



ONTARIO NON-PROFIT
HOUSING ASSOCIATION

Residential and Commercial Tenancies Unit
Housing Policy Branch
Ministry of Housing
777 Bay St., 14th Floor,
Toronto, ON M5G 2E5

June 28, 2016

Re: ONPHA Response to Consultation Paper: Proposals to Encourage Small Landlords to Provide Rental Housing

To Whom It May Concern,

Thank you for the opportunity to provide feedback on the Ministry of Housing's proposed changes to the *Residential Tenancies Act, 2006* ("RTA").

The Ontario Non-Profit Housing Association (ONPHA) is home to more than 700 non-profit housing providers. From Windsor to Cornwall, Toronto to Thunder Bay, our members house more than 400,000 people in 163,000 homes in 220 Ontario communities. Our members are a critical part of the fabric of every community and provide decent, affordable homes to low and moderate income households. Many of our members provide specialized housing and support services for Ontarians who need help to enjoy a successful tenancy.

In its update of the Long-Term Affordable Housing Strategy (LTAHS), the Ontario Government committed to the modernization of the non-profit housing sector. That announcement came at the right time: many of our members are approaching the end of their operating agreements with the federal government and legislative and regulatory changes by the Province can position the sector for future success. Our members need greater freedom to operate efficiently, manage costs, and deliver effective services. With this freedom, our members will be in a position to develop housing options that respond to the needs of their communities.



More broadly, amendments to the RTA should encourage more landlords to participate in the rental housing market by reducing operational barriers. We recognize the delicate balance that the provincial government must strike when weighing the rights and needs of landlords and tenants. However, the current system creates costly delays and inefficiencies for landlords and strains the budgets of small non-profit housing providers. To support the development of a vibrant and sustainable non-profit housing sector, we table the following recommendations.

Part I: Encourage Small Landlords to Provide Rental Housing

1. Increasing Access to Landlord and Tenant Board Remedies:
 - a) The Landlord and Tenant Board (LTB) is an effective and accessible way for landlords and tenants to resolve disputes and access remedies. ONPHA members report incurring costs when tenants have failed to make utility payments and/or a utility company has charged fees related to the disconnection and reconnection of services due to tenants' arrears. In the past year, members report spending between \$250 and \$2,000 on utility charges and fees resulting from tenants' actions in addition to staff time and wages.

The LTB is an appropriate forum for the recovery of such charges and is less costly and administratively burdensome than small claims court. The proposed change would improve operations for landlords and could encourage new landlords by providing a simpler remedy to a common problem. With this in mind, we support Proposal 1.1.

- b) The RTA allows tenants to pursue claims at the LTB for up to 12 months after the end of their tenancy, but restricts landlords from doing the same. Non-profit landlords frequently experience significant financial losses from rent arrears and unit damages at the end of tenancies, which must be pursued through small claims court. To create equity and provide a more accessible forum for the recovery of arrears and damages, we support Proposal 1.2.



- c) Issues commonly arise during tenancies that can be resolved without landlords serving their tenants a notice of termination. Many ONPHA members engage in mediation to preserve at-risk tenancies and support housing stability. While we do not anticipate that Proposal 1.3 will benefit our members who already engage in such practices, we recognize that the proposed changes may support other small landlords.

To encourage mediation and dispute resolution between landlords and tenants, we also encourage the Province to update notices of termination so that they clearly state the options, other than eviction, that are available to both landlords and tenants. We believe that such changes may facilitate a more collaborative relationship between landlords and tenants without creating additional procedural delays at the LTB.

2. Making Processes More Fair:

- a) Landlords and tenants should have equal protections under the RTA. In their application to the LTB, landlords must disclose the issues they wish to raise in a hearing. Currently, tenants are not required to do the same. This often results in an adjournment of hearing at landlords' request, so that they can respond to tenants' allegations. These delays are costly for landlords and the LTB.

We believe that amending the RTA to require tenants to notify their landlords in advance of issues they wish to raise at the hearing will make LTB processes more equitable and productive, reducing unnecessary and costly delays. ONPHA supports Proposal 2.1, and recommends that tenants be required to provide their landlords with a minimum of 10 business days of notice regarding issues they plan to raise.

- b) Landlords, particularly small, non-profit landlords, rely on rental revenue to fund their operations and remain viable. Currently, tenants are able to obtain a “stay” on an eviction order without proof of payment of their rent arrears. This practice is costly for our members,



frequently resulting in the tenant accumulating additional arrears, as well as the landlord incurring additional legal costs. ONPHA supports Proposal 2.2.

- c) ONPHA supports tenants' right to appeal LTB decisions to the Divisional Court. However, our members report having had tenants request multiple appeals on an LTB ruling in order to obtain a stay on an eviction order. Appeals should be limited to questions of law, but delays are common because the Divisional Court will not look at the substance of an appeal for many months or even years. The result is that some tenants are able to remain in units for extended periods of time without paying rent, at a significant cost to the landlord. Our members report these periods lasting anywhere from two months to over a year, with providers losing up to \$10,000 in unpaid rent and legal fees.

To remedy this, ONPHA recommends that Proposal 2.3 introduce a measure that would require tenants to seek leave to appeal their LTB ruling to the Divisional Court. Appeals would only proceed if the Court agreed that the LTB ruling contained an error of law, which would reduce the likelihood of arbitrary or non-substantiated appeals lasting lengthy periods of time.

3. New Protections for Landlords and Tenants:

- a) Smoking indoors can cause property damage, increases fire and other safety risks, and is a health concern for other tenants. Over 90 per cent of respondents to a recent ONPHA survey tell us they would be more likely to enact a no-smoking policy if there were more protections for landlords, such as the ability to issue an eviction order for violation of a no-smoking policy in a tenancy agreement.

ONPHA supports Proposal 3.1 and believes that non-smoking provisions in a tenancy agreement should apply to all types of smoking. The RTA should specify where non-smoking provisions can be enforced, including indoor spaces, balconies, and within a certain distances from entrances and exits. Ideally, the RTA would use the same standards as the Smoke-Free



Ontario Act, 1994, which would prohibit smoking within nine metres (29.5 feet) of an entrance or exit.

- b) While radon gas is primarily a concern in basement apartments, exposure can occur in above-ground units. Exposure to radon can have negative effects on the health of tenants, whose safety is a primary concern.

Radon gas is very costly to test for and remediate. To reduce barriers to remediation and protect the health and well-being of tenants, we recommend that the provincial government allocate funding to help small non-profit and for-profit landlords test for, and remediate, radon gas exposure.

4. Business and Operational Efficiencies:

- a) Many business practices are conducted online. Email communication is more convenient and efficient for many landlords and tenants.

ONPHA supports Proposal 4.1 and agrees that the consent of both parties should be required to allow the use of electronic communication. We believe that electronic communications should be limited to email and that other forms of electronic communication, such as texting, should continue to be prohibited because they are insecure, jeopardizing tenants' and landlords' privacy.

- b) Small errors on forms and documents can delay LTB hearings or derail them. To reduce the risk of errors, we recommend that all LTB notices be revised for clarity and edited for plain language (Proposal 4.2). Doing so would support small landlords, particularly those without professional property management staff, and help them to comply with their legislative requirements.



- c) In the interest of convenience and efficiency for both landlords and tenants, ONPHA supports Proposal 4.3.
- d) To simplify the enforcement of LTB orders by landlords, ONPHA supports Proposal 4.4.
- e) ONPHA supports Proposal 4.5. We also recommend an amendment to Section 78 of the RTA that would allow an L4: Application to End a Tenancy and Evict a Tenant Where Tenant Failed to Meet Conditions of a Settlement or Order notice to be filed, and an eviction order issued, if a tenant breaches a payment arrangement for damages and if damages were the reason the notice was served.¹

Part II: Rent Increase Guideline Review

1. While non-profit housing is exempt from most rent rules under the RTA, many ONPHA members currently use the rent increase guideline to determine rents for market rent units in their projects.

At the same time, some non-profit providers are approaching or experiencing an end of operating agreement with the federal government. Once these agreements expire, these providers have the freedom to rent all of their units at market rates. The rent increase guideline will thus apply to all of the units that providers choose to rent without subsidy.

Non-profit housing providers operate on slim margins, with minimal reserves for repairs and maintenance. Rent revenue is crucial to their sustainability and viability. In the future, inflation may

¹ Section 78 states that an application based on a breach can only be filed if the grounds would give rise to “the same grounds for terminating the tenancy as were claimed in the previous application.” If a tenant was served first an N5 for negligent or willful damage, they have 7 days to pay in order to void the notice. If they do not, the Landlord can file an application with the Board. Therefore, if the tenant is ordered to pay the damages in installments with Section 78 enforcement upon breach, the LTB has jurisdiction to evict because non-payment was the reason for the original application. However, if a landlord served an N7 notice for willful or negligent damage, and the parties consent to a payment plan, the Board has ruled that Section 78 cannot apply because the original application was about damage, not about re-payment of funds to cover the costs of damages.



exceed the current threshold of 2.5 per cent. Landlords should be permitted to raise their rents to match their operating costs. Therefore, we recommend that the annual rent increase guideline reflect the actual annual rate of inflation.

Conclusion

With more than 170,000 households on waiting lists for social housing, it is clear that Ontario needs more affordable housing. Small for-profit landlords and non-profit organizations are critical parts of the province's rental housing stock, but limited expertise and financial resources can make tenancy administration and management extremely challenging. Lost revenue, property damage, and fees incurred by tenants are serious matters for landlords – and can result in the loss of an affordable home landlords are unable to absorb costs.

The Ontario Government's proposed changes to the *Residential Tenancies Act, 2006* echo the commitment to increasing access to affordable housing outlined in the update to the Long-Term Affordable Housing Strategy. By increasing efficiencies and ensuring that small and non-profit landlords have access to remedies and protections through the Landlord and Tenant Board, these amendments will help stimulate a healthy rental market that provides positive outcomes for both landlords and tenants.

Sincerely,

Sharad Kerur
Executive Director