or section 161, or

(5) Section 126 of the Act is amended by adding the following subsection:

Application of subs. (13), non-completion of work

(12.1) Subsection (13) applies to a rental unit in a residential complex if the Board finds that,

(a) the landlord has not completed items in work orders for which the compliance period has expired and which relate to the residential complex;

(b) the landlord or another person or entity, as applicable, has not completed items in orders made under any Act or bylaw that relates to the standard of repair or maintenance of the residential complex for which the compliance period has expired; or

(c) the landlord has not completed specified repairs or replacements or other work ordered by the Board under paragraph 4 of subsection 30 (1) for which the compliance period has expired.

Delete subsection (9) from the proposed wording.

Post-termination Rent Claims

Section 24

(4) Subsection 37 (2) of the Act is amended by adding the words “no later than 30 days after the termination date” after the words “in accordance with the notice” so that it reads”

> 37. (2) If a notice of termination is given in accordance with this Act and the tenant vacates the rental unit in accordance with the notice, the tenancy agreement is terminated on the termination date set out in the notice.

Affidavits

Section 27

Delete this section

Legal Rent for New tenancy

Section 113 of the Act is repealed and the following substituted:

> Lawful rent for new tenant
>
> 113. Subject to section 111, the lawful rent for the first rental period for a new tenant under a new tenancy agreement is,
>
> (a) any amount that is equal to or less than the last lawful rent charged or that ought to have been charged to the previous tenant if the rental unit was previously rented in the last 12 months;
>
> (b) with respect to a rental unit that has not been rented in the last 12 months, an amount that is equal to or less than the sum of,
>
> (i) the last lawful rent charged or that ought to have been charged to the previous tenant,
>
> (ii) all increases to the rent that the landlord would have been permitted to make under this Act if the rental unit had been occupied, and

(iii) all decreases to the rent that the landlord would have been required to make under this Act if the rental unit had been occupied, or

(c) the rent first charged to the tenant if the rental unit was not previously rented.