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BILL 109: *RESIDENTIAL TENANCIES ACT, 2006*

The Community Services and Housing Committee recommends the adoption of the recommendation contained in the following report, August 30, 2006, from the Commissioner of Community Services, Housing and Health Services:

1. RECOMMENDATION

It is recommended that:

1. The Regional Clerk forward this report to the Ministry of Municipal Affairs and Housing (MMAH) and the Province be requested to adequately resource the Landlord and Tenant Board in order to achieve the intent of the legislation.

2. PURPOSE

On June 22, 2006, Bill 109 the *Residential Tenancies Act* (RTA) received Royal Assent. Once proclaimed the RTA will repeal and replace the *Tenant Protection Act, 1997* (TPA). The purpose of this report is to highlight for Council changes under the RTA that will change the operating practices of social housing providers and impact The Regional Municipality of York as a Service Manager and landlord.

3. BACKGROUND

The RTA received Royal Assent on June 22, 2006, which means it is law, but it is not in effect until it receives proclamation. A proclamation date has not yet been set by the legislature but the Province has indicated that the RTA will be proclaimed sometime in early 2007. However, there will be some transitional rules put in place prior to proclamation.

3.1 Provincial Consultations

From 2004 to 2005, MMAH undertook a comprehensive consultation process on key landlord and tenant issues that included questionnaires, public town hall meetings, and meetings with major landlord and tenant groups and housing experts, across the province.

Concerns raised by both tenants and landlords included tenants evicted without a hearing, building maintenance, vandalism, rising utility costs, rent increases, and issues related to mobile and care homes.

3.2 The Role of the Region

The Region, as a Service Manager, is responsible for the administration of social housing in the Region and administers funding agreements with social housing providers under the terms and conditions of the *Social Housing Reform Act, 2000* (SHRA).

The Housing Services Branch administers the social housing programs to approximately 6,000 social housing units across the Region and provides support to 43 housing providers. These social housing providers must operate under prescribed funding benchmarks that limit the use of funding.

The Region is also a social housing provider and manages, as of July 2006, 1,927 units through Housing York Inc. (HYI). The new provisions and amendments of the RTA will impact the operations of HYI.

4. ANALYSIS AND OPTIONS

Once the RTA is proclaimed, the Ontario Rental Housing Tribunal will be renamed the Landlord and Tenant Board. The Board's role will remain the same and will continue to:

- Resolve disputes between landlords and tenants through either mediation or adjudication.
- Regulate rent increases in most residential rental dwellings.
- Educate landlords and tenants about their rights and obligations under the RTA.

The RTA modifies the jurisdiction of the Board and makes significant changes to the eviction process that will have both positive and negative effects on social housing providers. The analysis below outlines those changes that will potentially have a significant impact as well as other amendments and provisions that will need to be monitored to assess their effect on Service Managers and social housing providers.

Attachment 1 is a table summarizing the changes between the TPA and the RTA and the impact that these changes may have on York Region.

4.1 Social Housing Exemption

As a Service Manager, the Region is bound by regulations under the SHRA which sets out the eligibility conditions and rent calculations for rent geared-to-income assistance (RGI). Under the TPA adjudicators, at times, took it upon themselves to order rent adjustments completely at odds with the principles of RGI. The RTA clarifies that the Board has no jurisdiction in adjudicating RGI eligibility or subsidies or other forms of assistance that are calculated under the authority of the SHRA. RGI units are exempt from RTA rules governing rent.

MMAH has indicated that the social housing exemptions will be extended to include the units built under the new Affordable Housing Program. This exemption will be addressed in the RTA regulations which are in the process of being developed.

4.2 Changes to the Eviction Process

The RTA makes significant changes to the eviction process that will impact the length of time of the hearing and the process to evict a tenant.

4.2.1 Tenant Issues in Application for Non-Payment of Rent

The RTA allows tenants at a hearing to raise any issue, without notice to the landlord, as reason for non-payment of rent, including poor maintenance, interruption of heat, security issues, harassment, criminal activities, etc. The landlord will not receive advance notice of the tenant's issue and, therefore, will not have an opportunity to prepare in advance of the hearing.

This provision is a critical change to the eviction process for social housing providers and will add to the complexity and length of hearings. It may also result in a significant number of adjournments, delays and an administrative backlog.

4.2.2 Elimination of the Default Eviction Process

Under the TPA a hearing is not held for eviction proceedings unless asked for. The RTA introduces a new provision whereby every tenant facing eviction has a hearing whether they wish to or not. They will not have to file a written dispute to obtain a hearing.

At the same time, the RTA does not have a provision to allow the Board to set aside an order if the tenant does not attend a scheduled hearing for a legitimate reason.

The elimination of the default eviction process will cause previous non-contested evictions to take longer to process and social housing providers may face longer periods of non-rent paying occupants and incur more costs. Those on the waiting list for social housing would also face longer waits for the units to be vacated. The elimination of the default process will slow down the eviction application procedure.

4.2.3 Reduced Notice Period

If a tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex, causes wilful and/or excessive damage the eviction process has been changed to:

- The notice period to the tenant has been reduced to 10 days. It was previously 20 days under the TPA.
- The notice period to the tenant and the landlord application process will run at the same time.
- The tenant cannot void the eviction application by repairing the damages.
- The eviction order will include a request that the sheriff expedite the enforcement of the eviction.
- The Board will also have to consider whether the tenant should be evicted immediately.

Under the TPA this provision did not require the tenant to be responsible for damage caused to their unit by another occupant of the unit.

The RTA also requires the Board to request the sheriff to expedite the enforcement of an eviction order if the order is based on the production or trafficking of an illegal drug, the possession of an illegal drug for the purpose of trafficking, or an act or omission that seriously impairs the safety of any person.

The intention of these provisions is to reduce the amount of time it takes to evict a difficult tenant; however, the landlord will still need to wait three to four weeks for a hearing and maybe even longer due to the administrative complexities that may be caused by allowing the tenant to raise any issue at a hearing without notice to the landlord and eliminating the default eviction process.

The new eviction process provisions introduced in the RTA counteract each other and it may be difficult to achieve the intent of the legislation.

4.3 Additional RTA Amendments and Provisions

The RTA introduces additional amendments and provisions that are anticipated to have a minor impact on the operations of social housing providers. Below is a brief analysis of these minor provisions and amendments.

4.3.1 Monetary Jurisdiction of the Landlord and Tenant Board

A new provision under the RTA prevents the Landlord and Tenant Board from ordering a tenant to pay the landlord if the amount owing is less than a prescribed amount. The prescribed amount, which has not been identified in RTA, may prevent social housing landlords from obtaining termination of tenancy based on several months of arrears when the amount is low in comparison to private market levels.

4.3.2 Payment of Arrears to Landlord and Tenant Board

The RTA expands the Landlord and Tenant Board's power to permit payment of money into the Board. These amendments include:

- A tenant who is making an application based on maintenance issues to avoid an eviction can pay rent to the Board until serious maintenance issues are resolved.
- Tenants will also be allowed to pay outstanding rent and related landlord costs to the Board up until the sheriff enforces the eviction. This new provision will be allowed one time during a tenancy. This, is in addition to the current provision that allows tenants to pay the rent arrears and avoid eviction, in most cases, up until 10 days after the eviction order is issued.

The RTA lacks clear timelines for the Board to transfer the money to the landlord. This can impact the cash flow and predictability of rent payments for landlords.

4.3.3 Order, Repair, Comply with Standards

The RTA amends the provision that requires the landlord to pay a specified sum to the tenant for the repair or replacement of tenant property that was damaged, destroyed or disposed of as a result of the landlord's breach. This provision has been amended so that the landlord will only be required to pay the replacement costs when repairing of the property is not reasonable.

4.3.4 Amendment to 24-hours Notice to Enter

The RTA has amended the provision which outlines the reasons a landlord can give 24-hours notice to tenants to enter their rental unit. The landlord is now permitted to give notice to carry out an inspection of the rental unit to determine whether or not the rental unit is in a state of repair and fit for habitation and complies with health, safety, housing and maintenance standards.

This amendment helps the landlord monitor their units and potentially fix maintenance issues before they become serious. On the other hand, the tenants may perceive this as harassment by the landlord.

4.3.5 Tenant Education

In an effort to increase tenant awareness of their rights and provide better tenant protection, the RTA introduces a new provision that requires landlords to provide a brochure with information on the responsibilities of landlords and tenants, the role of the Board and the Board's contact information. This information will be shared with all tenants at the start of their tenancies.

The Board, when possible, will send an information notice about the eviction hearing process to a tenant upon a filing of an eviction application. Landlords will still be responsible for serving a formal "Notice of Hearing" to their tenants.

4.3.6 Automated Debiting of Tenant's Bank Account

A new provision prohibits a landlord from requiring a tenant to permit automatic debiting of the tenant's bank account or any other form of automatic payment for the payment of rent. This may impact the collection of rent and require more administration by the property managers.

4.4 Smart Meters

Smart meters measure how much electricity is used in a unit during different times of the day. During certain high-use times, the cost of electricity will be higher. Smart meters encourage people to conserve energy and save money.

The RTA has a number of provisions regarding the use of smart meters by landlords and tenants to encourage energy conservation and transfer real costs of utilities to the tenant.

Although energy conservation is a priority for the Region's social housing providers, there are several operational limitations to installing smart meters. These limitations include:

- Smart meters have specific physical and technical requirements which are sometimes difficult to accommodate.
- The calculation of RGI's, including adjustments for paying utility costs, is prescribed by the SHRA. Social housing providers cannot manipulate a tenant's rent in the way required by the RTA.

- Landlords are bound by the terms of the lease for their current tenants and cannot transfer the cost of utilities until a new tenant resides in the unit.
- Social housing providers manage their operations within a very restricted budget and the cost to install smart meters is prohibitive.

4.5 Regulation Development

MMAH is in the process of developing the regulations for the RTA. They will be consulting with stakeholders, including the Region, in the process. It is anticipated that the regulations will be released at the same time that the RTA is proclaimed.

5. FINANCIAL IMPLICATIONS

Although there are no financial implications to the Region, Housing York Inc. and other housing providers may experience higher eviction costs and service reductions as property managers will be spending more time in court. Under the SHRA funding model, funds spent on evictions mean less money is available for building repairs or other needs.

6. LOCAL MUNICIPAL IMPACT

The Region is a social housing provider through Housing York Inc., and, in addition, provides support to 43 housing providers that operate throughout the region. Social housing landlords and tenants in all nine municipalities will be impacted by the changes introduced in the RTA.

7. CONCLUSION

The new RTA is an overall positive step in the relationship between landlords and tenants. The Region, as a Service Manager, will benefit from the new exemptions for social housing providers and eviction process for tenants that cause excessive or wilful damage.

The relationship between social housing and the rights of the tenant is a difficult balancing act. Some amendments, such as the removal of the eviction default process, will make certain processes for housing providers more complex and lengthy.

The Region will provide support to its housing providers in terms of program guidelines and training once the new RTA comes into effect and the relevant regulations are announced.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause was included in the agenda for the September 13, 2006 Committee meeting.)