Submissions on Proposed Bill 60 Regulations

CHANGES AFFECTING THE RESIDENTIAL TENANCIES ACT, 2006

PREPARED BY: ADVOCACY CENTRE FOR TENANTS ONTARIO

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

May 1, 2026

Re: Proposed Regulations for Bill 60 – *Fighting Delays, Building Faster Act, 2025*

To Whom it May Concern:

I am writing to you today on behalf of the Advocacy Centre for Tenants Ontario (ACTO) regarding proposed regulations under Bill 60, *Fighting Delays, Building Faster Act, 2025.*

ACTO is a non-profit organization that aims to protect the interests of low-income and moderate-income tenants in the province. We work in tandem with 71 other community legal clinics across Ontario to advance this goal. We strive to realize human rights and justice in housing through legal advice and test case litigation, law reform, community organizing and more, including providing tenant duty counsel services at the Landlord and Tenant Board (LTB).

The following feedback is situated in the context of the growing housing crisis in Ontario. In 2025, nearly 85 000 Ontarians experienced homelessness. This figure is up 8% since 2024 and has increased by 50% since 2021. The rising cost of living and the financialization of rental housing necessitate a coordinated response from all levels of government.

ACTO strongly opposes proposed regulations one through four as set out below. The changes proposed, viewed cumulatively, will: erode tenants' rights; reduce the ability of the LTB to make decisions that are responsive to the unique facts of each case; offend the *Human Rights Cod*e (the *Code*); and remove safeguards in the pathway to eviction of Ontario's most vulnerable tenants.

Moreover, the changes proposed are antithetical to the expressed goals of tenant protection and efficiency proscribed by the *Residential Tenancies Act, 2006* (*RTA*).

While we have proposed some measures to mitigate the harm to tenants resulting from the proposed changes, these recommendations should not be taken to detract from our fundamental opposition to Bill 60 as an attack on tenants' rights.

ACTO continues to call for the repeal of Bill 60.

The proposed regulation regarding section 48 is a welcome improvement – but more must be done to eliminate the financial incentives driving bad faith evictions.

Sincerely,

Advocacy Centre for Tenants Ontario

Dania Majid

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TABLE OF CONTENTS

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1. Proposed Regulation – section 82

In order to raise issues at the rent arrears hearing, a tenant must pay, to the landlord, 50% of the arrears claimed in the landlord's application at least seven (7) days in advance of the hearing.

Current Approach:

Tenants have the right to notify the Board and the landlord in advance of the arrears eviction hearing (L1) that they intend to raise tenant issues at the hearing. The Board has the discretion to allow a tenant to raise these issues if they do not meet the deadline (i.e. many tenants only learn about this right after speaking with tenant duty counsel or getting legal advice).

This right is an important eviction prevention tool. Often, the reasons for the tenants' arrears are tied to the landlord violating a tenant's rights. Raising tenant issues at an arrears hearing is a key part of a tenant's defence to the landlord's claim that they owe rent.

For example, a tenant with a fridge that failed and which the landlord refused to fix, may have had to spend money replacing spoiled food and hiring someone to repair the fridge themselves – resulting in them not having enough money to pay the rent. Section 82 enables the tenant to explain the situation at the hearing, and the Board may determine that the tenant does not owe any rent to the landlord or the landlord in fact owes the tenant money.

In another scenario, a tenant raising section 82 issues at the hearing could result in the Board ordering the landlord to provide the tenant with a rent abatement or compensation that significantly offsets the amount of arrears owed. This helps the tenant to repay the amount owing with a reasonable repayment plan and save their tenancy.

Hearing the matters together is also a more efficient use of Board time rather than scheduling two separate hearings approximately 12 months apart.

Submissions:

The proposed regulation threatens to erode a fundamentally important tenant right – the right to raise tenant issues at an arrears hearing.

Tenants paying for their right to raise a defence

By requiring tenants to pay half of the unproved arrears alleged by their landlord, the tenant assumes an unprecedented evidentiary burden. Nowhere else in the legal system are parties in a legal dispute required to pay money up front to present a response to a claim against them. For

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instance, in other civil matters, the defendant is not required to pay up front a portion of alleged damages before they can respond a claim against them.

The problems with forcing tenants to pay arrears before they are proven can be illustrated with the following example: a tenant in a purpose-built apartment building received a notice from the landlord that she owed them $3,000 in arrears. She is shocked because she has always paid her rent. The notice of the LTB hearing arrived one month after the building's garage door damaged her car, and she requested that the landlord compensate her for the damage caused. The tenant wanted to contest the landlord's allegations. She received support from her tenant union, who conducted an audit of her rental payment ledger. The audit revealed that the landlord incorrectly calculated her rent and added several illegal charges over the past 7 months. At her hearing, the tenant wanted to raise the damage to her car under section 82 of the *RTA*. As the law stands currently, the LTB could hear these issues with proper notice. If she were successful, her landlord may owe her money after the hearing. If the regulations are passed, however, the tenant will have had to pay the landlord $1,500 to bring evidence of the damaged car before the Board to save her tenancy. If this cost is prohibitive, she will have to file her own application and wait several months to be heard.

This requirement on tenants is a legally dubious proposal that forces tenants to pay money to provide a defence or explanation for the arrears alleged that they owe. The proposed change will exacerbate the existing power differential between landlords and tenants by allowing more landlords to evict tenants before tenants have an opportunity to raise legitimate issues with respect to their housing.

Foregoing the presumption of innocence in arrears cases

Any applicant who files an application at the LTB bears the onus of proving the requirements of the *RTA* are met. In an L1 hearing, the quantum of arrears may be determined by several considerations such as: whether the base rent used in the calculation is correct; whether the building is exempt from rent control; whether utilities are included in the calculation of arrears; and the liability of tenants living jointly or in common. In addition to the quantum of arrears, the landlord must also prove lawful service of the N4 Notice. Requiring tenants to pay arrears that are not proven before they can raise a crucial legal defense creates a presumption that the landlord is correct before any evidence has been heard. This is antithetical to the presumption of innocence that is central to any adversarial legal process.

By way of comparison, L1 applications frequently proceed even where the landlord has not provided the required L1/L9 update form in accordance with the LTB Rules. Often, the tenant is not aware of the actual arrears alleged until their hearing date and the calculations by the landlord may be wrong.

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Section 82 right only accessible for wealthier tenants

The proposed regulation creates a significant financial hurdle for tenants to exercise their rights. Most tenants able to save their tenancy do so by negotiating repayment plans to repay the rent owed in installments. It is widely known that nearly half of working tenants households do not have one month's worth of income in their savings. Low-income tenants, who are more likely to live in substandard conditions and to belong to *Code*-protected groups, will be disproportionally impacted by this regulation because they do not have the funds needed to provide a lump-sum payment of arrears. In other words, the financial burden placed by the proposed regulation results in a tenant right that can only be exercised by wealthier tenants.

Separate hearings go against LTB's stated goal of efficiency

The proposed regulation is counterproductive to the Board's objective of efficiency as tenants who are foreclosed from raising issues at their L1 hearing will add applications to the backlog at the LTB. This will compound the disproportionate delays to hear tenant applications compared to landlord applications, create a risk of incompatible findings, and offend section 183 of the *RTA*.

For tenants who are unable to pay 50% of arrears up front, the alternate route to have their issues heard is to file their own tenant application. This requires tenants to have the requisite knowledge and ability to complete and file the application, pay a filing fee (if they do not qualify for a fee waiver), and to endure a disproportionately long wait to be heard. Many tenants are no longer residing in their units by the time their hearing date arrives and abandon their applications and any abatements owed to them.

Furthermore, if a tenant must pay half of the unproven arrears prior to their hearing, they will not be able to have meaningful discussions about a repayment agreement, adding to the backlog of contested applications before the Board.

Logistical Confusion

The proposed regulation creates a logistical dilemma where tenants have no certainty that any undue payment to their landlord will be repaid. Unanswered questions include:

- Is the landlord expected to hold the unproven amount of arrears in trust? Can the landlord use the funds before the Board issues a decision?
- If a tenant pays the unproven arrears required and their landlord is unsuccessful in proving the arrears, or the tenant is successful in their s 82 claim such that they are owed a balance of funds, who is responsible for enforcing the payment? Will the tenant be responsible for bringing an application against the landlord to collect the funds?
- How will interest on the 50% of arrears be calculated and attributed to the tenant?

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The RTA is remedial in nature and has a tenant-protection purpose. It is meant to balance the rights and responsibilities of landlords and tenants in a forum for the efficient resolution of disputes. The changes proposed will constructively remove a longstanding enshrined right and put in its place a barrier that is counterproductive to the purported objectives of Bill 60 and antithetical to the fundamental purpose of the *RTA*.

Harm Mitigation Measures:

Given the problems with the proposal outlined above, this regulation should be rescinded. The Board's current approach to section 82 is already overly restrictive and this proposal in effect deprives most tenants from accessing this right. If the province insists on enacting the regulation it should also enact the following measures to mitigate harm to tenants:

- The regulations should specify that calculation of 50% of arrears is based on the amount of arrears claimed by the landlord *at the time* the application was filed.
- If prior to the hearing date, a tenant contests the quantum of arrears in writing with supporting evidence the proposed regulation shall not apply and the tenant is permitted to raise their section 82 issues without paying any arrears in advance of the hearing.
- Where a landlord has filed an L1 application without a ledger or another form of evidence to prove the correctness of the alleged arrears, the LTB should dismiss the application with prejudice.
- Include a requirement in the Act or regulations that landlords must provide the L1/L9 update sheet with an updated ledger well in advance of the L1 hearing (i.e. 10 days). If the update is not provided in time, adjudicators shall dismiss the application.
- L1 and tenant applications shall automatically be joined and heard at the same hearing where a tenant has filed an application that has not been heard by the time their landlord's L1 application is set for a hearing.
- The *RTA* should expressly articulate that Board members shall retain discretion to hear section 82 issues despite tenant non-adherence to limitation filing deadlines if there is no prejudice to the landlord. For instance, if the landlord is aware of maintenance issues being raised under section 82 then hearing these issues at the L1 hearing would not prejudice the landlord and would increase the efficiency and procedural fairness of the hearing process.
- The regulations should provide a low-income waiver for tenants unable to afford to pay 50% of the arrears to raise their section 82 issues.
- Province should establish a provincial rent bank program to assist tenants struggling with arrears or need to access the funds to pay the 50% of arrears payment required to raise their section 82 issues.
- LTB must schedule tenant applications at the same speed as landlord applications.

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2. Proposed Regulation – section 83(1)(b)

For “no fault evictions," postponement of eviction will only be granted if LTB finds that it would not be unfair to the LL and/or other tenants.

For “at fault evictions,” postponement will only be granted if LTB finds that it would not be unfair to the landlord and/or other tenants *and* that there are “compelling grounds to grant the postponement, after having taken into consideration all of the circumstances.”

Current Approach:

Where an eviction hearing is held, the Board must review the circumstances of the parties and consider whether to exercise its discretion to delay an eviction. The *RTA* does not distinguish between “at fault” and “no fault” evictions in the exercise of this relief. Nor does the Act specify that the circumstances be compelling in nature. This consideration of circumstances takes place regardless of whether the tenant attends the hearing or requests a delay in the eviction.

Examples of circumstances that might result in a delay of an eviction include: allowing children to finish their school year; whether the tenant household will have difficulties finding another rental unit (i.e. family size and composition, availability of rental housing stock in their city, health issues or disabilities); proximity to necessary supports, disability-related needs, etc.

A standard eviction order generally gives a tenant 11 days before the lease is terminated and they need to leave the unit. Postponing an eviction increases a tenant’s ability to save their unit by providing them with more time to collect the necessary funds to void an eviction order for arrears. Additional time before the lease is terminated also reduces the risk of a tenant household experiencing homelessness by giving them more time to secure new housing in the midst of a housing crisis.

For example, a senior tenant on a fixed-income has lived in the same rent controlled unit in a purpose-built rental for 20 years. She doesn’t have family in Canada but neighbours check in on her and her medical supports are nearby. The tenant is evicted at a hearing at the Board after falling into arrears after a medical emergency. At the hearing the Board asks the tenant her circumstances – and she explained the hardships of finding a unit that she could afford on her income and in the same community where she could access her support and doctors. After weighing all the circumstances, the Board delayed the eviction by 6 months to allow the senior adequate time to secure the necessary supports to assist her to locate a new unit and move.

Submissions:

The Ontario Rental Housing Tribunal, precursor to the LTB, was created to assume exclusive

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jurisdiction of residential tenancy matters from the Courts, with the goal of improving efficiency and access to justice. Section 83 of the *RTA* is derived from the Courts' longstanding power to provide relief against forfeiture. This discretion is a central and enduring pillar of justice, allowing adjudicators to consider a range of circumstances to ensure eviction is truly a measure of last resort.

Evidentiary burden for tenants

If the changes proposed are implemented, tenants facing eviction will be burdened with demonstrating that postponement of their eviction *would not be unfair to their landlord* – a new and unnecessary test. A delay in eviction may mean the difference between being evicted into homelessness and being able to secure a new home. Accordingly, the LTB should retain its current practice of weighing the circumstances of the parties and postponing an eviction based on whether the tenants' household circumstances warrant additional time to move.

Harmful distinction between tenants

Furthermore, the proposed regulations create a false and harmful distinction between tenants facing "no fault" eviction applications versus those who face "at fault" applications. While tenants facing "no fault" evictions have the burden to show delaying the eviction would not be unfair to the landlord, tenants facing "at fault" eviction must also show there are compelling grounds to grant the postponement – in other words, tenants need to convince the Board that their lives are worthy of some form of mercy by the Board. The additional evidentiary burden on tenants facing "at fault" eviction introduces anti-tenant bias in the test for relief for eviction where certain tenants are deserving of more robust protections than others.

Subjectivity of "Compelling Grounds"

The introduction of "compelling grounds" will likely lead to a high degree of subjectivity and inconsistency in determining which circumstances justify a postponement. What qualifies as sufficiently compelling? Should it include children completing the school year at their current school? Individuals with serious illnesses, or their caretakers? Workers who have been laid off? Tenants in rural communities with limited rental availability? People with disabilities who require accessible housing? The range of challenges tenants face is vast and varied. In the current housing climate, all of these circumstances should be considered compelling.

Trauma-based evidence and privacy

Narrowing the possibility of being granted relief places tenants in a position of having to disclose deeply personal information or "bare their soul" in a public adversarial proceeding to compel the LTB to grant relief. This publicly disclosed information could hinder their ability to secure a new rental unit or impact their livelihoods and expose them to stigma or prejudice. In light of this, many tenants may forego sharing their circumstances and give up their right to request a delay in eviction, exacerbating their hardships and putting them at increased risk of homelessness.

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Section 83 is not an analysis of blame and shame

The inquiry under section 83 is distinct from the assessment of the merits of any application and it should not be contaminated with notions of fault. The casualties most harmed by fault-based evictions frequently include those who bear no fault, such as children or other dependents. Furthermore, many tenants find themselves subject to an "at fault" eviction after experiencing some form of hardship beyond their control – i.e. reduction in work shifts, illness etc. – but otherwise were responsible tenants. These changes will disproportionately impact tenants from *Code*-protected groups who are already living with greater housing precarity.

Tenants experiencing any form of eviction pay a high price of being forced out of their unit – including higher rents, moving expenses, disruption of their lives and even homelessness. The proposed regulation will put tenants in the position of demonstrating their circumstances are something more than the ordinary consequences that tenants routinely face when evicted. That these consequences are commonplace should not detract from the devastation that results from being forced from one's home.

Harm Mitigation Measures:

Given the problems with the proposal outlined above, this regulation should be rescinded. The Board's current approach to section 83 adequately considers the relevant circumstances, and they should be allowed to continue doing so. This proposal inserts more confusion and an unnecessary evidentiary burden. If the province enacts the regulation the following measures may mitigate some harm to tenants:

- The proposed regulations should remove the distinction of "at fault" and "no fault" and remove an assessment of blame from the section 83 analysis.
- The proposed regulations should remove the harmful language of compelling grounds and unfairness to the landlord. Instead, the circumstances that should be assessed are the risk of homelessness of the tenant household, the local rental housing market and availability of comparable units, and other factors that might contribute to a delay in the tenant household securing another unit.
- Section 83 of the *RTA* should include a mandatory requirement that the LTB consider whether a tenant responding to an application for eviction is likely to be evicted into homelessness. If this threshold is met, the LTB shall grant relief from eviction.
- The *RTA* and the regulation should include an express provision of the established principle that eviction is a measure of last resort.
- The regulations should direct the Board to automatically grant tenant requests for a closed hearing to raise sensitive personal circumstances they do not want shared publicly.

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3. Proposed Regulation – section 58(1)

If the Landlord and Tenant Board (LTB) determines that at least three of the rent payments were late within a 6-month period, the LTB shall find that a tenant/member of a non-profit co-operative has persistently paid late.

Current Approach:

Where a landlord alleges a tenant has persistently paid their rent late, they may bring an application for eviction regardless of whether there are any arrears. The LTB will consider a range of factors, including how late the payments have been, the frequency of late payments, any acquiescence by the landlord and any evidence of a current or continuing inclination to pay rent late, and the circumstances that led to the late payments. Decisions on what qualifies as "persistently late" are not consistent but are fact-driven and based on the evidence assessed at the time of the hearing.

In cases where the LTB finds that persistent lateness is made out, relief from eviction is commonly granted in the form of a conditional order requiring the tenant to pay rent in full and on time for a specified period. If the tenant fails to meet this condition, orders contain a clause that the landlord can file for an automatic eviction order on an *ex parte* basis (without notice to the tenant).

This provision is already applied harshly on tenants at the Board, resulting in unnecessary evictions. For example, a tenant with disabilities was paying his rent in full but not on time. The landlord brought the tenant to the LTB. The LTB issued a conditional order that the tenant would have the Ontario Disability Support Program (ODSP) pay his rent directly to the landlord. The direct payments were set up and the landlord received the rent from ODSP at the first of the month. However, after a system-wide technical outage affecting the ODSP payment system, which was widely reported in the media, the payments from ODSP arrived late until the problem was fixed. The landlord filed for an *ex parte* order to evict the tenant for a breach of the conditional order. The tenant filed a motion to set aside and a hearing was scheduled. At the hearing, the tenant brought his ODSP support worker as his witness. She testified that the ODSP payment failure resulted in the late rent payments for all clients in the system and took full blame for the late payment. Despite this explanation and the tenant following all the conditions set out in the order, the Board still evicted the tenant from his unit.

Just as troubling, s. 58 of the RTA captures many long-standing tenants who over the entirety of their tenancy have paid their rents on time and in full but experienced a period of lateness after a life-altering event. For example, a tenant working as an experienced caregiver in a private long-term care home lived in her rental unit for 10 years and paid her rent on time and in full. Without notice, in an attempt to lower costs, the care home cut the shifts of workers by half – significantly impacting the tenant's monthly income. Given that almost 50% of the tenant's

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income is applied to rent she did not have more than a month's saving to get her through unexpected loss in shifts. As a result, the tenant paid her rent late for the next 3 months as she borrowed funds, took on side jobs and looked for more stable work. Despite her record and the absence of any arrears, the landlord filed an application for persistent late payment against the tenant. At the hearing, the Board found she violated s.58 and subjected her to an order with strict conditions at the time when the tenant was trying to secure and stabilize her income – a breach of any condition could result in an *ex parte* eviction order.

Submissions:

Conflates "persistent" and "late"

The bright line test that the Ministry is proposing is overbroad, capturing many instances where lateness is not sufficiently persistent to attract a severe penalty under the *RTA*. Whereas the definition of "persist" means "to go on resolutely or stubbornly in spite of opposition," the proposed measure captures many scenarios that are not chronic, prolonged or unrelenting. For instance, relatively short interruptions in employment or delays in social assistance payments are transitory and often outside of the control of tenants. A tenant may be late, but they may not have the intention of being persistent – the proposed regulation conflates "persistent" and "late" rather distinguishing them – as outlined in the examples above.

Removes discretion to consider relevant factors

The proposed regulation removes discretion from LTB adjudicators to assess a range of relevant circumstances in deciding whether there is a pattern of persistent late payment.

There are many contextual factors that are relevant to whether a tenant has "persistently failed to pay rent on the date it becomes due and payable," including:

- whether late payment is a temporary condition or a longstanding pattern over the length of a tenancy;
- whether the landlord acquiesced to late payment;
- whether the tenant's reasons for late payment are due to factors outside of their control, such as being laid off, health or other type of emergency, or a delay in social assistance payments;
- whether the tenant made any attempt(s) to pay their rent on or before the date it became due;
- whether the reason for late payment is that the landlord has unilaterally allocated rent monies to other debts owed by the tenant;
- whether the rent payment was late due to a third party's payment method (for instance, social assistance payment made directly by OW/ODSP to the landlord);
- the amount by which the rent is late;

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- the amount by which the rent is short;
- whether statutory holidays or weekends affect the date posted;
- whether reasonable measures can be put in place to address late payments.

To the extent that it may conflict with judicial interpretation of what "persistent" means in this context, the proposed regulation may be open to legal challenge. For example, many judicial interpretations have found this ground of eviction is not made out where the landlord has not made it clear to tenants that a late payment will not be accepted.

Furthermore, the volatility of the current economic climate means that disruptions in income are frequently more commonplace. The LTB should not be fettered in their discretion to consider contextual realities, circumstances behind the lateness, and possible solutions to prevent late payments in determining whether the test for persistent late payment has been met.

Harm Mitigation Measures:

Given the problems with the proposal outlined above, this regulation should be rescinded. The Board must retain its discretion to assess late payments over the entire course of a tenancy to ensure a fair result in light of the circumstances and prevent unwarranted evictions. If the province insists on enacting the regulation the following measures may mitigate some harm to tenants:

- If there is a bright line test for persistent late payment of rent, it should require a significantly longer time period as the baseline and situate that within the entire length of the tenancy.
- Regulations should specify that the period in which payment is alleged to have been late must be the 6 months immediately preceding the service of the N8 Notice of Eviction.
- The test should not be absolute – it should be used as a guideline in the analysis and complemented by a contextual analysis and conditional measures that could be put in place to save a tenancy.
- The LTB should impose automatic sanctions on any landlord who has filed an N8/L2 application and is found to have intentionally cashed rent checks late. Sanctions should include a fine and a mandatory abatement of rent to the tenant.
- If a landlord who has filed an N8/L2 is found to have refused a tenant's method of payment of any rent that forms part of the pattern of persistent lateness alleged in the application, the LTB shall dismiss the application.
- Rent shall be considered to have been paid on the date the tenant actually paid it and not on the date that the money became available to the landlord. In other words, rent is not late if it is paid on the date it becomes due and payable. For greater clarity, rent is not late if paid on the first business day that it is due after a weekend or statutory holiday, and any delay in processing or depositing a rent payment should not be considered to render it "late."

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4. Proposed Regulation – section 77(8)(b)

The Landlord and Tenant Board (LTB) may only issue a set aside if satisfied, having regard to all the circumstances, that it would not be unfair to do so.

However, the LTB cannot consider a "change in the tenant's circumstances" as a reason to issue a set aside.

Current Approach:

When a tenant gives notice to terminate their tenancy or agrees to terminate, and they do not vacate the unit on the date indicated, the landlord can apply to the LTB for an *ex parte* eviction order. That means that the order for eviction is issued with no notice to the tenant and no hearing. The tenant may become aware of the eviction order when they receive it from the Board, or where they do not receive it, when the Sheriff posts a Notice to Vacate on their unit.

If a tenant wants to contest the *ex parte* order, they must bring a Motion to Set Aside an Ex Parte Order within ten days. Upon receipt of the Motion, the *ex parte* order is stayed and the LTB schedules a hearing to consider the positions of the parties.

After hearing all of the evidence at the hearing, the LTB decides whether there was an agreement to terminate the tenancy. If they decide there was no agreement, the *ex parte* order is set aside and the tenancy continues. Even where the LTB finds there was an agreement, they may set aside the *ex parte* order if they find it would not be unfair to do so. In deciding whether it would be unfair, the LTB can consider all of the circumstances of both the landlord and the tenant. Currently, this could include whether there has been a change in the circumstances of the tenant.

It is often reported to us that tenants were pressured or misled by the landlord to sign an N11 termination notice. They are led to believe a dispute with a landlord would be resolved if they signed the N11 form – for example a tenant living in a basement apartment was given an N13 because the landlord said they needed vacant possession to renovate the unit and landlord told the tenant they must sign the N11 before they left. The tenant was not aware of what they signed or their rights until the landlord obtained an *ex parte* eviction order against them.

In cases where the tenant voluntarily gave notice, changes of circumstances beyond their control could render them homeless if they were not able to retain their unit. For example, a tenant in a small rental building gave her notice to terminate after securing a job in a different city. A month before she was supposed to start, her employer rescinded the job offer due to financial difficulties. She notified the landlord immediately to ask if she can continue with her tenancy given she was no longer relocating for work. The landlord refused and filed for an *ex parte* eviction order. At the hearing the Board considered the change of circumstances of both parties and decided it would not be unfair to the landlord to allow the tenant to retain her unit.

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Submissions:

"Change of circumstances" is a relevant and necessary consideration

Tenants should not be foreclosed from arguing that a change in their circumstances justifies the setting aside of an *ex parte* order, particularly where there is no prejudice to their landlord in continuing the tenancy or delaying their eviction. Landlords are unlikely to be prejudiced by tenants continuing their tenancy so long as the unit has not been rented to a new tenant. Tenants, on the other hand, are greatly prejudiced when they are evicted without being able to raise these issues. The financial burdens of securing first and last month rent deposit, moving expenses and paying significantly higher rent for a new unit could result in housing precarity, financial insecurity and homelessness.

The proposed regulation appears to be counter-intuitive – how does the Board intend to assess unfairness if it is precluded from considering the tenant's circumstances?

A change of circumstances is often outside a tenant's control and it would be unfair to evict them – especially if it further impacts their health, livelihoods and housing precarity. For example, a tenant may give notice and subsequently suffer a life-changing accident, have to care for a family member in crisis or have an employment opportunity cancelled. Tenants should maintain their right to explain why they need to continue the tenancy.

Preventing a tenant with a legitimate change in their circumstances from raising this as a basis to set aside an *ex parte* order for their eviction is procedurally unfair. It deliberately deprives the tenant the right to provide evidence to support their claim. It also bars the LTB from accessing and weighing critical evidence necessary to make a legally sound decision in line with the tenant protection purpose of the *RTA*.

Changes in tenants' circumstances should be considered and given weight by an adjudicator given the real possibility of homelessness, and circumstances that may give rise to the duty to accommodate under the *Human Rights Code*.

Harm Mitigation Measures:

Given the problems with the proposal outlined above, this regulation should be rescinded. The Board must retain its discretion to assess all relevant circumstances – especially a change in circumstances - in order to make a well-reasoned and fair decision. If the province insists on enacting the regulation the following measures may mitigate some harm to tenants:

- LTB adjudicators should retain broad discretion to assess all the relevant factual circumstances surrounding agreements to terminate and notices of termination, including

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any risk of homelessness, any risk of negative health consequences as a result of eviction, implications for employment and education, among other social determinants of health.

- Eliminate sections 77(8)(b) and (c) altogether and stipulate that section 83 shall apply to motions to set aside under section 77(6).

5. Proposed Regulation – section 48

Establish a 60-day timeframe within which the landlord (or their close family member or caregiver) must move into the rental unit after the effective date of the notice or after the tenant vacates, whichever is later. If the landlord (or their close family member or caregiver) does not move into the rental unit within this timeframe, and the tenant makes an application to the Landlord and Tenant Board (LTB) for a remedy, the landlord would be presumed to have acted in bad faith. However, the LTB would be able to make exceptions depending on the specific facts of the case.

Current Approach:

A landlord may give a notice of termination for personal use where they, their spouse, their child or their parent or a person who will provide care services to the landlord, requires possession of the rental unit for a period of at least one year. The person who intends to move in must do so within a "reasonable time" after the tenant vacates the unit.

If the former tenant believes the landlord has evited them in bad faith, they may bring an application to the LTB to allege that their landlord served the Notice of Eviction in bad faith. Whereas the onus is usually on the applicant to prove the grounds of any application to the LTB, there are prescribed circumstances in section 57(5) of the *RTA* which, if established, create a presumption that the landlord acted in bad faith.

Submissions:

Greater clarity around landlord conduct that triggers a bad faith finding is welcomed – including what is considered a "reasonable timeframe" to move into the unit. However, the proposed change does nothing to prevent landlord's from pushing tenants out of their units through N12s served in bad faith.

Relying on newly evicted tenants to bring T5 applications to remedy landlords' bad faith evictions does little to prevent harm to tenants. The province is placing on tenants the burden of investigating their landlord's post-eviction behaviour, adducing reliable evidence and waiting a lengthy period to have their application heard. As result, very few tenants file T5 applications at the Board because of the knowledge and resources required.

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Furthermore, for those who take on the labour to hold their former landlords accountable, the remedies for successful T5s are very low given the resources they require from the tenant. Landlords consider any penalties for bad faith evictions as a cost of doing business and worth the risk given the financial windfall landlords receive from pushing sitting tenants out of their unit.

As long as the rent control loopholes remain in place, particularly vacancy decontrol, landlords will continue to engage in bad faith evictions to increase the amount of rent collected with each new tenant they put into a unit unlawfully vacated.

Harm Mitigation Measures:

- The province should immediately close the rent control loopholes – vacancy decontrol and the November 2018 rent control exemption.
- The province/LTB should record the use of N12s at the front end in a public registry. This would allow tenants and the LTB to track patterns of abuse and to determine landlord compliance with section 71.1(3) of the *RTA*.
- The province should maintain a rental registry so tenants can see whether the prescribed person moved into their unit in the requisite timeframe; and when renovations are completed.
- The legal test for "good faith" should be defined in the legislation. The "genuine intention" standard is too narrow to capture many incidences of bad faith. Legislation should clarify that "good faith" means a personal and pressing need and that a mere desire, preference or ulterior motive does not satisfy the "good faith" requirement. For guidance, the British Columbia Residential Tenancy Policy Guideline offers the following workable definition: "(g)ood faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement."
- The onus must be on landlord to disprove all grounds alleged in a T5 application.
- Where a tenant is successful in their T5 application, the LTB shall implement mandatory compensation for the tenant no less than one year worth of rent, as well as a mandatory fine against the landlord.

Conclusion

Many of the changes entailed in Bill 60 are a part of a pattern characterized by the erosion of access to justice and procedural fairness for tenants. The regulations proposed herein entrench that pattern. Moreover, many of the proposals are antithetical to the purported goal of increasing efficiency and fairness at the LTB.

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Based on the concerns expressed here, ACTO urges the province to consider repealing Bill 60 in its entirely. We also call on the province to implement the remaining Bill 97 provisions to mitigate harm to tenants.

As you consider our insights and recommendations, members of our team are open to meeting with you to further discuss our shared goals and work together to develop effective solutions with the best interests of Ontario's tenants in mind.

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