Submissions to the Standing Committee on Heritage, Infrastructure and Cultural Policy regarding Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023

Advocacy Centre for Tenants Ontario
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Introduction

The Advocacy Centre for Tenants Ontario (ACTO) is a non-profit organization working to advance and protect the interests of low-income and moderate income tenants in Ontario. We strive for the advancement of human rights and justice in housing through legal advice and representation, law reform, community organizing, training and education. This includes managing and providing tenant duty counsel services for Ontarians at the Landlord and Tenant Board.

ACTO welcomes the government's attention to the growing housing crisis in Ontario. However, the tweaks to the *Residential Tenancies Act, 2006* (*RTA*) offered in Bill 97 will not do much to stem the tide of bad faith evictions. There is consensus that the amendments brought in by Bill 184 have not achieved their intended goals. Three years later, the government is attempting again to deter landlords from pushing tenants out of their homes with additional amendments with Bill 97. Unfortunately, these amendments will produce the same results as long as the government fails to address the root cause of bath faith evictions – the vacancy decontrol loophole.

Closing Rent Loopholes Driving Bad Faith Evictions

According to the 2021 Census, there are 1.7 million tenant households in Ontario, comprising 31% of Ontario households, and growing. A significant proportion of tenants are people from racialized communities, newcomers, single parents and people with disabilities.

Tenants are living on the margins. The median household income of tenants was $58,400.[1] Approximately, 40% of tenant households are spending more than 30% of

[1] Wellesley Institute: "Erosion of Affordable Rental Housing in Toronto: Findings from the 2021 Census".

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their income on shelter costs. And 25% are in core housing need. Once the rent is paid, many tenants report not having enough income for basic needs including food.[2]

Rents in Ontario's cities are some of the highest in the country. The average asking rate for rent in Ontario has gone up by more than 17% in one year to $2400.[3] The average asking rent is even higher in Toronto, Mississauga, Brampton, North York and Etobicoke – Toronto, home to half of the province's tenants, the average asking rent is more than $2800 a month.[4] Meanwhile, the incomes of tenants have not followed a similar trajectory as rents - making tenants poorer with each rent hike.

This crisis is three decades in the making. All-time low vacancy rates and skyrocketing rents are the result of governments ending their housing building programs, and Ontario gutting the province's rent controls in the early 1990s – including the elimination of vacancy control. These factors, coupled with a growing demand for housing, has turned residential properties into highly coveted investments for landlords, speculators and developers.

Investors, both big and small, make up the largest segment of buyers of residential real estate in the province – at 25% of buyers in 2021.[5] Investors went from being the smallest segment of buyers to the largest segment of buyers in under ten years.[6] Many of the properties they are purchasing are affordable rentals that have long-time tenants, including many seniors. As these tenants have been in the same unit for years or decades, their rents can be hundreds less than what the market is currently charging. These long-standing tenants are also very closely tied to their community.

Lower-rent properties hold great profit-making potential for investors.[7] In their own annual reports and websites, investors outline their strategies to maximize the rent collected from low-rent units.[8] This includes renovicting or demovicting the current tenant out of the unit and replacing them with a new, more upscale, tenant who is charged double or triple the previous rent through the vacancy decontrol loophole. The evicted tenant, unable to afford a similar unit at the current market rent, may be pushed out of their community or become homeless.

The vacancy decontrol loophole is one of the main drivers for the rapid loss of existing affordable housing units in the province, and the reason why we cannot build our way out of this crisis. **ACTO strongly recommends that the *RTA* be amended to close the vacancy decontrol loophole and the 2018 rent control exemption to ensure**

[2] ACTO Commissioned EKOS Public Opinion Poll, May 2022.
[3] Rentals.ca April 2023 Rent Report.
[4] *Ibid*.
[5] Farah Meralli. CBC News. "Investors now make up more than 25% of Ontario homebuyers, pushing prices higher, experts warn" November 23, 2021.
[6] *Ibid*.
[7] Martine August. Policy Options. "The rise of financial landlords has turned rental apartments into a vehicle for profit" June 11, 2021.
[8] Sophia de Guzman. ricochet. "Renoviction is the 'landlord playbook' in Toronto" May 10, 2023.

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that rental units are protected as homes for Ontarians and not incentivized as investments.

Air Conditioning

Climate change is producing more heat waves and heat advisories in different parts of the province. Most older purpose built-rental buildings, housing lower-income tenants, were not constructed with air conditioning. Seniors and persons with disabilities are particularly vulnerable to adverse health impacts from extreme heat, which can render their unit uninhabitable. Access to air conditioning is a serious public health issue for this segment of the population.

The proposed amendments in Schedule 7 of Bill 97 claim to provide tenants with clarity of their right to have air conditioning in their unit. However, it places the entire financial burden on tenants, many who already pay unaffordable rents, and introduces the potential for unlawful rent increases and subsequent disputes between landlords and tenants.

Currently, where the rent charged for a unit includes the cost of electricity, and the lease does not address air conditioning, the landlord cannot charge the tenant more rent if their electricity usage increases from the use of an air conditioner. This would change if Bill 97 becomes law and the landlord can demand more rent from the tenant even though electricity is included in the rent.

Bill 97, violates the principles of contract law by unilaterally renegotiating the terms of the lease in favour of the landlord to now state that the landlord will pay the renter's electricity except the electricity used by an air conditioner. Renters in these units will be required to pay more in rent than they originally bargained for.

Furthermore, this amendment proposed by Bill 97, relieves the landlord's overarching and ongoing obligation to provide housing "fit for habitation" as set out in s. 20 of the *RTA*. Extreme temperatures, both hot and cold, can have a detrimental impact on the health and well-being of a person. Just as we accept that a landlord cannot provide a tenant without heating in the winter, we must similarly accept that the landlord cannot provide a tenant a unit that is sweltering - ie exceeding the heat temperature maximums set out by health agencies ie 24-26 degrees.

ACTO recommends that the proposed amendment to s. 36.1(4) should be struck; and Bill 97 be amended to clarify that pursuant to a landlord's obligations under s. 20 of the *RTA*, the landlord shall provide tenants with a unit no warmer than prescribed temperature maximum. The parties can then turn to their lease to determine who is responsible for any additional cooling a renter may require, while considering accommodation obligations that may arise from *the Ontario Human Rights Code*.

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In light of the serious failings of the Landlord and Tenant Board including the unprecedented 24 months it can take for a tenant application to be heard at the Board, the ballooning backlog of cases and lack of experienced adjudicators,[9] it is quite perplexing that the government would introduce measures that could easily compound the problems at the Board. The proposed amendments to s. 36.1(6)-(9) will cause landlords and tenants endless confusion and frustration and likely will expose tenants to rent gouging.

First, there is no prescribed cap or guidelines as to how much additional rent a landlord can charge a tenant for air conditioning. Most tenants do not know their electricity usage or have the means or understanding to tract the electricity used by their air conditioner. They will not know if they are being over-charged for air conditioning electricity.

Second, air conditioning usage fluctuates wildly month to month, year to year – there could be a heat wave one week in April, and then cool weather in May and June. Dry heat can feel different than humid heat. Many Ontarians prefer to only turn on their air conditioning on certain uncomfortable days in the summer. Some Ontarians prefer to run their air conditioning all summer. This variability in weather and preferences will undoubtedly lead to tenants overpaying for electricity, when electricity is already part of their rent.

Third, it is unlikely that tenants and landlords will know that the rent is supposed to decrease after air conditioning use ceases for the season. Renters could continue paying this increased rent, in effect becoming an illegal rent increase. It is unclear who determines when the seasonal use of the air conditioner starts and has come to an end. If the landlord does not lower the rent as required, the burden falls on the tenant to file a tenant application at the Board and then possibly wait 2 years for it to be determined. Many renters will not subject themselves to this burden. If the electricity is included in the rent, it should continue to be the landlord's responsibility to pay for the electricity.

In summary, ACTO recommends that s. 20 of the RTA is amended to clarify that landlords are responsible for providing a unit fit for habitation, which includes minimum and maximum temperatures. **Further, ACTO recommends that s. 36.1(4)-(9) be struck from Bill 97 and the landlord continue to be required to pay the cost of electricity where it is included in the rent (unless the lease states otherwise).** These amendments undo the bargain made between landlord and renter will promote more conflict within the Act; and they run counter to the *RTA*'s remedial purpose. They are unfair to tenants who are entitled to a habitable home even in this age of climate uncertainty, anxiety and change.

[9] Ontario Ombudsman. "Administrative Justice Delayed, Fairness Denied" May 2023.

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Bad Faith Evictions

While ACTO appreciates that the province is attempting to deter landlords from committing bad faith evictions, the amendments set out in Bill 97 alone will not protect tenants from being pushed out of their units. As stated above, we need to start by closing the vacancy decontrol loophole.

"Renoviction" is the term used to describe a landlord's claim that they need the tenant to vacate their rental unit to conduct extensive repairs or renovations. Once the tenant is out of the unit, some landlords will re-rent the unit to a new occupier for considerably more rent instead of allowing the tenant to return to the renovated unit at basically the same rent as required by the *RTA.*

Report from a Qualified Person

Bill 97's amendment requiring the landlord to provide a report from a qualified person with the Notice of Termination for Demolition or Extensive Repairs is unlikely to be useful to tenants trying to determine if the landlord is providing the notice in good faith. The amendment as written does not set out who would be considered to be a qualified person or the required information that must be included in the report.

Some of the shortfalls could be addressed by using already existing municipal building, inspection and planning departments of municipalities and the related legislative instruments to determine the required documentation necessary to proceed with the renoviction, rather than creating a new class of person who has the "prescribed qualifications".

ACTO recommends that Bill 97 be amended to require that the landlord apply and secure the necessary building permits from the relevant municipality *before* serving the tenant with the N13 notice of termination; and the landlord must provide the tenant with copies of all the required building permits with the notice of termination.

As defined under s. 50(c) of the *RTA,* for this no fault eviction to be valid the renovations require a building permit and vacant possession. Building permits can also be drafted to warrant that vacant possession is required given the repairs proposed. Building, inspection, and planning could be entrusted to notify the evicted tenant when the unit is ready to be re-occupied; and not grant final authorizations of the completed work without proof the landlord has notified the tenant of their right of first refusal.

Providing tenants with the permits will also equip them with the necessary information needed to determine the scope, nature and extent of the renovations and whether vacant possession is required. It would also allow tenants to determine whether the unit is actually being demolished, which unlike renovations does not provide tenants with the right of first refusal, or if in fact it is a renovation that allows them the right of first refusal.

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Tenant's Right of First Refusal

Regarding the tenant's right of first refusal, Bill 97's amendments help provide some additional clarity to this right but they do not go far enough to prevent abuse. In reality, landlords have resorted to underhanded tactics to avoid the former tenant from moving into the newly renovated unit at their pre-existing rent. This includes renting the unit to new occupants at much higher rents without ever notifying the tenants that renovations are complete. This tactic is commonly used because landlords know that the Landlord and Tenant Board rarely orders the reinstatement of unlawfully evicted tenants into an occupied unit.

Furthermore, landlords know very few tenants file T5 notice of termination given in bad faith applications at the Board, and if they do, it will take approximately 24 months to be heard. They also know that any financial penalty incurred at the Board is very small in comparison to the financial gains the landlord generates from charging the much higher rent.

ACTO recommends that s.31 of the RTA be amended to clearly state that the Landlord and Tenant Board has the authority to reinstate an unlawfully evicted tenant back into an occupied unit; and provide the occupant, as an affected party, the ability to seek remedies against the landlord at the Board or in court. This is in keeping with recent decisions from Divisional Court on reinstatement.[10] This amendment will close one of the loopholes landlords use to circumvent tenant's right to reoccupy a renovated unit.

Any new occupier would have a cause of action against the landlord who rented them the unit that the landlord did not have the right to lawfully re-rent. On a balance of convenience and harm, the new occupier's damages would be far less than the evicted tenant because they came to the unit at a substantially increased rent that is similar to what the current market would be charging. The caselaw is clear – tenancies can only be terminated lawfully; and where the landlord fails to do so, they do not have the right to re-rent the unit to a new occupant.[11]

T5 Notice of Termination Given in Bad Faith Applications

Like with renovictions, landlords also abuse the landlord's own use or purchaser's own use provisions of the *RTA* to push out sitting tenants. Most tenants vacate after receiving the N12 notice of termination, rather than proceed with a hearing to test the validity of the landlord's notice. Most tenants, do not bring T5 applications against the landlord for evicting them in bad faith when they learn the unit has been re-rented to new occupiers. The evidentiary burden on the tenant, the 2 year delay to be heard at

[10] *Ottawa-Carleton Association for Persons with Developmental Disabilities/Open Hands v. Séguin*, 2020 ONSC 7405 (CanLII), https://canlii.ca/t/jbw7l.
[11] *Ibid.*

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the Board, personal circumstances, small financial remedies for the tenant if successful and the low prospect of being reinstated into the unit deters tenants from filing a T5 application.

The amendments to s. 57 of the RTA may assist a tenant who decides to file a T5 application against the landlord but they will not deter a landlord from abusing the landlord's own use provisions of the *RTA*. Similar to renovictions, **ACTO recommends that the vacancy decontrol loophole be closed, and the Board's authority to order reinstatement into an occupied unit be clarified in the *RTA*.**

With respect to the proposed amendments under Bill 97, **ACTO recommends that amendments to landlord's own use provisions also extends to purchaser's own use provision.** Differences in these two forms of no fault evictions creates confusion for tenants and landlords, meanwhile the harms on the displaced tenants are essentially the same.

ACTO also recommends that prescribed period of time for the landlord or his permitted relatives to move into the unit after it has been vacated be 11 days. This is in line with the standard amount of time the Board provides the tenant to move out in eviction orders. This will ensure that when landlords provide tenants with a termination date on the notice of termination that it is a realistic and well-planned date for the landlord or their relative to move into the unit. At a hearing for a T5 application, the landlord has the opportunity to explain why they were not able to move in by the prescribed date.

ACTO supports the extension of the limitation periods for a tenant to file a T5 application.

Fines

When Bill 184 was announced, it was lauded for its toughest administrative fines that would deter bad landlords and protect tenants. They did not work, which is why Bill 97 is proposing to hike fines even higher. As we submitted then, fines are not a deterrent for landlords acting in bad faith. Instead, we must address the root cause for bad faith evictions – the vacancy decontrol loophole.

There isn't a transparent and readily accessible way to track the number of administrative fines issued against landlords. ACTO conducted a Canlii search[12] of the T5 applications for notice of termination given in bad faith from July 2020, when Bill 184 was enacted, to the present, to assess the administrative fines issued by the Board. There were 74 T5 applications in the database. Only 14 of these applications included an administrative fine as a remedy requested by the tenant. Of these applications that

[12] Canlii.org is a database of legal decisions, which includes some of the decisions from the Landlord and Tenant Board.

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were decided in the tenant's favour – the Board declined to issue an administrative fine in half the cases. In the other half of the cases where the Board did issue an administrative fine, the fines only ranged from $500 to $3000. At the end of the day fines are meaningless if the Board never fully utilizes them.

What we gather from these results and our own experiences with tenants is the process for issuing administrative fines is flawed. Currently, the burden of pursuing administrative fines against landlords falls on the tenant. As we described above, most tenants who are unlawfully evicted do not file T5 applications against their landlords. It is a lengthy process because of the backlog at the Board, that results in minimal remedies to the tenant pushed out of their unit. The evidentiary burden is high for a tenant who might not even live in the community anymore.

As our search on Canlii reveals, the administrative fines being issued involved trivial amounts (the profit from one month of the new rent charged can covers these amounts in a month or two). It is uncertain whether landlords even bother to pay these fines, or what, if any, consequences result if they fail to do so. Considering the large profits to be gained from the rent charged to a new tenant, the pay-off is worth the risk of fines. Fines are merely a small cost of doing business.

Lastly, administrative fines do not benefit the tenant or mitigate the personal and economic losses they suffered as a result of their unlawful eviction. As such, most tenants do not bother requesting them if they decide to pursue a T5 application.

Renters should not carry the burden of collecting evidence and pursuing hearings for fines that do not even benefit them. **ACTO recommends that administrative fines are pursued by a robust Rental Housing Enforcement Unit with significantly increased resources and mandate to proactively prevent renovictions and demovictions by issuing fines and referring matters to prosecution.**

Bill 97: Schedule 5 - Rental Replacement By-Laws

As ACTO outlined in our submissions last year for Bill 23, we strongly oppose Bill 97's amendments to *the Municipality Act, 2001* to limit or restrict municipalities' use of rental replacement by-laws. Rental replacement rules are municipal by-laws that help protect the existing supply of rental housing. These rules ensure that when a developer or landlord wants to demolish or convert an existing rental property with 6 or more units, they must, at minimum, maintain the same number of units as rentals in the newly updated building.

Vacancy decontrol is driving the loss of existing affordable housing units. Any weakening or elimination of rental replacement policies would be a devastating blow to Ontario tenants.

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We are currently losing affordable rental units at a much higher rate than we are creating them. Units at risk of conversion and demolition tend to be older buildings that are often some of the few remaining affordable rentals left in the municipality. Between 2006 and 2016, Ontario experienced a 26% decline in units that rent for less than $1000, while units renting by over $1,500 increased by 360%. This trend has further accelerated. Between 2016 and 2021, units renting for under $1,000 have decreased by another 36%. The highest increase has been in luxury rentals, renting for over $3000, which have increased by 87%.

Rental conversion and demolition bylaws are one of the very few ways in which municipalities can protect their existing rental housing. For example, since 2007, the City of Toronto has ensured the replacement of over 4,000 rental units through its rental replacement by-law. Mississauga, prior to the implementation of a rental replacement by-law, was losing 70 purpose built rentals each year to condominium conversions, and between 2005 and 2018, three projects totaling 55 units were demolished.

There is no basis or evidence to suggest rental replacement policies prevent building renewal. In fact, the *RTA* holds landlord responsible for maintaining their properties, and even allows them to seek above guideline increases for the costs of any significant capital expenditures incurred for renewal or for energy conservation.

Lastly, these policies were created after extensive consultation with stakeholders and residents to craft a policy that works well for the local housing context in their city. Creating a one-size-fits-all approach is inefficient and will not serve local housing demands because it is not informed by the unique needs of local residents.

ACTO recommends that the Province prioritize the preservation of existing affordable housing units in the Ontario. ACTO further recommends that the proposed amendments to section 99.1 (7)(a) of the *Municipality Act, 2001* be struck. Any weakening or reduction of rental housing protections will result in the continued loss of affordable rental units and place tenants at greater risk of losing their housing and being pushed out of their community.

Conclusion

Bill 97's amendments to the *Residential Tenancies Act, 2006* do not go far enough to meaningfully address the housing crisis that we see happening around us.

The Province needs move beyond the band-aid solutions offered in Bill 184 and Bill 97 and take decisive action to address the roots of our crisis – starting with closing the vacancy decontrol and 2018 rent exemption loopholes.

We have a housing crisis in this province. It is well documented. It is well understood. Bill 97 is an initiative that only serves to delay the real opportunity to address the

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serious problems at hand. We urge the Province to enact brakes on the cost of renting in Ontario before the crisis worsens to a point where our communities are changed forever.

Sincerely,

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