ACTO TDCP Advocacy Centre for Tenants Ontario | Tenant Duty Counsel Program

Submission: Bill 184 – Schedule 4 Proposed amendments to the Residential Tenancies Act

June 26, 2020

The Advocacy Centre for Tenants Ontario
1500-55 University Ave.
Toronto, ON
M5J 2H7

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TO: Standing Committee on Social Policy
c/o Tonia Grannum, Committee Clerk
99 Wellesley Street West, Room 1405, Whitney Block
Queen's Park Toronto, ON M7A 1A2

A. Who We Are

ACTO is a community legal clinic funded by Legal Aid Ontario with a province-wide mandate to assist low-income Ontarians with their housing issues through legal advice and representation, law reform, public legal education and training. We also coordinate the Tenant Duty Counsel Program at the Landlord and Tenant Board (LTB) across Ontario which provides legal information and assistance to tenants appearing at hearings there.

B. The Precarious Housing Situation of Ontario's Tenants

Well before the pandemic, many Ontario tenants were struggling to maintain their households, crippled by unaffordable rents and stagnant wages. The economic earthquake caused by the lockdown to stop the spread of COVID-19 has put tens of thousands of tenants at risk of losing their homes.

Ontario is home to over one-third of all renters in the country. Almost half of renter households in Ontario have an annual income below $40,000. Many of these lower-income households are struggling daily to make ends meet because of pervasive discrimination against people from racialized communities, newcomers, single parents and people with disabilities. Young people and single-person households, particularly those from these groups, face additional barriers and make up a high proportion of renters.

Renters have been hit hard by the pandemic. Many are employed in sectors that were most directly impacted by COVID-19 – on the frontlines of healthcare and essential services where they are at a high risk of infection. Others work in sectors that have

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experienced lay-offs or faced significant reductions of hours worked. Ontario has lost more than a million jobs since the start of the pandemic. It will take time for these households to recover from these impacts. Those living on lower incomes are at risk of accumulating more debt and falling further into poverty, resulting in poorer health and educational outcomes and an increased need for social supports. Ontario is on track to become a province with a deep divide between the haves and the have-nots.

C. Legislation for a Difficult Rental Market

For the vast majority of Ontarians, their need for housing is met in the private market. Even for those with annual incomes below $40,000, only 25% live in social housing where the rent is based on their income. This makes regulation of the rental market and legal protection of security of tenure vital to the stability of our communities. But our reliance on the private sector has resulted in a chronically low vacancy rate which creates a high demand for any affordable units and skyrocketing rents in available units. The quality of rental housing – state of repair, amenities offered to tenants and how tenant concerns are addressed – has deteriorated as tenant turnover becomes a financial bonanza for landlords.

In such an atmosphere, the need for timely and expert dispute resolution has grown. But the government's efforts to force changes on the province's tribunal system has resulted in a critical shortage of adjudicators at the Landlord and Tenant Board (LTB) and a growing backlog of cases. The delays have made it more difficult for tenants, as the uncertainty of outstanding eviction claims and ongoing conditions of disrepair and harassment cause tenants to move before their cases ever come to adjudication. The backlog has grown during the pandemic as landlords continue to e-file applications against tenants facing temporary hardship hoping to gain an advantage once the LTB resumes full operation.

These are the issues that revision of the *Residential Tenancies Act, 2006* (RTA) should be addressing. Instead, a collection of pro-landlord amendments are joined with minor improvements in the way displaced tenants are treated in Schedule 4 of Bill 184 and marketed as "protecting tenants".

D. Keeping People Housed Must Continue to Be the First Priority

We commend the provincial government for taking swift and decisive action in obtaining a moratorium on residential evictions and stopping eviction proceedings at the Landlord and Tenant Board. During these difficult times, these steps help to create an opportunity to develop a comprehensive plan that will address the root causes of our housing crisis, laid bare by the pandemic. Such a plan must arise from increased collaboration among all stakeholders. If we fail to take that opportunity, Ontario puts the health and

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well-being of low-income tenants at risk of homelessness that could impact on the health and well-being of all Ontarians.

Thus we were surprised and disappointed that the government rushed Bill 184 to a second reading and Committee hearings, in the midst of the pandemic, without consultation or notice to stakeholders or opposition parties. This has created distrust and fear among renters. It appears that the government wants to make it easier to evict tenants while the health of our society and economy depend on ensuring that everyone remains housed during the pandemic and beyond.

Bill 184 was drafted and introduced before the province was hit by the pandemic. In a short time, the rental landscape has changed and the housing crisis has deepened. What is required at this time are reforms to housing laws and policies that reverse the pressures pushing tenants to the brink of homelessness. We need an immediate increase in the supply of affordable housing and preservation of our existing affordable rental housing stock. We need stronger protection against eviction and impoverishment. Schedule 4 of Bill 184 does not address these pressing needs of tenants and is no longer an acceptable response to rental market problems. We urge the government to abandon this Bill and invite tenant communities and other stakeholders to develop laws and policies that will truly protect renters and our communities.

E. What's Wrong with Schedule 4 of Bill 184

1. Post-tenancy debt collection should not be added to the LTB workload (Sections 18 - 21, 28, 29)

As noted above, the LTB has been experiencing significant delays in scheduling hearings for some time. These delays are the subject of an ongoing investigation by the Ombudsman in recognition of the prejudice to landlords and tenants caused by these delays. If increased financial assistance is not made available to tenants who were unable to pay their rent in full during the pandemic, the LTB's backlog could be further exacerbated by a flood of landlord applications. Bill 184 would put a further burden on the LTB by requiring it to adjudicate a new class of claims for tenant debts after the landlord-tenant relationship is over.

The LTB was designed to address issues between landlords and tenants with a current, ongoing relationship. This is fundamental to the design of its proceedings, particularly its requirements for notifying tenants of claims against them. After the relationship is over, disputes are resolved through the accessible process of the Ontario Court of Justice, more commonly known as Small Claims Court. This Court continues to have the capacity to hear such cases and has its own processes for notifying parties who do not have an ongoing relationship, developed over decades of practice. In addition, this

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Court has benefited from technological investments made to keep the courts operating during the pandemic.

Amending the RTA to expand the workload of the LTB in this way will not serve the parties that appear before it. The Bill does not require any process that could guarantee that former tenants receive notice of the case against them at their new address. In fact, the rules for serving notice have been weakened by sections 28 and 29 of the Bill, which take the responsibility to notify the former tenant away from the LTB itself and entrusting this critical function to the former landlord.

There is also no clarification on the limitation period for these claims. Is the landlord prohibited from making these claims once the 12 months have passed? Or can the landlord later bring a case in Small Claims Court if the LTB has not made an Order. This proposal has not received adequate consideration and should not be passed into law.

2. The Alternative Dispute Resolution proposed is deeply flawed (Sections 30, 31)

Alternative dispute resolution can be a useful problem-solving tool that, when done correctly, can result in positive outcomes for both parties. However, tenants living on lower incomes who are desperate to keep their housing have challenges in participating in this problem-solving when there is a stronger party on the other side.

Mediation at the LTB is already an important and well-established feature of the board process. The Bill does not specify what alternative dispute resolution would look like or how it would be conducted. The objective should be to resolve disputes in a way that works to the advantage of both parties. What has been proposed appears only to create a fast-track to eviction.

Mediated settlements at the LTB are very common in the 62% of the LTB applications that are landlord claims for rent arrears. These settlements take the form of re-payment plans where tenants agree to make payments in addition to their future monthly rent to clear up their arrears. Most of these settlements include a s.78 clause where the tenant agrees that if they fail to make any of these payments (including the future monthly payments) for the period of the agreement, the landlord can get an eviction order “over the counter” (i.e. without a hearing) on filing evidence of the default.

We believe that the s.78 process can often result in an unfair eviction because the reasons for the tenant’s default may be worthy of consideration by an adjudicator before a decision of whether or not to displace them is made. However, at least under this current process, the tenant has come to the LTB, had the opportunity to get the advice of tenant duty counsel and the assistance of the mediator before the agreement is signed. As well, the outcome is overseen by the presiding adjudicator who makes the

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agreement into an Order of the LTB and enforceable as such. These safeguards can prevent situations where the tenant signs an unfair agreement which will put them on a certain path to eviction.

An alternative process also exists in the Act (s. 206) in which the landlord's application can be settled by a written agreement *before* the hearing date where the same kind of payment plan can be can be consented to and an LTB Order can result. However, the tenant does not have access to the resources of duty counsel, mediators and adjudicators. If the tenant breaches their agreement, the landlord can make a request to the LTB to re-open their application for a hearing. But landlords have refused to use this process because the law prohibits these agreements from including an over-the-counter eviction. Bill 148 would take that prohibition away. The process could work for both parties if the LTB provided mediators to assist in resolving disputes in advance of hearing dates, similar to what is available at the Human Right Tribunal Ontario.

It is claimed that removing this prohibition will free up the Board's resources and make it easier to be a landlord. But at what cost? Do we really believe that these agreements about whether a household will be displaced or not - made in the landlord's office, or the apartment corridor or on an anonymous online portal without any third-party oversight - will be fair agreements? No one who actually listened to the tenants who appeared before the Committee could believe that.

Eviction orders should not be made without notice or the opportunity for a hearing, especially while the province is recovering from the impacts of the COVID-19 pandemic. If we want to promote the fair resolution of disputes before a hearing, they must be done at the LTB, in public, with the support of additional mediators and where we know there are resources for tenants to properly protect their interests. If concern for these tenants is not enough, we should also be mindful of public costs of eviction and homelessness and the possible public health concerns when people do not have a home to shelter in.

3. Provisions for tenants facing no-fault evictions are inadequate (Sections 5, 6, 7)

The government is commended for recognizing that the no-fault eviction process in the RTA has been abused to remove sitting tenants. Unfortunately, the amendments proposed will not provide much of a deterrent to this abuse because the financial reward permitted by vacancy decontrol is the primary driver of bad-faith evictions. In addition, the compensation provided in the RTA, even with the enhancements proposed by Bill 184, would still leave the evicted tenants at a disadvantaged position by not adequately covering the expenses that they will have incurred as a result of their displacement.

In recognition of this, the compensation for all no-fault evictions should be raised to three months so it is in line with the compensation currently paid for demolition or

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conversion of complexes with five or more units. If landlords have funds that are available for investment in renovation or new construction, part of that budget must be used to prevent further disruption of the lives of the displaced tenants. In most cases, this investment will be quickly recouped in future rents, even where these are subject to rent increase restrictions in the RTA.

Ontario rents have skyrocketed in recent years because of low supply, high demand and landlords' ability to increase the rent on a unit between tenancies without restrictions (vacancy decontrol). This incentivizes many landlords to abuse the no-fault eviction provisions to push out sitting tenants and then to rent gouge the incoming tenants without making any significant improvements to the units. Not only are displaced tenants forced to pay much higher rents in their new units, but the high rents created through vacancy decontrol further reduce the number of affordable units across the province.

The RTA should be directed at preventing this abuse, and the minor disclosure obligations added by s. 11(2) of the Bill will not be effective at doing that. Although the RTA allows tenants to file a bad faith application against their landlord if they believe they were evicted under false pretences, most victims of this abuse will not file a bad faith application and for those who do, the evidentiary burden makes it difficult for their application to succeed. Where a landlord is found to have acted in bad faith and ordered to pay damages or fines, it is simply a small cost of doing business more than offset by the windfall of future higher rents that will be collected.

At a minimum, tenants who have been victimized by these actions must have the clear and absolute right to obtain an order to re-take possession of the unit at the same rent as when they left. Of course, there must be compensation for any new tenant occupying the unit without knowing that the landlord had the obligation to provide it to someone else.

To truly stop this abuse, the RTA must be amended to end the rent gouging created through vacancy decontrol. To be effective, this must also apply to newer units and so, the exemption to rent regulation granted to units first occupied after November 2018 must be rescinded.

Further to compensation, we need look at additional measures to curb the abuse of no-fault evictions. First, a more systematic approach must be taken to the regulation of the private rental supply. The RTA must include provisions for developing a provincial database of residential rental units, including information about rent levels and violations of landlord obligations. This would work in concert with government efforts to create community housing and distribute housing allowances fairly. As a start, a comprehensive record of no-fault eviction notices or eviction applications under s. 48, 49, 50 of the RTA must be maintained. Landlords would be required to file notices at the LTB before they could be enforced, accessible to the public for the purpose of

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transparency and ease of verifying landlord's claims. This will allow all parties to know the history of evictions from the unit and would support tenants' right of first refusal once renovations are completed. This system could be integrated with municipal rental building registration programs such as RentSafeTO in the City of Toronto. It would also facilitate the examination of records such as building and demolition permits by tenants and LTB adjudicators.

Second, numerous recommendations made by tenants who have fought renovictions by their landlords need further consideration. These include:

- Notices (N13s) for renovation or demolition must include copies of building permits and architectural designs so tenants are able to assess the real substance of the application;
- Timelines for renovations to be completed should be capped at ten months, after which the landlord would cover the tenant's rent;
- Tenants need at least 60 days advance notice to exercise their right of first refusal to return to their unit;
- Compensation up to five years for tenants denied their right of first refusal;
- Require landlords to provide tenants alternative housing during the course of the renovations or relocate the tenant to one of their available vacant units; and
- Corporations should also be excluded from accessing purchaser own use provisions as they are for landlords own use evictions.

4. Defences to rent arrears claims should not be further constricted (Section 16)

This provision of the Bill, requiring a written notice to raise tenant issues as a defence in rent arrears, should be removed. Section 82 provides for a tenant's right to respond to an arrears application by raising issues that may have contributed to the arrears – most commonly a landlord's failure to complete repairs. Without the opportunity to provide a proper defence a tenant may be evicted.

This proposed change to the RTA is of particular concern to vulnerable tenants who may not have the resources to file their own tenant application. It is also a tool of last resort that some tenants use when their landlords repeatedly ignore longstanding and serious repair and maintenance concerns. It is also more expedient for the LTB to hear these matters (rent arrears and tenants' claims) together, especially in light of its backlog.

It is very difficult to believe that landlords are unaware of serious repair problems in the units they are seeking rent arrears from, or of harassment and other interference that the tenant has suffered. Poor communication of this right in eviction application material is one cause of tenants' lack of preparation and unnecessary adjournments that

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inconvenience everyone. Most tenants only become aware of their rights at the day of their hearing if they have an opportunity to speak to tenant duty counsel. While still disadvantaging some tenants, information or an accessible tenant form regarding raising s. 82 claims that is provided with the landlord's application and notice of hearing might improve the adjudication of these applications. As is, the proposed change in s. 16 of the Bill creates a barrier to even-handed justice.

5. Notices to tenants about rent and utility costs should not be weakened or eliminated (Sections 24 and 25)

If the obligation to provide proper notice of all rent increases is to be respected, the proposed amendment to the RTA in section 24 that provides only a 12-month window for tenants to seek repayment of an increase made without notice should be removed. Much effort has been devoted by Ministry staff and landlord and tenant advocates to ensuring that forms impacting people's rights are usable and understandable. There should not be a financial benefit to failing to provide this information.

There is also no reason to eliminate the government's ability to require landlord's to inform a prospective tenant about electricity costs. These provisions only apply to tenants who will be paying separately for their own electricity and they need this information so they can assess what their monthly housing cost will be. Suite-meter deals were made by the landlord for the landlord's benefit and can result in tenants being misled about their ability to afford a rental unit because the rates for this electricity are not subject to regulation.

F. Post-COVID Amendments to the RTA

If Bill 184, Schedule 4 is to proceed, it should be expanded to include additional provisions to address the short and medium term consequences of the pandemic crisis on the rental housing market. These measures would remain in place while the pandemic and its economic consequences poses a threat to residents of Ontario. They would prevent housing insecurity and displacement that can entrench poverty in tenant households and hinder the advancement of public health.

1. Extend the Eviction Moratorium and Develop Real Alternatives

The pandemic has clearly demonstrated that sheltering in adequate housing is the key to fighting the spread of infectious diseases. The eviction moratorium should be extended by legislation until the pandemic and the post-pandemic recovery period is over. Employment levels and other economic indicators must be used with public health

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information to ensure that communities will not be disrupted by unnecessary and costly displacement. Eviction applications could continue to be considered in urgent matters with serious health and safety implications, but eviction should continue to be "off the table" for the vast majority of applications before the LTB.

Such cases would include rent arrears claims, no fault evictions and minor misconduct matters where the tenant household is facing difficulties such as:

- loss of employment,
- decrease in income,
- illness or self-isolation due to exposure,
- particular vulnerability to COVID-19,
- need to care for a family member hit by the illness
- need to care for children out of school or day care

Tenants should not be punished because they faced hardships during this pandemic. Business as usual is not expected in other industries during this pandemic and the landlord industry should not expect to be treated as an exception.

With proper supports and processes in place for both landlords and tenants, these cases could be resolved without the need for LTB adjudication. Instead, the landlord should be required to participate in other available government programs (rent forgiveness or landlord hardship relief) before an application to the LTB can be made. Alternative dispute resolution can be conducted in a much better atmosphere when the threat of immediate of evictions is removed. Where parties have additional supports, they are much more likely to achieve repayment agreements that are feasible and will not push tenants into continuing poverty or default.

2. Re-Institute Effective Rent Controls

In the short term and the long term, paying unaffordable housing costs every month is the greatest source of anxiety for most tenants. This fear has become more severe and widespread as the effects of the pandemic crisis continue. Over 8 million Canadian residents applied for federal CERB funding because they needed money to cover their basic needs. Most tenants do not have enough savings to pay their bills for more than a month if they lose their job.

Thus, curbing rent increases is even more critical at this time when tenants' financial situations remain volatile. An ongoing, comprehensive program of rent regulation is needed in Ontario. As a starting point, there must be a pause in all rent increases for sitting tenants (including those in units first occupied after November 15, 2018) during

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the pandemic period. We also urge that, for the rental units that are turning over during this period, no rent increases be permitted between tenancies to eliminate

incentives for displacement and rent gouging. As we heard from three days of committee hearings, vacancy decontrol was cited as the main reason for tenants housing precarity.

3. Begin Meaningful Ongoing Consultation on Housing Policy

Government-side talking points seek to create the impression that tenants have been involved in the development of the policies embodied in this Bill. The Bill would reduce their right to dispute unfair evictions and would weaken enforcement of repair obligations and rent rules. It would overload their specialized dispute resolution body with routine debt collection now handled by the Courts. No tenants or tenant advocates accepted these changes as the price to pay for minor improvements in addressing displacement and landlord fraud. On-line surveys have their place, but they should not be used as a cover for the restriction of fundamental human rights.

The pandemic crisis is expected to bring fundamental changes to the rental market and the operations of the LTB for years to come. Meaningful involvement by a variety of stakeholders, including those with lived experience, would be of invaluable assistance to the Government of Ontario in developing long-term solutions to the problems that these changes will create. The process of developing a forum for such ongoing involvement must begin now so poorly thought-out policies like those in this Bill do not see the light of day.

Even the limited consultation process offered by the LTB in its Practice Advisory Committee has been abandoned by this government. Meetings between government officials and tenant and landlord advocates to discuss concerns with the operations of the LTB had been convened regularly since that institution's establishment. A stakeholder committee that can provide immediate and expert assistance to the LTB on these changes is needed now more than ever. Indeed, wider tables of ongoing consultation on rental housing policy are needed to bring the people affected by government policy together with policy makers for the long-term benefit of all Ontarians. But this kind of participatory democracy is threatening to over-centralized decision-making. Current events have shown that this is the kind of democracy that Ontario needs.

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G. Conclusion

Bill 184 does not go far enough in addressing the longstanding systemic housing concerns of tenants, many of which have been exposed by the pandemic crisis. Our submission addresses what was presented in Bill 184 and what else is needed based on our experience working with renters across the province.

Most of the rental concerns expressed by landlords, and the rationale given for many of the changes made by the Bill are largely related to the increasing delays parties experience at the Landlord and Tenant Board. The problems of the LTB should not be fixed by further weakening tenants' rights. The government should be listening to these concerns and instead be reinvesting resources into hiring more qualified adjudicators, mediators and legal clinic workers.

We strongly encourage the province to engage with all stakeholders to examine and address the ongoing affordable housing crisis. ACTO is available and willing to bring what we have learned to any and all efforts to end that crisis.

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SUMMARY OF RECOMMENDATIONS

Our primary recommendation is that this Bill not be proceeded with, and that a proper consultation process be undertaken to develop appropriate laws that suit the changed rental market of 2020. In the alternative, we recommend the following changes to Schedule 4 of the Bill.

1. Post-tenancy debt collection should not be added to the LTB workload.
   Sections 18, 19, 20, 21, 28 and 29 should not be enacted.

2. The Alternative Dispute Resolution proposed is deeply flawed.
   Sections 30 and 31 should not be enacted.

3. Provisions for tenants facing no-fault evictions are inadequate.
   Section 5 should be amended by substituting “three months” for “one month” in the first line of the proposed s. 49.1(1).
   Section 6 should be amended by substituting “three months” for “one month” in the first line of the proposed s. 52(2).
   Section 7 should be amended by substituting “three months” for “one month” in the first line of the proposed s. 54(3).
   Section 9(1) should be amended by adding the following paragraph to paragraph 1 of the proposed s. 57(3):

   1.3 Despite any other provision of this Act, an order reinstating the tenancy agreement between the parties on the same terms and conditions as existed prior to the termination of the tenancy, granting possession of the rental unit to the former tenant and an order evicting any person in possession of the rental unit, to be enforced in accordance with s. 85 of the Act.

4. Defences to rent arrears claims should not be further constricted.
   Section 16 of the Bill should not be enacted.

5. Notices to tenants about rent and utility costs should not be weakened or eliminated.
   Sections 24 and 25 of the Bill should not be enacted.

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Post-COVID Amendments to the RTA

1. Extend the Eviction Moratorium and Develop Real Alternatives.
   A new section 83.1 should be added to the Act as follows:
   83.1 (1) Despite any other provision of this Act but subject to subsection (2), no eviction order shall be granted until the end of the prescribed post-pandemic recovery period where the occupants of the rental unit have been adversely affected in the prior 12 months by:

   - loss of employment;
   - decrease in income;
   - illness or self-isolation due to exposure;
   - particular vulnerability to COVID-19;
   - need to care for a family member hit by the illness; or
   - need to care for children out of school or day care

   (2) Where there are grounds for eviction which include urgent matters with serious health and safety implications, the Board may grant an exception to the prohibition is subsection (1). The regulation powers must also be amended to define the “post-pandemic recovery period”.

2. Re-Institute Effective Rent Controls.
   A new section 110.1 should be added to the Act as follows:
   110.1 Despite any other provision of this Act no landlord shall increase the rent charged to a tenant for a rental unit, including a new tenant of that rental unit until the end of the prescribed post-pandemic recovery period.

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