

To: Hamilton City Council c/o Economic Development (Norm Schleeahn & Judy Lam)

From: Malleum Real Estate Management

RE: Response to Acorn comments re: 540 King St E & additional properties

Date: August 13, 2021

*Response to comments re: 540 King St E:*

Malleum would like to respond to the issues raised during and after the July 5, 2021 GIC meeting related to our management of 540 King Street East.

When Malleum took over management of 540 King Street East, the property was in complete disrepair, unsafe, and unfit for habitation. The property had not been maintained by prior ownership, it was infested with pests, and it had virtually no fire safety equipment and systems. The property had been cited by the City of Hamilton and by-law with orders to comply and major structural work was required.

While we understood the condition of the property when our management commenced, we don't have insight into how prior ownership managed this property. At the commencement of our management of the property, there were six active tenancies and 30 units without valid leases. Within the six active tenancies, four of these tenants had already provided notice to end their tenancies to the prior owner, before our tenure. We suspect the unsafe conditions and serious deficiencies at the property meaningfully contributed to their only being two tenancies that had not yet provided notice to leave at the start of our management.

We have heard the tragic story of [redacted] and we believe that more should be done in order to assist vulnerable individuals. [redacted] was not one of the six active tenancies in place when we commenced managing the property and we understand that her tenancy was scheduled to end in October 2018. We do not have the particulars related to this tenant's rental account under prior ownership nor do we have full details pertaining to any Landlord Tenant Board matters related to this tenancy.

While this tenancy was scheduled to end prior to our management, this individual remained in occupation of a unit at the property past the established tenancy end date, in contradiction of the LTB process completed under the prior ownership. An LTB order to enforce this matter was not received until after we began managing the property and this individual remained in illegal occupation of a unit at the property for months afterwards. In early 2019, a Ministry appointed Sheriff enforced the LTB directive in order to end this illegal unit occupation. This individual did not provide any consideration for their use of the property and we elected not to pursue any further actions after their departure.

Shortly after Malleum began managing the property, in November 2018, one of the two active tenants that had not previously terminated their tenancy provided Malleum with notice to terminate their lease. We agreed to allow this individual to terminate their tenancy with less than the typical 60 day notice period. Again, the unsafe condition of the property and the need for major repair and restoration work contributed to our willingness to allow this tenant to terminate their lease with a short notice period.

We believe that the lone other active tenancy at the property is the tenant whose story has also been publicized by delegates to City Council as well as within the press. We will refrain from disclosing identifying details due to this tenant's privacy, although this tenancy involved a family and the individuals involved remained in possession of a unit at the property until June 2019.

Unfortunately, the situation with this tenant is also extremely heartbreaking, particularly given the involvement of young minors. During our management of the property, this tenant remained in possession of a unit for almost eight months without providing any rental payments to the landlord. While we are willing to work with tenants in order to structure payment arrangements that can preserve a tenancy, we simply are not in a position to allow a tenant to occupy a unit without the tenant providing rental payments.

There were also other very serious issues related to the individuals occupying the unit in question, including alleged physical altercations with representatives of the landlord as well as alleged extensive property damage that we believe was willfully caused by these individuals.

The culmination of these issues led to this tenancy ending, with ultimate Sheriff enforcement of an LTB order occurring in June 2019. During the time in which these individuals occupied a unit at the property, various authorities were contacted by building property management given the involvement of minors and our concerns related to safety.

We strongly support groups like Acorn and would like to see more action taken by all levels of government to stop renovations and other illegal and improper actions by landlords. Further, we would like to see the City take further actions to enforce property standards so that situations like the one in place when we purchased 540 King Street East do not occur in the first place.

We do not have the ability to end tenancies unilaterally in order to upgrade a unit and attempt to achieve a higher rental rate. In any case where a landlord unilaterally ends a tenancy in order to renovate and re-rent a unit to a new tenant, this is wrong and there should be harsh consequences. We believe that any landlords found to have taken such actions, should be denied the right to participate in City of Hamilton grant programs and there should be further consequences levied by any level of government with the authority to do so.

We have no information that suggests that any of the tenancies that ended under the property's prior ownership were improperly terminated via unilateral action by the Landlord; this action would include the improper use of an N13 document where a landlord unilaterally terminates a tenancy with the intent to re-rent the unit to a new tenant instead of offering the unit to the former tenant at their prior rental rate. If it is discovered that leading up to our management of the property, any of the tenancies in place were improperly ended by the building's prior owner, without consent by the tenant or an appropriate order from the LTB, we would be willing to review these matters and would be willing to place the tenant in question in a comparable unit at the same rental rate that existed prior to their tenancy being improperly terminated. We believe this is the right thing to do, despite us not having involvement in these tenancies prior to our management of the property.

In the case of the tenancies in place as of the start of our management, all of these tenancies were ended through either a tenant providing notice to end their lease or via actions before the LTB. In the event that any of these tenants had decided not to provide notice to terminate their lease and assuming these tenants remained in good standing by making rental payments and adhering to their other obligations, we would have maintained these tenancies even after the required extensive repairs and renovations were conducted. In such cases, we adhere to the provisions set out by the Province, in order to protect tenant's rights; including their right to resume occupation of a unit, at their former rental rate, after needed repairs are completed.

We believe that properties like 540 King Street East have a meaningful positive impact on the Hamilton community. We have made a significant investment in this property in order to correct numerous pre-existing deficiencies, including major structural and fire safety upgrades at the property. Absent these actions, these units would not be safe or fit for habitation. This property adds 36 safe rental units to the inventory within central Hamilton and this increase in supply benefits all tenants.

The rental rates at this property are set by the market and these rates account for the condition and amenities within the property. We understand that many groups and individuals take issue with the market forces that determine rental rates. While we respect the right for these groups to make such objections, we believe the repeated opposition to Malleum is simply rooted in a desire to protest against changes in the rental market.

This opposition to Malleum has included a large number of unfair and untrue characterizations. The information delegates provided to Council during the July 5, 2021 GIC meeting is not true and it mischaracterizes the situation in attempt to protest broader conditions within the rental market. We have repeatedly supported groups like Acorn and their efforts to enhance tenant protections and consequences for bad actor landlords. Malleum has also made a meaningful effort to assist groups like Acorn with affordable housing initiatives and we remain committed to working with all parties to enhance tenant protections and to be part of a solution for housing needs within our community.

*Response to additional properties:*

Malleum would also like to address Acorn's comments related to various other properties, besides 540 King Street, that have been managed by Malleum. Overall, we disagree with the information and characterizations that have been provided and believe this information to be unfairly misleading:

*41-43 Albert Street*

At 41-43 Albert Street, which is not currently managed by Malleum, when our management of this property commenced in 2016, there was a significant number of deferred maintenance and pest issues at the property that had been neglected by prior managers. During Malleum's tenure as manager, tenant maintenance requests were addressed as promptly as possible and the condition of the property was meaningfully improved.

When it was discovered that the City of Hamilton only recognized residential use for 12 of the existing 13 units at the property, Malleum invested considerable time and resources in order to attempt to have the City recognize all of the existing units within the property. This effort included appeals to various authorities within the City (including Building and Zoning Departments) as well as an appearance before the Committee of Adjustments. We believed that investing in this process to have all existing units recognized by the City would not only preserve all existing tenancies, which included affordable units, but also support the overall supply of rental housing in the City.

Despite our best efforts, unfortunately, the Committee of Adjustments rejected our application to have all existing units be deemed legal for residential use. As part of this process, numerous delegates from the neighbourhood advocated against our application citing concerns over density and traffic within the area.

Given there was one existing unit that was not legally recognized, we were put in the uncomfortable position of having to decommission a single unit at the property in order to comply with the law. Our preference was to approach existing tenants in order to come to a mutual agreement with one of them whereby an existing tenant would agree to move-out under a timeline acceptable to all parties in exchange for consideration that exceeded the amount mandated by the Province. Unfortunately, we were not able to reach an agreement with any of the existing tenants and we were compelled to undertake the process to unilaterally decommission a unit in order to comply with the City's directive that only 12 of the 13 units were legal. We conducted this decommissioning process under the Provincial framework within the Residential Tenancies Act. This process required an N13 to be served. After the process of decommissioning one of the units was completed, this unit remained vacant for the duration of our management of the property.

Further, after this decommissioning process had concluded and prior to the end of our tenure as manager of 41-43 Albert Street in late 2019, we considered approaching the City a second time in order to attempt to have the decommissioned unit legally recognized. In conjunction, we contacted the prior tenant of the decommissioned unit in order to offer this tenant the unit at their prior rental rate in the event that we could be successful in having the City legally recognize all units at the property. This process was not concluded as the property was sold and Malleum no longer served as the property manager.

*160 Sherman Avenue*

Within the property located at 160 Sherman, this is yet another example of Malleum taking over management of a property that had fallen in to significant disrepair and was unsafe for tenants. These issues became apparent after Malleum began managing the property in 2018. As an example, portions of the property, including entire occupied units, did not have running water or functioning bathrooms.

It became evident that meaningful restoration and repair work would be required and it was unclear whether or not all of the property's existing units could remain permanently intact as a result of this work. Similar to other situations where there is a need to conduct major repair work and/or decommission units within a property, property management attempted to find mutually agreeable solutions with tenants, including providing tenants with consideration that exceeds the amounts mandated by the Province as well as helping tenants secure safe and suitable housing.

In cases where such work is needed and tenants wish to retain possession of their unit, Malleum accommodates these tenants by allowing them to either remain within their units through the duration of the repairs or, if it is not safe for tenants to remain, allowing these tenants to resume occupancy of their unit at their former rental rate when work is completed and the unit is safe for occupation.

The information provided to Council related to 160 Sherman is not accurate and it is knowingly misleading. Tenants who exercised their right to terminate their lease and were offered financial assistance were provided considerably more total consideration than what has been reported to council. We disagree with the characterization that any such tenants were misled or pressured and we reiterate our position that any tenant who wished to remain in their unit would have been provided the opportunity to do so, provided their unit could have been rehabilitated and deemed safe.

*6 Steven & 571-575 King Street*

When Malleum began managing this property there were no ongoing residential leases in place. We aren't aware of the full particulars as to how any of the tenancies formed prior to our management were ended including details related to any LTB processes or the circumstances related to any tenant who

provided a termination notice to the prior manager. There have been a number of instances where Malleum has taken over management of properties that are completely vacant or that do not have any ongoing residential leases where we have been accused of tenant displacement. We believe these accusations are yet another example of groups being critical of Malleum's rejuvenation of such properties in protest against the market conditions that have set the rental rates for such properties.

*293 Kenilworth Avenue*

Prior to Malleum's management, this property was formerly being operated as an illegal rooming house without proper fire safety, sanitation, or zoning. The property had a pest infestation and units did not even have bathrooms. After taking over management of this property in 2018, beyond the horrid unsafe conditions that existed, Malleum was forced to work with occupants at the property to assist in relocation as the City did not legally recognize residential use at this property and we could not allow the occupants to legally remain.

Given our desire to comply with the law, including the City's zoning regulations, all of the units had to be decommissioned under the provincial regulations that exist within the Residential Tenancies Act and Malleum worked with the prior occupants in order to provide the best transition possible.

*1083 Main Street*

When Malleum began managing this property, there were meaningful pre-existing maintenance and pest issues. Many of the units required major repair work, including heating and electrical upgrades in order to ensure these units were safe for tenants. While Malleum no longer manages this property, this work was underway throughout the timeframe in which Malleum did serve as manager.

During our tenure managing the property, significant efforts were made to address deferred maintenance and pest issues and significant work was conducted on the heating systems within the property. This work required management to relocate any tenants using certain portions of the property given heating would not be available within these units while this work was underway.

Management issued an N13 to a tenant related to this work. As part of this process, Malleum found a comparable unit within the property and relocated this tenant to this alternate unit, while maintaining their prior rental rate. Once this work was completed, and it was safe for the tenant to resume occupation of their prior unit, this tenant was moved back in to their prior unit at their prior rental rate. Similar to all other examples, Malleum strictly adheres to its obligations and the tenant protections in place under the law.

We are disappointed with the unfair criticism that Malleum has received and we believe the critical comments provided are exaggerations, mischaracterizations, or simply untrue. Many of these criticisms are wholly unrelated to Malleum management; as an example, Malleum has been criticized for the upkeep of 1083 Main as of September 2019, although this property was not managed by Malleum until three months after this date in December of 2019.

Additionally, one of the tenants at this property, who delegated to council on behalf of Acorn during the July 5, 2021 GIC meeting, provided Malleum with the following message at the conclusion of our management of the property (note that names have been truncated): “Thanks [A] for your prompt response. I guess we forgot to say, but we've had a positive relationship with Malleum (especially you and [C]). Truth is, Malleum has been the best landlord we've had since coming here in 2004 (think there were 8 before Malleum!). Sorry to see you go”

We are deeply concerned about the credibility of the information provided to the City. Further, we continue to be frustrated by the unwillingness of tenant advocacy groups like Acorn to accept our offer to assist with tangible affordable housing initiatives. We remain aligned with the goals of these tenant advocacy groups and we strongly support initiatives to hold landlords to higher property standards and to punish landlords who improperly evict tenants.