

November 21, 2019

## Analysis of Regulatory Amendments under the *Housing Services Act, 2011*: Creating Safer Communities

On April 17, 2019, the Ontario government released the [Community Housing Renewal Strategy](#) (CHRS), which aims to stabilize and grow Ontario's community housing sector by leveraging investments through the National Housing Strategy, creating incentives for community housing providers, and building a more effective access system. In addition, the Ministry of Municipal Affairs and Housing (MMAH) committed to regulatory amendments under the [Housing Services Act, 2011](#) (HSA) in three distinct areas:

1. Simplifying rent-geared-to-income (RGI) rules;
2. Improving waiting lists; and
3. **Creating safer communities.**

After consulting on the proposed amendments in the spring, the Ontario government released the new regulations on [September 23, 2019](#). MMAH also released a series of [Social Housing Notifications](#) about the amendments to provide more information and clarity about the changes.

This document provides a high level summary of the regulatory amendment related to community safety, the information learned from the Ministry's accompanying Social Housing Notification, potential impacts on members, and next steps for ONPHA.

ONPHA made a [submission](#) to the spring 2019 consultations and, overall, we are pleased that the provincial government incorporated some of our feedback to address concerns related to this regulatory amendment. However, some outstanding areas require more detail and clarity. As such, we will continue engaging with the provincial government and representing our members' priorities to improve the community housing sector.

### Creating Safer Communities

The Ministry's regulatory amendment to create safer communities, as outlined in the accompanying [Social Housing Notification](#), gives housing providers the discretionary authority to refuse to offer a unit to a household based on a previous eviction for a serious criminal offence. This regulation came into force on September 23, 2019.



Under the amended regulation, a housing provider may refuse to offer a unit to a household if a member of the household was previously evicted from an HSA-governed housing project through an order of the Landlord and Tenant Board (LTB) based on an illegal act (through an “N6,” or Notice to End your Tenancy For Illegal Acts or Misrepresenting Income in a Rent-Geared-to-Income Rental Unit). The housing provider must also have reasonable grounds to believe the household would pose a risk to the safety of people at the housing project (e.g. other residents, staff).

Under the new ground of refusal, a serious criminal offence includes:

- Production, trafficking, or possession for the purpose of trafficking an illegal drug;
- Illegal production, distribution or sale of cannabis;
- Physical violence or attempted physical violence against another person;
- Physical harm, attempted physical harm, or a risk of physical harm to another person;
- Human trafficking; or
- Use of threats to, intimidation of, and harassment of another person.

The new ground of refusal only applies where the LTB ordered an eviction based on an N6 notice for an illegal act (as listed above); it does not apply where the LTB ordered an eviction based on an N6 for misrepresentation of income.

A housing provider’s ability to refuse to house a previously evicted household applies:

- For a period of five (5) years from when the household was ordered evicted;
- Whether the previous eviction was from the same housing provider or a different community housing provider, regardless of service area (including co-op housing); and
- Equally to special needs housing units and a household who had previous membership in a social housing co-op terminated by the LTB due to illegal activity.

For other members of the evicted household, a person who, as a tenant, was named in an eviction order based on an illegal act could potentially be refused, even if the person was not directly involved in the illegal act. However, in order to refuse, the housing provider must also have reasonable ground to believe the household poses a risk to the safety of others in the housing project.

The rule is meant to be a tool for housing providers to address safety concerns, but does not require housing providers to refuse a unit to anyone. As with any other ground of refusal, the first time that a provider refuses



a household, the provider must notify the household. Households are entitled to request a review of the decision.

The Ministry intends to develop guidance material to support housing providers that choose to apply this rule.

## **Inclusion of ONPHA's Feedback**

Overall, ONPHA is supportive of the regulatory changes and is pleased that the Ministry incorporated some of the [feedback](#) that we provided, based on what we heard from members. However, there are some outstanding areas of concern that we hope to address through ongoing government engagement.

In regard to community safety, the Ministry responded to ONPHA's recommendations by making explicit that a housing provider can refuse to offer housing to an applicant only if an eviction order for serious legal activity has been issued against them by the LTB (i.e. not if an eviction order was issued for a different reason, such as rent arrears, or if a tenant left without an eviction order being issued). In addition, the amendment includes ONPHA's feedback regarding clarifying the ability for housing providers to refuse applicants who have been evicted for serious illegal activity from any community housing unit (and not just from their own programs).

This amendment responds to concerns expressed by ONPHA members, who have consistently shared that addressing issues with tenants involved in illegal activities can have substantial impacts on other tenants, staff, and whole communities and we support its policy intent. However, in our feedback to the Ministry, ONPHA emphasized that this is not a challenge the majority of our members face on a regular basis and recommended that government share this fact when publically communicating about this regulation to avoid contributing to negative public perceptions of community housing. To this point, the Ministry has yet to include this caveat in its discussions of this amendment and ONPHA will continue to encourage the Ministry to do so.

ONPHA is also seeking further clarity regarding the impact of this regulation on other members of a household who were not involved in the illegal activity that formed the grounds for eviction. We look forward to learning more about the guidance material that the Ministry intends to develop to help housing providers who choose to apply this rule.



## ONPHA's Next Steps

Over the coming months, ONPHA will continue to actively engage with government to provide input and seek clarity on outstanding areas of concern related to the new amendments and their impacts on our members, as well as on forthcoming legislative and regulatory developments related to the CHRS as a whole.

In particular, ONPHA will be monitoring for forthcoming guidance materials from the Ministry to help community housing providers who may choose to implement the community safety rule, including further information related to the impact of the rule on other members of an evicted household.

## What can ONPHA Members Do?

Stay tuned to ONPHA's communication channels for more information about provincial developments and our own advocacy initiatives. In the meantime, we strongly encourage all housing providers to engage in discussions with your staff, board, and Service Managers to make decisions regarding the application of this new tool and how it could impact your communities.

## We're here to help

As the community housing sector continues to evolve, ONPHA is here to support members through the changes and ensure you have what you need to succeed in your missions and be financially viable into the future. Visit us online to see what new [resources](#) and learning opportunities are available for members, including our selection of online and in-person [courses](#) starting January 6, 2020, which will include ABCs of RGI, Ready, Set, (re)Build, Finance Fundamentals, and Supportive Housing Core Competencies.

If you have any questions, please do not hesitate to reach out to us at [member.support@onpha.org](mailto:member.support@onpha.org) or 1-800-297-6660.