City of Hamilton
EMERGENCY & COMMUNITY SERVICES COMMITTEE ADDENDUM

Meeting #:	23-013
Date:	October 19, 2023
Time:	1:30 p.m.
Location:	Council Chambers Hamilton City Hall 71 Main Street West

Loren Kolar, Legislative Coordinator (905) 546-2424 ext. 2604

---

5. COMMUNICATIONS

*5.1 Correspondence from ACORN Hamilton, respecting Proposed Amendments to the Renovation Licence and Relocation Listing By-law

Recommendation: Be received, and referred to Item 10.1, Addressing Renovictions, Tenant Displacement and Property Standards in Apartment Buildings in the City of Hamilton (PED23072) (City Wide)

*5.2 Karen Andrews, Advocacy Centre for Tenants Ontario, respecting a Legal Opinion on the Hamilton Apartment Rental Program

Recommendation: Be received, and referred to Item 10.1, Addressing Renovictions, Tenant Displacement and Property Standards in Apartment Buildings in the City of Hamilton (PED23072) (City Wide)

ACORN Hamilton
Communication for the October 19th Emergency and Community Services Committee
Regarding 10.1 Addressing Renovictions, Tenant Displacement and Property Standards in Apartment Buildings in the City of Hamilton (PED23072) (City Wide) Sub-sections (e), (f), (g), and (h) DEFERRED from August 17, 2023

What is ACORN?
ACORN Canada, the Association of Community Organizations for Reform Now, founded in 2004, is an independent grassroots organization that fights for social and economic justice for low and moderate income communities.

ACORN has over 168,000 low-to-moderate-income individual members in 24 neighbourhood chapters in 10 cities across the country.

ACORN started organizing in Hamilton in 2017 and has grown to have four neighbourhood chapters: Downtown, Mountain, East End and Stoney Creek.

Background
Since 2017 ACORN Hamilton has been advocating for strong municipal policies and programs to support and protect tenants in the City of Hamilton. Over the past six years, our members have led organizing in their buildings to defend their homes from greedy and predatory landlords who are looking to evict tenants in rent controlled units so that they can raise rents and increase their profits. These landlords exploit loopholes in provincial legislation that enable renoviction, demoviction, and raising rents above the annual cap (Above Guideline Increase) and neglect repairs, building maintenance and pest control to save money and “encourage” tenants to leave.

With provincial legislation (lack of vacancy control) enabling financialized landlords in the city to abuse the use of N13s and raise rents beyond what low and moderate income tenants can afford , ACORN Hamilton has been focused on municipal solutions in light of there being no desire from the province in maintaining affordability in rental housing and preventing no fault evictions.

ACORN members have organized tirelessly through building and neighbourhood tenant meetings, actions, town halls, and workshops to ensure its members and tenants city-wide know their rights and how to work with their neighbours to defend their homes.

Additionally, ACORN members have met with City Councillors and City Staff in the previous and current term to bring these issues forward and demand local action.

ACORN commends the city's effort to create a made in Hamilton anti-renoviction by-law, however the proposed bylaw will not do enough to disincentivize renoviction or ensure tenants have the best chance of maintaining their housing. The bylaw needs to be improved to better ensure that tenants understand their rights, are able to obtain temporary housing, and are able to successfully exercise their right of first refusal. We share our proposed amendments with City Councilors and staff below.

Currently ACORN is organizing and supporting tenants at 10 multi residential buildings in the city facing renoviction. Tenants that call these buildings home are seniors on fixed income, tenants with disabilities, single parents, and low wage workers.

Tenants are counting on bold action from City Hall. If the province of Ontario is going to turn its back on low and moderate income tenant communities and prioritize landlord and investor profit, we need our local government to take a stand and protect the most vulnerable in our city.

Hamilton Renovation License and Relocation By-law: Overview

Problems with the status quo that a renovation license would ideally address:

- N13 process effectively allows landlords to evict tenants when vacant possession is not actually necessary to do repairs, creating a semi-legal method for landlords to evict tenants to raise rents [province addresses this a bit in Bill 97, but inadequately, and Bill 97 amendments to the RTA are not yet in force]
- RTA does not adequately disincentivize landlords from re-renting units to new tenants at higher rents once renovations are complete
- Tenant entitlements/compensation in the RTA is inadequate for current rental environment and does not prevent tenants from being evicted into homelessness
- Tenants aren't given adequate notice of units being ready for reoccupation that would allow them enough time to legally vacate their temporary accommodation so they can move back into their units following renovation [province addresses this a bit in Bill 97, but it's not in force]
- Tenant support organizations and the City of Hamilton have no way of finding out which tenants are being renovicted unless tenants reach out to them; if tenants do reach out, it is often done too late to provide effective support and prevent predatory eviction
- LTB adjudicators that receive N13s that say landlords have gotten all necessary

approvals tend to not question whether or not they have actually received these approvals and win eviction orders even when renoviction is unjustified
- Renovations to a unit can function to make housing unlivable for other tenants, and can be used as a tool to encourage other tenants to move out voluntarily
- RTA doesn't establish a clear process that enables tenants re-occupy their rental units at the same terms as their original rental agreement once renovations are complete

What a municipal bylaw needs to do to be helpful:

- Must disincentivize landlords from pursuing vacant possession unnecessarily
- Must disincentivize landlords from not allowing tenants to reoccupy units
- Must encourage landlords to have tenants re-occupy renovated/repaired units
- Must encourage tenants to re-occupy renovated/repaired units
- Must prevent tenants from being evicted into homelessness
- Must provide city with enough advance notice & info to intervene effectively & connect tenants with supports
- Must provide tenants with adequate evidence of a bad faith eviction to win at LTB
- Must disincentivize landlords from circumventing bylaw/not getting a license
- Must flag to LTB adjudicators that necessary approvals may not have been received/invite more scrutiny
- Must provide adequate data for tracking, evaluation and enforcement
- Must ensure tenants receive adequate notice and tenants rights information and access to supports/resources
- Must prevent renovations and repairs from making housing unlivable for other tenants

Problems with proposed Renovation Licence & Relocation Listings bylaw:

- Does not adequately disincentivize landlords from pursuing vacant possession unnecessarily
- Does not disincentivize landlords from not allowing tenants to return
- Does not prevent tenants from being evicted into homelessness
- Incentivizes landlords to circumvent bylaw/not get a license by setting the license application fee almost twice as high as the penalty for not getting a license
- Does not prevent landlords from making housing unliveable for other tenants while renovations and repairs are being completed

ACORN recommended amendments / changes to the proposed Renovation Licence & Relocation Listings bylaw:

Pink = addition to staff recommended proposed bylaw

1. Landlords who want vacant possession to do repairs or renovations must apply to the City for a renovation license within 7 days of having served the affected tenant with an N13 notice of eviction.
2. The application must include:
   a. a copy of the N13 notice served. N13 forms that are submitted must indicate on the form (via a checkbox in the "Necessary Permits" section) that the necessary building permits or other authorization to convert,

demolish or repair the rental unit has not yet been obtained.

b. Rental Unit and building information that includes information about the affected unit: type (number of bedrooms), current rental rate, start date of tenancy, and number of tenancies in the building (to enable enforcement of Disruption Plan requirement).
c. A copy of a report prepared by a qualified professional stating that the repairs or renovations being undertaken are so extensive that they require vacant possession of the Rental Housing Unit. Staff have the authority to verify the assessment by the professional and/or prepare their own report.
d. A Disruption Mitigation Plan for properties with more than one tenanted unit to ensure that renovations and repairs don't make the housing of other tenants uninhabitable.

3. Upon applying for a license, the landlord must (within 5 days) notify the tenant that they have applied for a license and provide them with a City of Hamilton-produced information package about their rights & entitlements under the RTA & the renovation licensing bylaw–which includes a Tenant Right of First Refusal form (a copy of which can be voluntarily provided to the City or a tenant support agency), and post a notice in the common area(s) that an application has been submitted.
4. To encourage and enable tenants to exercise their right of first refusal, Landlords are required to provide tenants who wish to exercise their right of first refusal a comparable unit while renovations are being completed that is acceptable to the tenant or monthly compensation equal to the difference between the tenant's current rent (including the cost of utilities) and a comparable market rent unit in the neighbourhood, while renovations are being completed, in addition to the compensation they are entitled to under the RTA.
5. After submitting a license application, the landlord must provide the City with completed tenant relocation & assistance documentation of the arrangements made with the tenant, indicating that the tenant agrees with the arrangements, including arrangements for tenant reoccupation of the rental unit once renovations are complete or confirmation from the tenant that they understand their rights and do not wish to exercise their right of first refusal. This includes confirmation that the tenant understands their rights and does or does not wish to reoccupy the unit once repairs or renos are complete.
6. Licence applications will not be approved until all required application materials are received.
7. Landlords are required to provide the tenant 60 days notice of when the unit is ready for occupancy, or for renovations that take less time, provide the date that the Rental Unit will be available for re-occupancy as part of the alternative accommodations arrangements
8. Landlords are required to give the tenant at least 60 days after the day the rental unit is ready for occupancy to exercise the right of first refusal to occupy the unit, consistent with Bill 97 amendments.
9. Landlords are prohibited from preventing a tenant who has informed the landlord in writing that they wish to exercise their right of first refusal from reoccupying the rental unit upon the completion of repairs or renovations and from advertising a renovated or repaired Rental Unit for rent if a tenant has informed the landlord in writing that they wish to exercise their right of first refusal, unless the tenant informs the landlord in writing that they no longer wish to reoccupy the rental unit.

Must be added to administrative penalties bylaw:

10. Landlords who do not apply for a license will be fined significantly more than the cost of complying with the bylaw and more than the profits a landlord is likely to realize as a result of renovicting a tenant. (Buyouts are often starting over $10,000 but one townhouse complex on the Hamilton Mountain was offered $75,000 for their home.)

Explanatory Notes:

License application process:
What's being proposed here is a two-stage process, where landlords provide all the required documents except for the documents pertaining to tenant relocation arrangements in their initial application. Once this initial application is received, N13 information would be given to relevant City staff for follow-up with tenants & referrals. The landlord would then be required to follow up by submitting documents pertaining to tenant relocation arrangements. Only when the tenant relocation documents have been received would the application be reviewed for licensing approval.

Requirement to provide N13 with specific box marked:
Requiring applicants to indicate on the N13 notice that they don't have all necessary authorizations for their renovation will flag for LTB adjudicators at an eventual eviction hearing to ensure applicants have obtained all necessary permits and authorizations before approving evictions. Ideally this will help prevent applicants from having N13 evictions approved at the LTB without first meeting all Renovation Licence requirements.

Requirement to provide report justifying vacant possession:
In its submission to the province on Bill 97's proposed changes to the Residential Tenancies Act (RTA) to help protect tenants from bad faith renovation evictions, the Canadian Centre For Housing Rights noted that, "The proposed changes would stipulate that a landlord must provide a report from a "qualified professional" stating that the proposed renovations will require vacant possession. A report from a professional hired by the landlord would not constitute independent or objective evidence. We recommend that municipalities carry out the assessment as part of their building permit process. Municipalities have the expertise and are a neutral body, as opposed to contractors or other private actors hired by landlords who stand to benefit financially from stating that the unit should be vacant to proceed with their work." While this would be ideal, it would also be incredibly expensive and complicated for the City to implement, involving both significant staff resources and the development of a tool to evaluate the necessity of vacant possession. Instead we are proposing that the bylaw give the City the authority to independently verify the report provided by the applicant and to provide their own assessment/report on an as-needed basis. It is unclear if criteria for when this independent verification would be necessary needs to be included in the bylaw.

Tenant relocation support and compensation:

Current situation (under the RTA):

If you live in a residential complex that has at least 5 residential units and you do not plan to move back in once the repairs or renovations are done, the landlord must:
• pay you an amount equal to 3 months' rent, or
• offer you another rental unit that is acceptable to you.

If you live in a residential complex that has fewer than 5 residential units and you do not plan to move back in once the repairs or renovations are done, the landlord must:
• pay you an amount equal to 1 months' rent, or
• offer you another rental unit that is acceptable to you. If you live in a residential complex that has at least 5 residential units and you plan to move back in once the repairs or renovations are done, the landlord must pay you:
• an amount equal to 3 months' rent, or
• the rent for the period of time the rental unit is being repaired or renovated, whichever is less.

If you live in a residential complex that has fewer than 5 residential units and you plan to move back in once the repairs or renovations are done, the landlord must pay you:
• an amount equal to 1 months' rent, or
• the rent for the period of time the rental unit is being repaired or renovated, whichever is less.

Situation under the proposed draft bylaw:

Tenants who don't wish to return to their unit following renovations:

- A **comparable** alternative rental unit and no RTA compensation, or:
- Tenants of building of 5+ units: no alternative rental unit and 3 months rent
- Tenants of building of 4 or fewer units: no alternative rental unit and 1 months rent

Note: For tenants not accepting an alternative rental unit, the compensation is the same as under the RTA. We are trying to encourage tenants to return to their units to prevent landlords re-renting at higher rents as a way to preserve rental housing affordability, so there is no additional support or compensation for these tenants.

Tenants who do wish to return to their unit following renovations:

- A **comparable** alternative rental unit and compensation for moving costs, OR
- Tenants of buildings of 5+ units: no alternative rental unit and an amount

equal to three months' rent or an amount equal to the rent for the period of time the rental unit will be under repair or renovation, whichever is less, plus the difference in rent between current rent and market rent (including utilities) for the duration of renovations, plus moving costs
    - Example: Three month renovation: moving costs, plus 3 months rent and the difference in rent between current rent and market rent (including utilities)
- Tenants of buildings of 4 or fewer units: no alternative rental unit and an amount equal to one months' rent or an amount equal to the rent for the period of time the rental unit will be under repair or renovation, whichever is less, plus the difference in rent between current rent and market rent (including utilities) for the duration of renovations, plus compensation for moving costs
    - Example: One month renovation: “free” one month of current market rent, plus moving costs - tenant still has to pay for storage, and inconvenience out of pocket

Implementation of tenant relocation and support:

Vancouver's Tenant Relocation and Protection Policy Bulletin February 2023 details how this works for building redevelopments. The City could develop similar guidelines and develop templates for landlord-tenant relocation and compensation arrangements. The guidelines would include details such as:

- The applicant-paid rent top-up period starts when the tenant enters into a new tenancy agreement for a new unit, or vacates the Rental Unit, whichever happens first.
- The rent top-up period ends on the move-in date for the Right of First Refusal unit.
- Timing of top-up payments:

    Where the tenant is receiving the top-up and paying their landlord, the top-up payment must be received 7 days before the rent is due.
    Where the applicant is paying the landlord directly, the top-up payment must be received per the tenancy agreement deadlines.
    Applicant will be required to provide a copy of the tenancy agreement for the new interim unit that includes the monthly rent to City Staff so that rent top-up amounts may be verified.
    Note: Staff may require evidence that rent top-ups are being paid in a timely manner per this policy (e.g. records of direct deposits, copies of cheques etc.).

Administration and Resourcing:

The proposed draft by-law involves more administration and more enforcement than the

staff recommended licensing by-law and therefore the staff recommended resourcing should be updated to reflect the additional resources that will be required to adequately administer and enforce the bylaw.

In its earlier submission, ACORN recommended that the Renovation Licensing system be supported by an enforcement hotline where tenants can call to report unpermitted work/check on permit status/lies on forms/illegal activity and adequate resources to ensure that tenants can access case management support to facilitate their successful exercise of their right of first refusal. This hotline would require additional resources to operate.

Closing

Across Hamilton tenants have been displaced or are currently fighting to defend their homes from predatory and greedy landlords who are abusing the provincial loophole. While tenants do have the right of first refusal (legal right to return to the unit post renovations at the same rent), ACORN has yet to see a landlord follow the law.

If Hamilton passes a renoviction bylaw it would be the first of its kind in the province of Ontario. And the policy is desperately needed. Protecting Hamilton's affordable housing is more important now than ever. The average market rent in Hamilton for a one-bedroom apartment is currently $1755, compared to $875 just 7 years ago. The number of N13 (renoviction) applications filed to the Landlord and Tenant Board in Hamilton has grown exponentially over the past few years - 6 were filed in 2012 and over 100 last year. Hamilton has lost 15,000 units that rent for less than $750 a month in the last decade. That is 29 affordable units lost for every new affordable unit added.

The rise in renovictions has and will continue to have a devastating impact on Hamilton, at both the individual and systemic level. Renoviction shatters the lives of families, breaks long-held community bonds,drives up rents in the neighborhood, increases homelessness and strain on social services, incentivizes landlords to allow their buildings to fall into disrepair and destroys existing stock of affordable housing.

Hamilton has an opportunity on October 19th (Emergency and Community Services Committee, followed by Council on the 25th (where any decisions will need to be ratified) to be a leader in the province of Ontario in local tenant protection

ACORN contact information:
hamilton@acorncanada.org / 905-393-5734
56 Mulberry Street Suite 8, Hamilton

Note:
Appendix "D" - the City of Hamilton's proposed Renovation Licence and Relocation Listing By-law was used as the starting point for this draft bylaw. Modifications to it appear in red. This bylaw edit is an attempt to incorporate the recommended ACORN amendments / changes into the staff recommendation Renovations License and Relocation Listing by-law. Please use as the city sees appropriate in evaluating next steps for the creation of a strong made in Hamilton anti-renoviction by-law.

Appendix "D" to Report PED23072

CITY OF HAMILTON

BY-LAW NO.

Renovation Licence and Relocation ~~Listing~~ By-law

WHEREAS section 8 of the *Municipal Act, 2001,* S.O. 2001, c.25 states that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues

AND WHEREAS section 10 of the *Municipal Act, 2001,* S.O. 2001, c.25 provides a single-tier municipality with the broad authority to pass by-laws respecting (i) the economic, social and environmental well-being of the municipality, (ii) the health, safety and well-being of persons, (iii) the protection of persons and property and (iv) business licensing;

AND WHEREAS subsection 151(1) of the *Municipal Act, 2001,* S.O. 2001, c.25 authorizes a municipality to provide for a system of licences with respect to a business and may:

(a) prohibit the carrying on or engaging in the business without a licence;

(b) refuse to grant a licence or to revoke or suspend a licence;

(c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;

(d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;

(e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;

(f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it;

AND WHEREAS subsection 151(1) of the *Municipal Act, 2001,* S.O. 2001, c.25 applies with necessary modifications to a system of licences with respect to any activity, matter or thing for which by-law may be passed under section 9, 10 and 11 of the Act as if it were a system of licences with respect to a business;

AND WHEREAS, in accordance with subsection 23.2(4) of the *Municipal Act, 2001,* S.O. 2001, c.25, Council for the City of Hamilton is of the opinion that the delegation of the legislative powers under this by-law to the Director including, without limitation, the power to issue and impose conditions on a licence are powers of a minor nature having regard to the number of people, the size of the geographic area and the time period affected by the exercise of the power;

AND WHEREAS subsection 39(1) of the *Municipal Act, 2001,* S.O. 2001, c.25 provides that a municipality may impose fees and charges on persons,

(a) for services or activities provided or done by or on behalf of it;

(b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and

(c) for the use of its property including property under its control;

AND WHEREAS subsections 425(1) and 429(1) of the *Municipal Act, 2001,* S.O. 2001, c.25 authorize a municipality to pass by-laws providing that a person who contravenes a municipal by-law is guilty of an offence and to establish a system of fines for offences under a by-law;

AND WHEREAS section 434.1 of the *Municipal Act, 2001,* S.O. 2001, c.25 provides that a municipality may require a person, subject to such considerations as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that person has failed to comply with a by-law of the municipality passed under the *Municipal Act, 2001,* S.O. 2001, c.25;

AND WHEREAS section 436 of the *Municipal Act, 2001,* S.O. 2001, c.25 provides that a municipality may pass a by-law providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether a by-law of a municipality has been complied with;

AND WHEREAS sections 444 and 445 of the *Municipal Act, 2001,* S.O. 2001, c.25 provides that municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity and do work to correct the contravention;

AND WHEREAS the Province of Ontario has enacted the *Residential Tenancies Act, 2006* and such *Act* states that:

> "The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes."

AND WHEREAS the City seeks to regulate by way of licensing, any Landlord who intends to perform repairs and renovations and serves a notice of termination pursuant to section 50(1)(c) of the *Residential Tenancies Act, 2006* in order to assist the Tenant of such Landlord in securing alternative accommodation, either temporarily, in the case where a tenant delivers a notice of its wish to occupy the Rental Unit after the repairs and renovations are complete prior to such Tenant vacating the premises, and in exercising their Right of First Refusal pursuant to subsection 50(3) of the *Residential Tenancies Act, 2006*. ~~making an informed decision as to whether or not the Tenant should deliver a notice of its wish to occupy the Rental Housing Unit after the repairs and renovations are complete prior to such Tenant vacating the premises;~~

AND WHEREAS pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006,* a Landlord shall serve a Tenant with a notice of termination of tenancy if the Landlord requires vacant possession of the Rental Housing Unit for the purpose of performing repairs or renovations;

AND WHEREAS the City seeks to require that a Landlord take certain steps, including, but not limited to, obtaining a licence to perform repairs or renovations to a Rental Housing Unit for which a notice of termination has been given under subsection 50(1)(c) of the *Residential Tenancies Act, 2006;*

AND WHEREAS subsection 50(3) of the *Residential Tenancies Act, 2006,* requires that the notice of termination served pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006,* inform the Tenant that if they wish a right of first refusal to occupy the premises as a Tenant after the repairs or renovations are complete, they must give the Landlord notice of this fact before vacating the rental unit;

AND WHEREAS pursuant to subsection 53(2) of the *Residential Tenancies Act, 2006*, a Tenant who wishes to have a right of first refusal shall provide the Landlord notice in writing before vacating the rental unit;

AND WHEREAS, pursuant to subsections 54(1) ~~and 54(3)~~ of the *Residential Tenancies Act, 2006,* where a Landlord has served a notice of termination pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006* on a Tenant of a Rental Housing Unit as the Landlord has voluntarily chosen to perform repairs or renovations requiring vacant possession of ~~a Residential Complex or a Rental Housing Unit~~, a Rental Unit in a Residential Complex containing at least 5 rental units, that Landlord shall compensate that Tenant in an amount equal to three (3) months' rent or shall

offer the Tenant another rental unit acceptable to the Tenant if that Tenant does not serve notice of its wish to have a right of first refusal pursuant to subsection 53(2) of the *Residential Tenancies Act, 2006;*

AND WHEREAS, pursuant to subsections 54(2) of the *Residential Tenancies Act, 2006,* where a Landlord has served a notice of termination pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006* on a Tenant of a Rental Housing Unit as the Landlord has voluntarily chosen to perform repairs or renovations requiring vacant possession of a Rental Unit in a Residential Complex containing at least 5 rental units and that Tenant serves notice of its wish to have a right of first refusal pursuant to subsection 53(2) of the *Residential Tenancies Act, 2006,* that Landlord shall compensate that Tenant in an amount equal to the rent for the lesser of three months and the period the unit is under repair or renovation or shall offer the Tenant another rental unit acceptable to the Tenant*;*

AND WHEREAS, pursuant to subsections 54(3) of the *Residential Tenancies Act, 2006,* where a Landlord has served a notice of termination pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006* on a Tenant of a Rental Housing Unit as the Landlord has voluntarily chosen to perform repairs or renovations requiring vacant possession of a Rental Unit in a Residential Complex containing less than five rental units and that Tenant does not serve notice of its wish to have a right of first refusal pursuant to subsection 53(2) of the *Residential Tenancies Act, 2006,* that Landlord shall compensate that Tenant in an amount equal to one month's rent or shall offer the Tenant another rental unit acceptable to the Tenant*;*

AND WHEREAS, pursuant to subsections 54(4) of the *Residential Tenancies Act, 2006,* where a Landlord has served a notice of termination pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006* on a Tenant of a Rental Housing Unit as the Landlord has voluntarily chosen to perform repairs or renovations requiring vacant possession of a Rental Unit in a Residential Complex containing less than 5 rental units and that Tenant serves notice of its wish to have a right of first refusal pursuant to subsection 53(2) of the *Residential Tenancies Act, 2006,* that Landlord shall compensate that Tenant in an amount equal to the rent for the lesser of one month and the period the unit is under repair or renovation*;*

AND WHEREAS the Residential Tenancies Act, 2006 53(1) and 53(3) establishes that a tenant who receives notice of termination of a tenancy for the purpose of repairs or renovations pursuant to section 50(1)(c) of the *Residential Tenancies Act, 2006*, may have a right of first refusal to occupy the rental unit as a tenant when the repairs or renovations are completed, and that a tenant who exercises a right of first refusal may reoccupy the rental unit at a rent that is no more than what the landlord could have lawfully charged if there had been no interruption in the tenant's tenancy, but provides no mechanism to ensure the tenant is able to reoccupy the rental unit at a rent that is no more than what the Owner or Operator could have lawfully charged if there had been no interruption in the tenant's tenancy once the renovations or repairs are complete. ~~the Landlord to provide any information to the Tenant about alternate Rental Housing Units which may be acceptable and/or available to the Tenant~~

AND WHEREAS the Province of Ontario will amend section 53 of the *Residential*

Tenancies Act, 2006, on a day to be named by proclamation of the Lieutenant Governor to require landlords to give the tenant at least 60 days after the day the rental unit is ready for occupancy to exercise the right of first refusal to occupy the unit, pursuant to c. 10, Sched. 7, s. 3.

AND WHEREAS the Province of Ontario has enacted the *Residential Tenancies Act, 2006, of which section 73.1* states that:

> "**73** (1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 50 unless it is satisfied that,
>
> (a) the landlord intends in good faith to carry out the activity on which the notice of termination was based; and
>
> (b) the landlord has,
>
> > (i) obtained all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, or
> >
> > (ii) has taken all reasonable steps to obtain all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, if it is not possible to obtain the permits or other authority until the rental unit is vacant. 2006, c. 17, s. 73."

NOW THEREFORE, the Council of the City of Hamilton enacts as follows:

<u>General</u>

1. In this By-law;

> (a) a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa;
>
> (b) a reference to any Act, by-law, rule or regulation or to a provision thereof shall be deemed to include a reference to any Act, by-law, rule or regulation or provision enacted in substitution therefor or amendment thereof;
>
> (c) the headings to each section are inserted for convenience of reference only and do not form part of the By-law;
>
> (d) words and abbreviations which have well-known technical or trade meanings are used in the By-law in accordance with those recognized meanings; and
>
> (e) where an officer of the City is named, or a reference is made to an officer of the City, that reference shall be deemed to include a reference to the designate of that person, as appointed in accordance with policies and procedures of the

City in force from time to time.

2. This By-law shall apply to all Rental Housing Units within the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires.

3. This By-law shall not apply to:

(a) a licensed hotel, motel, inn or bed and breakfast, tourist home, licensed lodging house, licensed short-term rental or licensed residential care facilities; and

(b) any building to which any of the following statutes, or their regulations, apply;

(i) the *Homes for Special Care Act,* R.S.O. 1990, c. H.12, as amended;

(ii) the Innkeepers Act, R.S.O. 1990, C. 17, as amended;

(iii) the Long-Term, Care Homes Act, 2007, S.O. 2007, c. 8, as amended;

(iv) the Retirement Homes Act, 2010, S.O. 2010, c.11, as amended;

(v) the Social Housing Reform Act, 2000, S.O. 2000, c. 27, as amended and

(vi) social housing or affordable housing that is not subject to Social Housing Reform Act, 2000, S.O. 2000, c. 27, as amended, but which is subject to an agreement with the City and which has been approved for exemption by the Director.

4. All licence fees and inspection fees related to this By-law shall be paid in accordance with the City's User Fees and Charges By-law No. 19-160, and such licence fees and inspection fees paid shall be non-refundable.

Definitions

5. In this By-law:

"By-law" means this By-law;

"Chief Building Official" means the Chief Building Official as appointed by Council pursuant to the *Building Code Act*, or their designate, and may include building inspectors for the purpose of doing inspections as contemplated under this By-law;

"City" means the municipality of the City of Hamilton or the geographic area of the City of Hamilton as the context requires;

"Council" means the Council of the City of Hamilton;

"Director" means the City's Director of Licensing and By-law Services;

"Fire Chief" means the City of Hamilton Chief of the Hamilton Fire Department;

"Landlord" includes (i) the owner of a Residential Complex or any other person who permits occupancy of a Rental Housing Unit, other than a Tenant who occupies a Rental Housing Unit in a Residential Complex and who permits another person to occupy the Rental Housing Unit or any part thereof, (ii) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (i), and (iii) a person, other than a Tenant occupying a Rental Housing Unit in a Residential Complex, who is entitled to possession of the Residential Complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or the *Residential Tenancies Act 2006,* including the right to collect rent;

"Licensee" means any person, corporation or partnership licensed under this By-law;

"Medical Officer of Health" means the Medical Officer of Health for the Hamilton Health Unit and includes public health inspectors;

"Municipal Act, 2001" means the *Municipal Act, 2001,* S.O. 2001, c.25;

"Municipal Law Enforcement Officer" means an employee of the Licensing and By law Services Division of the City of Hamilton who is appointed by Council to enforce the provisions of this By-law;
"Officer" shall include a Municipal Law Enforcement Officer, Medical Officer of Health, Fire Chief, Chief Building Official, a Hamilton Police Services police officer, or any other person appointed under the authority of a municipal by-law or by Council to enforce City by-laws;

"Operator" means the superintendent or property manager or any other person who may take on some or all of the roles relating to permitting occupancy in a Rental Housing Unit, but does not include an Owner;

"Owner" means any person or persons who have any legal right, title, estate or interest in a Rental Housing Unit and shall include, but is not limited to, a landlord, lessors, sublessor or other person permitting the occupation of a Rental Housing Unit, their agents, heirs, personal representatives and successors in title;

"Person" includes an individual, sole proprietorship, partnership, limited partnership, trust, party or body corporate, and the personal or other legal representatives of a person to whom the context can apply according to the law;

"**Rental Housing Unit**" means a building or part of a building: (i) consisting of one or more rooms; (ii) containing toilet and cooking facilities; (iii) designed for use as a single housekeeping establishment; and (iv) used or intended for use as a rented residential premise;

"Residential Complex" means a building or related group of buildings in which one or more Rental Housing Units are located and includes all common areas and services and facilities available for the use of its residents;

"Residential Tenancies Act, 2006" means *the Residential Tenancies Act, 2006*, S.O. 2006 c.17; and

"Tenant" includes a person who pays rent in return for the right to occupy the Rental

Housing Unit and includes their heirs, assigns and personal representatives, but does not include a person who has the right to occupy a rental unit by virtue of being an Owner of the Residential Complex in which the Rental Housing Unit is located or a shareholder of a corporation that owns the Residential Complex.

6. A term not defined in section 5 of this By-law shall have the same meaning as the term in the *Building Code Act, 1992,* S.O. 1992, c.23 or the City's Property Standards By-law.

PART I- REPAIRS AND RENOVATIONS TO RENTAL HOUSING UNITS

Licence Required

7. A Landlord or Operator who has delivered a notice of termination pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006* to a Tenant in order to perform repairs or renovations which require vacant possession of a Rental Housing Unit shall, within seven (7) days of serving the notice of termination pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006*, submit an application for a licence issued by the Director in accordance with the provisions of this By-law.

8. A Landlord or Operator who fails to obtain a licence pursuant to section 7 of this By-law is guilty of an offence and is subject to a penalty in the amount prescribed in this By-law for each day that the Landlord or Operator fails to comply with section 7 of this By-law.

Prohibitions

9. No Landlord or Operator shall be issued a licence as required pursuant to section 7 of this By-law without first being issued all permits required to carry out the repairs or renovations requiring vacant possession of the Rental Housing Unit pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006.*

X. No Landlord or Operator shall be issued a license as required pursuant to section 7 of this By-law without having made satisfactory alternative housing arrangements with the Tenant pursuant to section x of this By-law.

X. No Landlord or Operator that has obtained a license under this bylaw shall fail to adhere to the arrangements made with the Tenant, pursuant to section x of this By-law.

X. No Landlord or Operator that has obtained a license under this bylaw shall prevent a tenant who has informed the landlord in writing that they wish to exercise their right of first refusal from reoccupying the rental unit upon the completion of repairs or renovations at a rent that is no more than what the Owner or Operator could have lawfully charged if there had been no interruption in the tenant's tenancy.

X. No Landlord or Operator that has obtained a license under this bylaw shall advertise a renovated or repaired Rental Unit for rent if a tenant has informed the Landlord in writing that they wish to exercise their right of first refusal unless the tenant informs

the Landlord in writing that they no longer wish to reoccupy the rental unit or the 60 day period following the date the Rental Unit was available for re-occupancy has concluded and the Tenant has not re-occupied the Rental Unit.

10. No Landlord or Operator shall hold themselves out to be licensed under this By law if they are not licensed.

11. No Landlord or Operator shall contravene or fail to comply with any of the terms and conditions of their licence issued under this By-law.

12. No Landlord or Operator shall transfer or assign a licence issued under this By law.

13. No Person shall provide false or misleading information to the Director when applying for or renewing a licence under this By-law.

14. No Person shall hinder or obstruct an Officer or attempt to hinder or obstruct an Officer who is performing a duty under this By-law.

15. Any Person who provides false information to the Director shall be deemed to have hindered or obstructed an Officer in the execution of their duties.

Application for and Renewal of Licence

16. The application for a licence shall be signed and submitted to the Director by the Landlord or Operator no later than seven (7) days after service of any notice given pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006*.

17. Every Landlord or Operator applying for a licence pursuant to section 16 of this By law shall provide the following information and materials in support of the application:

    (a) a copy of the building permit issued by the Chief Building Official and any other permit required to carry out the repairs or renovations, issued to the Landlord or Operator;
    (b) a copy of the notice of termination delivered to the Tenant by the Landlord or Operator pursuant to section 50(1)(c) of the Residential Tenancies Act, 2006, indicating that the necessary building permits or other authorization to convert demolish or repair the rental unit have not yet been obtained; and
    (c) Information about the Rental Complex, including the number of current tenancies, and information about the Rental Unit including the unit type (number of bedrooms), current rental rate, and start date of current tenancy.
    (d) a copy of a report prepared by a professionally designated engineer or other person with the requisite qualification stating that the repairs or renovations are so extensive that they require vacant possession of the Rental Housing Unit;
    (e) for properties with more than one tenanted unit, a Disruption Mitigation Plan, developed in a form and manner satisfactory to the Director;
    (f) completed Tenant Relocation & Assistance documentation that includes:
        (i) a copy of a new tenancy agreement with the Tenant for a comparable Rental Unit that has the same rental rate and terms as the tenancy

agreement pertaining to the Rental Unit being renovated or repaired, or terms that are more favourable to the Tenant; or

(ii) satisfactory documentation of other arrangements made for the Tenant's temporary accommodation in a comparable rental unit during the renovation or repair, and for the Tenant's return to their original Rental Unit at a rent that is no more than what the Landlord or Operator could have lawfully charged if there had been no interruption in the tenant's tenancy following completion of the renovation or repair, including evidence of the Tenant's consent to the arrangements; or

(iii) satisfactory documentation of arrangements made to compensate the Tenant in the amount equal to the difference between the rent currently paid (including utilities) and the current market rent of a comparable Rental Unit for the duration of the renovation or repair, and for the Tenant's return to their original Rental Unit at a rent that is no more than what the Owner or Operator could have lawfully charged if there had been no interruption in the tenant's tenancy following completion of the renovation or repair, including evidence of the Tenant's consent to the arrangements; or

iv) satisfactory documentation of the Tenant's agreement to an alternative voluntary arrangement, which includes payment of the compensation required pursuant to the Residential Tenancies Act, 54(1,2,3,4), as applicable;

X. The Director may require that a person, who in the opinion of the Director is qualified to do so, provide or verify to the satisfaction of the Director the report that is required pursuant to Section 17 (d) of this by-law.

Notice of application

X. The applicant shall provide notice of the application for a Renovation License and a City of Hamilton Renovation Licence and a Tenant Rights Information Package, that includes a City of Hamilton Right of First Refusal form to the Tenant of the Rental Unit within 5 days of submitting the application.

X. In Rental Complexes with more than one occupied Rental Unit, the applicant shall post a completed City of Hamilton Renovation License Application notice in common areas within 5 days of submitting the application.

Issuance of Licence

18. A licence issued under this By-law shall only be valid for the repairs or renovations of the Rental Housing Unit as provided for on the application form.

19. A licence issued under this By-law shall be valid for either the period of one (1) year or the estimated date by which the Rental Housing Unit is expected to be ready for occupancy following the repairs or renovations, whichever is sooner.

20. A licence, in accordance with the provisions of this By-law, shall be required for each Rental Housing Unit and/or each Residential Complex for which a building permit is issued.

PART II- PROVISION OF ~~LISTING TO TENANTS FOR~~ ALTERNATE HOUSING

Purpose

21. The purpose of this part of the By-law is to require a Landlord or Operator of a Residential Complex who has ~~obtained~~ applied for a licence to repair or renovate a Rental Housing Unit pursuant to this By-law to make arrangements with the Tenant to ensure the Tenant is able to secure alternative comparable accommodations while renovations or repairs are taking place, to prevent the Tenant from becoming homeless, to preserve existing rental housing affordability, and to facilitate Tenants' exercise of their right to reoccupy their rental unit following renovation or repair at a rent that is no more than what the Owner or Operator could have lawfully charged if there had been no interruption in the tenant's tenancy. ~~provide, or cause to be provided, a listing of Rental Housing Units which are comparable to the Tenant's present Rental Housing Unit so that the Tenant can make an informed choice about whether or not to deliver a Notice to Re-Occupy the Rental Housing Unit at the end of the renovations or repairs.~~

Requirement to Provide ~~Listing~~ Alternative Accommodations

22. Where a Landlord has served a notice of termination on a Tenant pursuant to subsection 50(1)(c) of the Residential Tenancies Act, 2006 for the purpose of performing repairs or renovations on the Rental Housing Unit that require vacant possession of same, the Landlord or Operator shall:

(i) enter into a new tenancy agreement with the Tenant for a comparable Rental Unit that has the same rental rate and terms as the tenancy agreement pertaining to the Rental Unit being renovated or repaired, or terms that are more favourable to the Tenant, and provide a copy of the agreement to the Director pursuant to x of this bylaw; or

(ii) make other arrangements in writing for the Tenant's temporary accommodation during the renovation or repair in a comparable rental unit, and for their return to their original Rental Unit at a rent that is no more than what the Owner or Operator could have lawfully charged if there had been no interruption in the tenant's tenancy following completion of the renovation or repair, and provide to the Director satisfactory documentation of the arrangements including evidence of the Tenant's consent to the arrangements, pursuant to section x of this bylaw; or

(iii) make arrangements to provide the tenant with compensation in an amount equal to the difference between the rent currently paid (including utilities) and the current market rent of a comparable unit no later than 7 days before the first day of each month during the period of renovation or repair, and make arrangements for the Tenant's return to their original Rental Unit at a

rent that is no more than what the Owner or Operator could have lawfully charged if there had been no interruption in the tenant's tenancy following completion of the renovation or repair, and provide to the Director satisfactory documentation of the arrangements including evidence of the Tenant's consent to the arrangements, pursuant to section x of this bylaw; or

(iv) provide to the Director satisfactory documentation of the Tenant's agreement to an alternative voluntary arrangement, which includes written confirmation from the Tenant that a) they understand that they have the option of being provided a temporary comparable rental unit or compensation equal to the difference between their current rent and current market rents for a comparable unit while renovations or repairs are being completed and then return to their original Rental Unit at a rent that is no more than what the Owner or Operator could have lawfully charged if there had been no interruption in the tenant's tenancy following completion of the renovation or repair, and they either a) do not wish to accept an alternative rental unit or compensation equal to the difference between their current rent and current market rents for a comparable unit while their rental unit is being repaired or renovated and return to the rental unit once repairs or renovations are complete, or b) do not wish to accept an alternative rental unit or compensation equal to the difference between their current rent and current market rents for a comparable unit while their rental unit is being repaired or renovated and do wish to return to the rental unit once repairs or renovations are complete.

(c) For the purposes of subsection 22,

(i) the new tenancy agreement may either transfer the Tenant's tenancy permanently to the other Rental Unit, or entitle the Tenant to occupy the other Rental Unit temporarily during the course of the renovation or repair and return to their original rental unit following completion of the renovation or repair.

(ii) a Rental Unit is comparable to a Rental Unit that is being renovated or repaired if it has the same or a greater number of bedrooms, is at a similar or better level of accessibility, is within a one-mile radius of the Rental Housing Unit that requires vacant possession, complies with the maintenance standards of the City's Property Standards By-law, and the rent for the unit is equal to or less than the rent for the Rental Unit that is being renovated or repaired.

X. The landlord shall give the Tenant 60 days advance notice of when the Rental Unit will be available for re-occupancy, or, in situations where vacant possession is required for less than 60 days, provide the date that the Rental Unit will be available for re-occupancy as part of the alternative accommodations arrangements.

X. The Landlord or Operator shall give the Tenant at least 60 days after the day the Rental Unit which the Tenant has a right of first refusal is ready for occupancy to exercise the right of first refusal to occupy the Rental Unit.

~~22. Where a Landlord has served a notice of termination on a Tenant pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006* for the purpose of performing repairs or renovations on the Rental Housing Unit that require vacant possession of same, the Landlord or Operator shall obtain a listing of alterative Rental Housing Units which are comparable to the Tenant's present Rental Housing Unit and shall serve the said listing on the Tenant no later than two (2) months before the expiry of the one hundred and twenty (120) days' notice period pursuant to subsection 50(2) of the *Residential Tenancies Act, 2006*. To be comparable, the alternative Rental Housing Units must be within a one-mile radius of the Rental Housing Unit that requires vacant possession, have the same or a greater number of bedrooms, comply with the maintenance standards of the City's Property Standards By-law and the rent for each of the alternative Rental Housing Units is no greater than Fifteen Per Cent (15%) of the rent for the Rental Housing Unit that is being renovated or repaired.~~

~~23. For the purpose of section 22 of this By-law, the number of alternative Rental Housing Units provided on the listing to the Tenant shall be no less than the number of Tenants in the Residential Complex who have been served with a notice of termination pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006* and, in no case shall there be less than three (3) Rental Housing Units set out on the listing for the purpose of allowing the Tenant to determine whether to exercise its right to first refusal pursuant to subsection 53(2) of the *Residential Tenancies Act, 2006* as a result of being served with a notice of termination pursuant to subsection 50(1)(c) of the *Residential Tenancies Act, 2006*.~~

~~24. In the event that the Landlord or Operator is unable to provide a listing to the Tenant with the number of alternative Rental Housing Units as required pursuant to section 22 of this By-law due to an inadequate supply of available and comparable Rental Housing Units:~~

~~(a) where the Landlord or Operator is still able to provide a listing to the Tenant with a lesser number of alternative Rental Housing Units than required by section 22 of this By-law, the Landlord or Operator shall provide the listing to the Tenant with a lesser number of alternative Rental Housing Units listed on the listing than what is required by section 22 of the By-law and the Landlord or Operator shall provide a certification to the Director, signed by the Landlord or Operator, certifying that the Landlord or Operator is unable to comply with section 22 and that the reason for such non-compliance is due to an inadequate supply of available and comparable Rental Housing Units, or~~

~~(b) where the Landlord or Operator is unable to provide any listing to the Tenant as required by section 22 of the By-law, then the Landlord or Operator shall provide a certification to the Director, signed by the Landlord or Operator, certifying that the Landlord or Operator is unable to comply with section 22 and that the reason for such non-compliance is due to there being no available comparable Rental Housing Units.~~

~~25. The following information shall be included on the listing provided to each Tenant:~~

~~(a) the name of the proposed Landlord or Operator of each proposed alternative~~

~~Rental Housing Unit;~~
~~(b) the address of each proposed alternative Rental Housing Unit;~~
~~(c) the quantum of rent per month for each proposed alternative Rental Housing Unit;~~
~~(d) the minimum rental term required by the Landlord or Operator for each proposed alternative Rental Housing Unit; and~~
~~(e) any other information that may assist the Tenant in making an informed decision about whether to give notice of its intention pursuant to subsection 53(2) *Residential Tenancies Act, 2006* to have a right of first refusal to occupy the Rental Housing Unit as a Tenant when the repairs or renovations are completed.~~

~~26. The Landlord or Operator shall ensure that each of the proposed alternative Rental Housing Units set out on the listing served upon the Tenant shall be available for rent by the Tenant at the time of service of the listing on the Tenant.~~

~~27. After the service of the initial listing referred to in section 22, the Landlord or Operator may provide the Tenant with further listings to assist the Tenant in making an informed decision when considering whether to give notice of its intention to have a right of first refusal to occupy the Rental Housing Unit as a Tenant pursuant to the option provided to the Tenant under subsection 53(1) of the *Residential Tenancies Act, 2006.*~~

~~28. Where the Landlord or Operator does not provide the Tenant with the listing as required in section 22 of this By-law, the Landlord or Operator shall be in breach of this By-law.~~

PART III-ADMINISTRATION AND ENFORCEMENT

Powers of the Director

29. Notwithstanding any other provision in this By-law, the power and authority to issue or renew a licence, refuse to issue or refuse to renew a licence, to revoke a licence, and to impose terms and conditions, including special conditions on a licence are delegated to the Director.

30. The Director shall issue a licence or renew a licence where the requirements or conditions of the By-law have been met.

31. The Director may refuse to issue, refuse to renew, or revoke a licence, or impose a term or condition on a licence on the following grounds:

(a) there are reasonable grounds to believe that an application or other documents provided to the Director by the Landlord or Operator contains a false statement;
(b) the Residential Complex of the Owner and/or any Rental Housing Unit in the Residential Complex is subject to an order, or orders, made pursuant to any governmental authority;
(c) a Landlord or Operator does not meet all the requirements of this By-law.

32. The Director may reject an application or its renewal where any of the documents required by this By-law are incomplete or have not been filed.

33. Notwithstanding any other provision in this By-law, the Director may impose terms and conditions on any licence at issuance, renewal or any time during the term of the licence, including special conditions, as are necessary in the opinion of the Director to give effect to this By-law.

Offences

34. Every Person who contravenes any provision of this By-law is guilty of an offence and is liable to a fine, and other such penalties, as provided for in the *Provincial Offences Act* and the *Municipal Act, 2001.*

35. In addition to section 34 of this By-law, every Person who contravenes any provision of this By-law and was charged with an offence for a contravention of any provision of this By-law by the laying of an information of Part III of the *Provincial Offences Act,* is guilty of an offence and on conviction is liable to a minimum fine of $1,000.00 and a maximum fine of $50,000.00

PASSED this _________ day of _________, 2023	
Mayor: Andrea Horwath	City Clerk:

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

ADVOCACY CENTRE FOR TENANTS ONTARIO

Legal Opinion - Hamilton Apartment Rental Program

RE: The Director of By-law and Licencing Services, Planning and Economic Development Department Report to The Chair and Members, Emergency and Community Services Committee, dated August 17, 2023

DATE: October 6, 2023

Introduction

We are long past calling what we have in Ontario a housing crisis. According to Marcuse and Madden, with 96% of Ontario's housing stock in private hands, we have a market behaving exactly as it should: prices are too high; supply is too low; and any diversity of new housing stock seems insignificant.

While the province has clearly signalled its concern with respect to the housing crisis, specifically here with tenant interference and illegal eviction, the so called renoviction by-laws fall squarely within municipal authority to address. That is, to identify a local concern and come up with a municipal solution that does not frustrate but rather complements provincial legislation to solve a serious and growing problem – specifically, a housing problem that is greatly reducing the supply of affordable housing and is creating widespread community instability and misery.

The Paramountcy of the *Residential Tenancies Act, 2006*

The *Residential Tenancies Act, 2006* is provincial and paramount legislation setting the terms and regulating most residential tenancies in the province. It is remedial legislation. That is, it recognizes the power imbalances between landlords and tenants. It is intended to right societal wrongs and provide remedies and detailed methods for enforcing legal rights especially for the weaker parties.

For greater certainty, the *RTA* expressly sets out that provisions in any tenancy agreement conflicting with the Act are void. Subject to express limitations, the Act applies with respect to every rental unit in every residential complex in the province despite any other Act (other than the *Human Rights Code)* and despite any agreement or waiver to the contrary. See s. 3 and 4 of the *RTA.*

Under pre-Charter division of powers jurisprudence, property rights and landlord and tenant rights flowing from that have fallen to the provinces to regulate and enforce. Security of tenure is the hallmark of the legislation. See *White* v. *Upper Thames Conservation Authority,* 2022 ONCA 146 (CanLII). As set out in its purpose section, the *RTA* is intended to protect tenants against unlawful rent increases and unlawful evictions.

Under this security of tenure theme, tenancies can only be terminated in a very limited number of circumstances: for example, death, abandonment, agreement, a landlord's own personal residential occupation, demolition, and, most commonly, through some proven breach of a tenant's legal responsibilities connected to a process at the Landlord and Tenant Board that results in an eviction order being issued.

It is important to note at the outset, however, that given the total number of tenants in Ontario (approximately 1.7 million households) and the number of landlord applications that result in hearings filed against them (about 40,000 is the accepted pre-pandemic number), tenant misconduct is a statistically very rare occurrence. Most tenants faithfully pay their rent on time and in full, and most

tenants want or need to remain in their units indefinitely. Herein lies the seeds of our renoviction problem.

What is a Renoviction and Why is the Response of the *RTA* is Inadequate?

As property values increase, as the cost of borrowing increases, as scarcity pushes rents even higher, (particularly under our vacancy de-control regime instituted by the Harris government in 1998), the tactics by which a landlord regains possession from a sitting tenant under the guise of renovating their unit is colloquially known as a renoviction.

While the tenant has a right to re-occupy the unit after it has been renovated at the same rent that they would have otherwise paid had they not vacated, the landlord instead rents it to another tenant at a greatly increased rent. See s. 50 and 53 of the *RTA*.

On its face, the legislation is clear, reasoned, remedial and effective. Units will need repairs and renovations over time. Section 50 is the mechanism for allowing a landlord to obtain possession of the unit, compensate the tenant for the inconvenience, renovate it and provide the original tenant with the opportunity to return to the unit when the renovation is completed at the same rent as if the tenancy had not been interrupted. Fines and damages can flow if a landlord, in bad faith, is found not to have renovated or does not reinstate the tenant at the proper rent. See s. 54, 57 and 57.1 of the *RTA*. What could possibly be wrong with this? Well, in practice and on the ground, everything.

The simple economic truth is that a landlord will not invest in significant improvements to the unit without the ability to increase that unit's rent revenue.

Instead of following the law, the landlord defies it. He obtains possession of the vacated unit asserting that he is renovating it, he improves it or does not improve it, and then rents to another tenant happy and willing to pay more. The landlord then simply waits to see if there are any significant consequences to this flouting

of the law. If there are consequences, this is simply put down to the cost of doing business.

The economic benefits to a landlord for this kind of behaviour are irrefutable. In the words of one LTB adjudicator, they "profit enormously". The economics of this was outlined in a shocking decision of the Landlord and Tenant Board where several tenant households in downtown Toronto were displaced by a renovating landlord successful in re-renting the units for more than *three times* the original rent. See *[Tenants] v. 795 College Inc. (7 February 2019; Whitmore),* 2019 LNONLTB 57 (QL), 2019 CanLII 87012, File No. TST-90503-17 (LTB).

If a landlord re-rented a "fluffed" unit for $1000.00 a month more, it would take about two years to cover the cost of the *maximum* fines prior to the legislative changes made in 2020, about four years to recover the cost of the maximum fines prior to the legislative changes made in 2023 and about eight years to recover the cost of the *maximum* fine since those changes were made in 2023. It also goes without saying that fines enrich the provincial coffer and not the displaced tenant.

As was recently reported by CTV news, administrative fines related to these bad faith evictions are "rare and minuscule".   It is indeed hard to find a case where a fine, let alone a significant fine, was ordered.

In 2021, the Mayor of Montreal spearheaded a by-law to encourage housing developers to include social and affordable units in their developments – A Bylaw For A Diverse Metropolis. As was widely reported in the Canadian press last August 2023, every single developer opted to pay the fines rather than comply with the by-law.

In sum, fines provide no incentive to stop this practice. Other approaches, like re-housing the displaced tenant while the unit is being renovated developed in New Westminster British Columbia both signal a landlord's genuine intention to renovate the unit and affirm their understanding of the obligation to house the tenant *during and after* the process.

The claim by Hamilton's Director of By-law and Licencing Services that there is no "silver bullet" to this problem is highly disputable. In British Columbia, the New

Westminster approach of requiring landlords to re-house their tenant during a renovation that required their absence from the unit worked and had a proven track record of success despite several legal challenges brought by landlords arguing that the municipality did not have the jurisdiction to do this.

> *On May 27, 2019, in response to numerous complaints regarding renovictions, City Council amended the* Business Regulations and Licensing (Rental Units) Bylaw *to include Part 6, a section that specifically aimed to deter renovictions and to provide protection to those tenants who may be displaced by large scale renovation work. The amendment was successful and resulted in a significant decrease in the number of reported renovictions and inquiries of concern. The City is considered a leader among municipalities across the nation for this work.*
>
> *See https://www.newwestcity.ca/housing/renovictions-tenant-protection-and-resources.*

Anecdotally, the by-law ground the renoviction problem to a halt in New Westminster, a bedroom community to Vancouver that has a well documented and ongoing housing crisis of its own. Unfortunately, the by-law was repealed when British Columbia addressed the problem in its provincial landlord and tenant legislation adopting a scheme similar to what is set out in Ontario's s. 50 of the *RTA.* This was an unfortunate decision but perhaps an expected one given landlord and developer opposition to it. Time will tell whether landlord non-compliance will become the same problem in New Westminster as it is in Ontario.

The Province Occupies the Field

The issue of how to renovate a unit occupied by a sitting tenant without prejudice to the sitting tenant has been legislatively considered by the province for over

thirty years. See, for example, *Landlord and Tenant Act*, R.S.O. 1990, c.L.7, ss. 1 – 130.

It has clearly been identified by the province as a matter worth regulating both in provisions of the Act itself and in the subsequent Bills stiffening fines and making more stringent the evidentiary requirements for the renovation and eviction to happen in the first place. See, for example, Bill 97.

As set out above, on its face, the legislation that the province has promulgated and *enhanced* over the years speaks to a tenant's security of tenure in the renovation process. The section is supposed to accomplish this because the law is supposed to be followed. Municipalities, governments closer to the ground of where people actually live, have noticed increasing trends that have undermined security of tenure and reduced the quality and affordability of existing rental housing in their communities.

Municipal governments in North Bay, Brampton, Toronto, Waterloo and London have acted to obtain more oversight in the rental housing area than the current legislation allowed. These attempts have succeeded despite legal challenges attacking the jurisdiction to do this. See *Toronto (City)* v. *Goldlist Properties Inc*., 2003 CanLII 50084 ON CA), *London Property Management Association* v. City of London, 2011 ONSC 4710 (CanLII), F*odor* v. *North Bay (City*), 2018 ONSC 3722 (CanLII), *1736095 Ontario Ltd. v Waterloo (City),* 2015 ONSC 6541 (CanLII).

Municipalities Can Also Occupy the Field

It is well established that municipalities can occupy the field of what is a provincial legislative concern when it complements that legislation in order to accommodate local concerns and conditions. As set out by the former Chief Justice in *Reference in Assisted Human Reproduction Act*, so long as complementary local laws do no frustrate other legislation, "in an area of jurisdictional overlap, the level of government that is closest to the matter will often introduce complementary legislation to accommodate local circumstances".

In the matter of housing which is crucial of any community's wellbeing and prosperity and where the circumstances might be unique or particular to that community – population trends, gentrification, quantity and quality of housing stock, housing costs, labour market issues, available land – a municipality would be hard pressed not to use its municipal powers to address particular and identifiable problems in the area of housing and rental housing in particular.

In the law related to landlord and tenant issues, we see this this kind of "jurisdictional overlap" everyday from landlord licensing, care home regulation, safe apartment building oversight and minimum and maximum unit heat issues.

There is also the express intersection between municipal by-laws and the *RTA.* For example, s. 50 (c) of the *RTA* references the requirement for a municipally issued building permit for the renovation to proceed, s. 4 of O.Reg. 571/06 referencing Maintenance Standards sets out that any municipal property standard by-laws regulating unit exteriors have paramountcy and Part XIII of the *RTA* supports direct municipal action respecting rental housing and the provision of vital services to it.

Chapter 667 of Toronto's Municipal Code

Chapter 667 of Toronto's *Municipal Code* deserves special mention. While demolition and conversation are expressly referenced in the *RTA*, Toronto places obligations on developers to re-house tenants displaced by redevelopment in complexes of over six units. This *Residential and Rental Property Demolition and Conversion Control* is basically the New Westminster by-law for bigger complexes and has survived the developer lobby's distaste for it. See *Toronto (City)* v. *Goldlist Properties Inc*., 2002 CanLII 62445 (ON SCDC), appeal to the Court of Appeal dismissed.

The Toronto initiative requiring developers of rental housing complexes to re-house displaced tenants failed at first instance before the Ontario Municipal Board. There, it was decided that the Tenant Protection Act, 1997 was a

complete code and the City's activities were at "cross purposes" with the legislation making them invalid and illegal.

On appeal, the Court took a very different view. They cited the Supreme Court of Canada on the issue of "dual compliance" – that is, by-laws that work in addition to provincial legislation and that might impose an even higher standard of control than those of the related statute. In other words, by-laws can "enhance" provincial legislation and they survive if simultaneous compliance is possible between by-law and provincial legislation and if the by-law does not frustrate the provincial legislation.

Given that the *RTA* does not encourage but restricts and regulates renoviction activity passing by-laws that support the objectives of security of tenure and rent regulation in the renovation process should pass jurisdictional challenge.

The context for the *Goldlist* challenge to Toronto's legislatively robust approach to security of tenure during redevelopment came during an earlier affordable housing crisis. As the Court noted in 2002:

> *The adequate supply of rental housing serves a very important role in the City of Toronto. Approximately 52 per cent of its total housing stock is rental housing. The current vacancy rate in the City is approximate 0.8 per cent and virtually no affordable rental housing is being constructed in the City.*

Alas, in the twenty years since *Goldlist* nothing has changed and arguably, things are much, much worse.

Hamilton's Proposed *Repairs and Renovations By-law*

At the April 2023 meeting of Council, the city solicitors were reminded of the request to provide options to the renoviction crisis that was happening in Hamilton. Specifically, Council wanted to consider a by-law akin to the New Westminster by-law where a similar affordable housing crisis has been underway for years.

The Housing Sustainability and Investment Roadmap passed by Council in April 2023 identifies four pillars of activity. The report of the Director of Licensing and By-law Services dated August 17, 2023, focusses on the preservation of existing affordable rental housing by addressing solutions to renovictions, tenant displacement and property standards.

The situation is bleak for Hamilton's 72,000 rental households. Once a Mecca of good and affordable housing, the report sets out that Hamilton is losing 23 affordable units of rental housing for every new affordable unit being built. Researcher Steve Pomeroy, and member of McMaster University's Canadian Housing Evidence Collaborative, says that over the last decade Hamilton has lost 15,000 units of affordable housing to market forces. The *Globe and Mail* reported that the Landlord and Tenant Board received double the N13 notices predicated on demolition, renovation and conversion in 2022 than it did in 2019 but these statistics do not show the real numbers of tenants who vacate just on the strength of receiving the notice.

Unfortunately, the proposed ***Repairs and Renovations By-Law*** does not form part of the Roadmap. It is up for alternative consideration and includes a pessimistic staff opinion that it would not withstand a legal challenge and present challenges with respect to its operation and enforcement.

The Details

Termination of Tenancies and Temporary Tenancies

Under the proposed New Westminster type by-law, a landlord must obtain the necessary permits before the N13 is served. Most importantly, the landlord must find a tenant equivalent temporary accommodation while the renovation of the tenant's unit takes place. The Director's Report quite rightly sets out the thorny issue of terminating tenancies under s. 50 of the *RTA* and what the proposed by-law sets out about temporarily re-housing the displaced tenant.

The *RTA* sets out how the tenancy is terminated while the renovation proceeds. This is how the landlord maintains control of the unit while the work is being done and how the tenant can live elsewhere without the obligation of paying rent. But termination is a problem because it legally severs the tenant from what was their home. As the August 17, 2023 report of the Director notes “staying in place” is one of the best strategies for discouraging renovations.

Significantly however, the tenancy is terminated on the good faith *bona fides* of the landlord asserting the need for vacant possession. It is very much a live legal question that if the tenancy is not terminated lawfully then it is not terminated at all. See *Ottawa-Carleton Association for Persons with Developmental Disabilities/Open Hands* v. *Séguin,* 2020 ONSC 7405 (CanLII).

The other significant legal issue at play is the requirement to re-house the tenant while the renovation is underway. Like what was set out in New Westminster, this is the major and unique feature of the proposed Hamilton by-law that should stop in its tracks any renoviction gamesmanship.

Under the by-law, the landlord can rehouse the tenant by creating a new tenancy in some other unit or by re-housing the tenant “temporarily”. The *RTA* does not contemplate “temporary” tenancies nor can tenancies be commenced with future termination clauses contained within the agreement. See s. 37(4) of the *RTA*.

As for establishing whether the tenant has a new tenancy in the new unit while the renovation proceeds, the Divisional Court has again answered this question. In the case of an elderly woman who was moved temporarily to one unit when her complex was being totally redeveloped over many years, she refused to go back to her new unit as per her agreement with the developer asserting that she had a new tenancy at the unit where she was re-located.

The Divisional Court resolved this sticky wicket for us by deciding that Ms. Asboth’s relationship to her first unit was not severed but only “suspended”. They evicted her from her “temporary” unit because she refused to return to her original unit. See *Morguard Residential* v. *Asboth,* 2017 2502 (ONSC) CanLII. Leave to the Court of Appeal was denied.

The Building Permit

Under the proposed by-law, a renovating landlord cannot serve a notice of termination unless every building permit and authorization had been obtained with respect of the proposed renovation.

This requirement is in complete harmony with what is set out in the *RTA* at s. 50. There, vacant possession can only be sought if the renovations are so extensive that vacant possession and a building permit is required. The by-law simply asks for proof of what is already required while also reinforcing the "staying in place" strategies to defeat specious renovation claims.

Additionally, the *Building Code Act,* 1992, S.O. 1992, c. 23 sets out at s. 8 that that building permits shall be issued unless the construction will contravene any other applicable law. Considering the ramifications for sitting tenants protected by the *RTA* in the construction and renovation process acts in concert with following the law rather than breaking the law. Indeed, Building Inspectors could be better used in the policing of this issue. Their final inspections could include notifying the displaced tenants of the opportunity to return to their homes when the renovation was complete.

Hamilton's Proposed Renovations License and Relocation Listing By-law

In her report, the Director promotes a *Hamilton Apartment Rental Program* that "comprises four separate but interconnected new initiatives to address renovictions, tenant displacement and property standards in apartment buildings.

The *Renovations License and Relocation Listing By-law* features as a prominent piece of the strategy that is billed as innovative and "first-of-its kind" in addressing the crisis.

Pursuant to the requirements of the by-law, landlords must obtain a license to renovate *after* the N13 is served. Building permits and other information must be provided to the City setting out that vacant possession is required. Landlords

must provide sitting tenants will three apartment listings of comparable size and price *if* they exist.

The Concerns:

Tenant Information

The Report's clarion call is that "tenants must be aware of their rights". As set out, "tenant education and support are paramount in any and all efforts to address renoviction". With respect, this must be tempered with the acknowledgment that the landlord gains possession under the current renovation process, the landlord has the keys, the landlord has the control, and the landlord permits re-occupancy when the landlord wants it re-occupied. Tenants are simply kept in the dark about when the unit is re-occupied by another.

No amount of tenant education can actually prevent another higher paying tenant from re-occupying the unit if the landlord wants to make that so. This emphasis on tenant education is a waste of ink, and it blames the victim. We must find a way for landlords to follow the rules whether tenants know their rights or not. It is not a question of tenant education - it is a question of landlord education.....and compliance.

Building Inspections

As set out above, the Report fairly sets out that the best strategies "prevent the tenant from moving out at all". A strong, reactive and proactive use of Buildings and Inspections could address repair issues before the need for a major renovation arises. This is certainly a good strategy.

However, and with respect, this horse has already left the barn. Landlords have neglected their properties for years to the point of needing renovations to maintain them. Landlords also use s. 50 of the *RTA* to misrepresent to an adjudicator that vacant possession is required to renovate and repair.

Rigorous inspections going forward is certainly the way to go but there must be 1000's of units in Hamilton in need of extensive repairs and renovations and s. 50 still operates to displace tenants and install new tenants willing and able to pay more rent for a repaired or not repaired unit.

Section 50 can also be used by landlords to argue for vacant possession and while Bill 97 sets out the requirement that a report must be provided by a person with the "prescribed qualifications" to prove that claim, the mischief that will be involved with this is still to be determined. Amending the *RTA* directing that a Building Permit must be obtained outlining repairs that require vacant possession before the N13 could be served would have been a better way for the province to proceed. Hamilton's proposed licencing regime requiring a Building Permit is a positive step.

Available Listings

Increasingly, the evidence shows that there are no comparable and available units in Hamilton. According to the CMHC, the unhealthy vacancy rate in Hamilton stands at 1.9%. On the ground, if there were available units in Hamilton, the issue of renoviction would be a nonexistent issue because people, while inconvenienced, would simply move to other, similar units. The crisis *is* that there are no available similar units at similar rents. The colloquial rule of thumb is that a displaced tenant of long tenure will pay double the rent for half the space. Under the proposed by-law, landlords do not have to comply with this requirement if no alternative listings exist.

The Need for a License for a Landlord to Renovate

As the Appendices to the Report sets out, it will be $715 to obtain a license to renovate and the fine owed for failing to obtain a license will be $400. It would seem that Hamilton is trying to incentivize the practice of *not* obtaining a license from the get-go.

Does the City have statistics of the number of people who build without obtaining the necessary permits? It seems commonplace that property owners proceed with their renovations without proper municipal authority. We cannot expect landlords to behave any differently and perhaps we can expect landlords to behave with even less compliance given the nature of the problem that this proposed by-law is trying to address.

Conclusion

It would seem that Hamilton's legal department is concerned about possible legal challenges to any legislative initiatives that fall anywhere near the New Westminster by-law. Some might legitimately posit that they overstate the concerns. There would certainly be a cost to any legal challenge to Hamilton's attempts to regulate in this area but there is an even greater cost to the city in not taking this kind of effective action.

As the Director has pointed out, it goes without saying that British Columbia's enabling legislation in these matters would not be identical to Ontario's legislation - British Columbia's *Community Charter* and Ontario's *Municipal Act*. But lawyers do not operate in the world of "identical". Lawyers analogize, compare, contrast, weigh, argue. There is sufficient legal authority to support defeating any legal challenge to what Hamilton is proposing to deal with the pressing renoviction issue at hand.

What is unequivocally true is that no person can predict what a judge will decide or how litigation will go especially when there is an egregious injustice afoot and the equities are so clear as in the instant case. The record that Hamilton would create would be persuasive - landlord greed and flagrant law breaking against the proven loss of thousands of units of affordable housing lost to the citizenry of Hamilton on account of renoviction and vacancy de-control. The express need for action is because landlords are not following the law. If this does not capture a decision-maker's interest, what will?

The City Director of Licensing and By-law Services is too casual in her assertion that a by-law akin to what was promulgated in New Westminster would not survive judicial scrutiny. It is wrong not to support such a by-law that would help the community of Hamilton very much and at least lands within the possible scope of success.

But sometimes, you just have to have the fight: you might have to make the other side account, you might have to send a message to the province or to the community that an injustice has been identified and that something must be done, or it might be the case that it would simply be wrong to stand by and allow flagrant breaches of the law to pass without lifting a litigation finger in reply.

There is precedent for success. ACTO urges you to try.