



**CITY OF HAMILTON**  
**HEALTHY AND SAFE COMMUNITIES DEPARTMENT**  
**Housing Services Division**

<b>TO:</b>	Chair and Members Emergency and Community Services Committee
<b>COMMITTEE DATE:</b>	April 20, 2023
<b>SUBJECT/REPORT NO:</b>	Renovictions Stakeholder Consultation (HSC23023) (City Wide) ( <b>Outstanding Business List Item</b> )
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	James O'Brien (905) 546-2424 Ext. 3728
<b>SUBMITTED BY:</b>	Michelle Baird, Director Housing Services Division Healthy and Safe Communities Department
<b>SIGNATURE:</b>	<i>Michelle Baird</i>

### RECOMMENDATION(S)

- (a) That Council approve increasing the balance of the Tenant Defence Fund Project ID 6731841801 by \$50 K in 2023 through a transfer from Project ID 6731941901 Hamilton Portable Hsg Benefit to the Tenant Defence Fund Project ID 6731841801; and,
- (b) That staff report back on the outcomes of the Tenant Defence Fund in 2025; and,
- (c) That the item respecting the Tenant Defence Fund be removed from the Outstanding Business List.

### EXECUTIVE SUMMARY

This report updates Council on previous directions regarding the issue of Landlord and Tenant “renovictions” and provides recommendations as next steps on the part of the municipality.

- The issue of a rental unit renovation by a Landlord resulting in Tenant eviction, commonly referred to as a renoviction, in the City of Hamilton was originally raised at the December 10, 2020, Emergency and Community Services (ECS) meeting. Staff were directed, through a motion, to review the issue of renovictions and report back to Emergency and Community Services Committee

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

(ECS) by the end of March 2021. In particular, renovictions are a form of bad faith eviction using an N13 notice under the Residential Tenancies Act and issued to tenants when a landlord uses the premise of performing substantial repairs and renovations to evict tenants.

- On April 8, 2021, Report HSC19011(a) recommended some enhancements to the existing Tenant Defence Fund Program and addressed renovictions as a system-wide issue that impacts some of the most vulnerable renters in the City of Hamilton. This enhancement expanded the program to support tenants challenging rent increases at the Landlord Tenant Board and bad faith N13 renovation notices. Staff were directed to report back to ECS with a framework, including timeline and resources needed to develop a comprehensive strategy for renovictions in the City of Hamilton as part of a recovery plan.
- On Dec 9, 2021, through Report HSC20020(d) – Adaptation and Transformation of Services for People Experiencing Homelessness, approval was granted for up to \$100,000 to hire and retain a consultant to evaluate the feasibility of implementing a bylaw in the City of Hamilton, similar to the renovictions bylaw previously enacted and currently repealed in the City of New Westminster, British Columbia (hereinafter the “New Westminster bylaw”).

The New Westminster bylaw was a licensing bylaw regarding rental units and addresses the issue of renovictions. Central to their licensing bylaw was the premise that tenants should be able to reside within their unit during renovations and subsequent accommodations should have been made to address their needs within the unit or building during the proposed works. The landlord was, as a result, required to apply to the City of New Westminster in the circumstances where it was not feasible to remain in the unit and to satisfy the requirements of the bylaw. The New Westminster bylaw was repealed in 2021 as a result of the British Columbia (BC) government enacting provincial legislation.

It is important to distinguish the jurisdictional powers between the municipalities in British Columbia and the municipalities in Ontario. It is further important to understand the jurisdictional powers between the municipal level and at the provincial level in Ontario. In Ontario, residential tenancies are under the exclusive jurisdiction of the province and matters of dispute are under the exclusive jurisdiction of the Landlord Tenant Board.

The Housing Services Division engaged Enterprise Canada as the consultant to consider a local governance model and possible subsequent bylaws that would target bad faith landlords while ensuring quality improvements to existing rental units. Enterprise Canada engaged with local stakeholders including housing advocates, tenants, landlords, members of Council and Housing staff, etc. They also conducted an

environmental scan of some Ontario local municipalities and others throughout North America, as well as a general survey that was shared widely via stakeholders and the Engage Hamilton platform.

As of 2022, the City has a rental licensing pilot project for Wards 1,8 and part of 14 for rental housing units and buildings or part of buildings with four or less self-contained units, detached homes or town homes. This pilot project has allowed the Housing Services staff to focus on renovictions outside of a licensing regime. The Tenant Defence Fund has a successful track record supporting tenants fighting against bad faith N13 notices from landlords, thus the recommendation to increase and continue funding for that program.

In addition to the recommendations in this report, and as referenced in the Housing Sustainability and Investment Roadmap as one of the eleven priority actions for the first year, Housing Services will be reviewing existing tenant and landlord supports and resources currently available within city government and community partners and reporting back on recommendations for developing and resourcing a city-coordinated tenant response team to address tenant concerns and issues. The Tenant Defence Fund will be part of this review, as well as any recommendations for ongoing resourcing to maximize the program's impact and efficiency.

### **Alternatives for Consideration – See Page 8**

### **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** Project ID 6731841801 (Tenant Defence) has a balance of \$23.5 K which is expected to be fully exhausted by the end of April 2023. With the introduction of Canada-Ontario Housing Benefit (COHB), the funding required from Municipal Housing Benefits has decreased. As of February 28, 2023 Project ID 6731941901 (Hamilton Portable Benefits) has a balance of \$1.4 M, which will primarily be spent on portable housing benefits. Recommendation (a) requests a reallocation of \$50 K to Project ID 6731841801 (Tenant Defence) from Project ID 6731941901 (Hamilton Portable Benefits) to fund \$50 K of legal/paralegal services for clients in 2023.

**Staffing:** No new staff resources are required

**Legal:** No legal implications for the recommendations.

## **HISTORICAL BACKGROUND**

Renovictions is a commonly used term to describe the displacement of tenants from their current rental unit under the premise of a major renovation being conducted in “bad faith”, meaning improperly using renovation to terminate a tenancy. The practice of evicting tenants for bad faith renovations has had a growing impact on the rental market in the past 5 years in many cities across the Province, including the City of Hamilton. Due to this growing issue, the Housing Services Division was directed to explore solutions for this problem and directed to review the previously enacted bylaw regarding renovictions in the City of New Westminster, British Columbia.

In April 2021, Report HSC19011(a) recommended some enhancements to the existing Tenant Defence Fund Program and addressed renovictions as a system-wide issue that impacts some of the most vulnerable renters in the City of Hamilton.

In December 2021, Council approved the recommendation report, “Adaptation and Transformation of Services for People Experiencing Homelessness Update 4 (HSC20020(d)) (City Wide)”. Recommendation (d) of this report read:

“That the General Manager of the Healthy and Safe Communities Department or their designate be authorized to enter into contracts necessary to hire and retain a consultant to evaluate the feasibility of implementing a New Westminster style bylaw in Hamilton to deal with the issue of ‘renovictions’ in the approximate amount of \$100 K, funded from the projected 2021 Housing Services Division surplus through the Tax Stabilization Reserve #110046 and if necessary, from in-year surpluses of the department; any unspent Housing Services Division 2021 surplus be transferred to the Housing Supplement/Housing Allowance Reserve, #112252 be approved;”

Subsequently, Enterprise Canada was retained to undertake a stakeholder review related to renovictions. Report HSC23023 contains the consultant’s findings as Appendix “A” and contains staff recommendations on local solutions that help address the issue of renovictions under the City’s limited authority.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

This review acknowledges that the *Residential Tenancies Act* (RTA) limits the City’s authority in terms of landlord and tenant disputes. The RTA gives residential landlords and tenants rights and responsibilities and sets out a process for dispute resolution.

## **RELEVANT CONSULTATION**

In August 2022, the Housing Services Division engaged Enterprise Canada to lead the engagement process around the issue of renovictions.

Enterprise Canada consulted numerous stakeholders in this review, including in-person interviews. These included:

- City Councillors
- Hamilton legal clinic
- ACORN Hamilton
- City of Hamilton Housing Service Management Team
- Social Planning and Research Council
- Hamilton District Apartment Association

Enterprise Canada also distributed a survey aimed at the populace to further gather information and opinions on the issue of renovictions in Hamilton. This survey was distributed via the stakeholders mentioned above and was hosted on the Engage Hamilton platform.

The online survey collected data between February 13, 2023 and March 7, 2023, for a total of 585 responses.

There were several takeaways from this survey and engagement. Half of the respondents to the survey identified as a tenant, while a little more than one in 10 identified as a landlord. More than one-third identified as homeowners or citizens concerned about the issue of renovictions. Among those who identified as landlords, 30% predicted they will need to undertake a renovation that will require displacement, and 37% of tenants felt they would be displaced for the purposes of a renovation.

From both the landlord and tenant perspective, there is a feeling that there is room for more education on the rights and responsibilities of when a rental unit is to be renovated.

Housing Services Division staff consulted with staff from Licensing and Bylaw Services as they are in the early stages of a two-year rental housing licensing pilot program in Wards 1, 8 and part of 14.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The City's focus on renovictions has been framed to focus on stopping bad faith landlords evicting tenants through the guise of renovations and create support to ensure landlords acting in good faith are able to fulfill their obligations while improving units and conducting major necessary repairs to rental units.

The Housing Services Division work on renovictions started with an analysis of what powers a municipal government in Ontario has regarding renovictions.

The example of a renoviction bylaw that City staff were directed to investigate was the repealed bylaw from the City of New Westminster, BC. The legal analysis of

jurisdictional powers determined that the municipal powers for Hamilton, Ontario are different from those granted to New Westminster, BC due to the governing Provincial legislations. In Ontario, the powers granted to a municipality are through the *Municipal Act*, 2001, SO 2001, c. 25 (hereinafter the “Municipal Act”). The Municipal Act differentiates municipalities on a tier system. The City of Hamilton is a single-tier municipality and as such, the authority under which it may pass bylaws is outlined in section 10 of the Municipal Act. In contrast, British Columbia has the *Community Charter*, SBC 2003, c.26 (hereinafter the “Community Charter”). The Community Charter provides fundamental powers that a municipality has and that council may implement, regulate and prohibit under subsection 8(3).

Although both municipal acts allow for bylaw enactment, there are substantial differences between the two. For our purposes, the Community Charter provides for a direct reference to the BC *Residential Tenancy Act*, SBC 2002, c. 78, in subsection 63(f). Subsection 63(f) of the of the Community Charter in BC indicates that the authority of Council may be exercised to implement a bylaw under the sphere of authority for the protection of persons and property in relation to a rental units and residential property as defined by the *Residential Tenancy Act*, subject to a tenancy agreement. In contrast, the Municipal Act provides no direct reference.

In addition, in terms of evictions or terminating a tenancy, the City cannot interfere with the requirements as set out in the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 (hereinafter the “RTA”). Section 37 of the RTA provides that clear exclusivity has been made for the RTA to govern terminations of tenancy.

The New Westminster bylaw was enacted in 2019 and was an amendment to their *Business Regulations and Licensing (Rental Units) Bylaw*, with a view to protect renters from renovictions. On November 15, 2021, the City of New Westminster repealed Part 6 of the bylaw in response to changes made to the BC *Residential Tenancy Act* in July 2021, which rendered Part 6 of the City’s bylaw inoperative.

These two key points scoped the area of focus for what an Ontario municipality can do to minimize the displacement issue related to renovictions while also working to not negatively impact the quality of the rental housing stock.

### **Tenant Defence Fund**

In April 2021, the City expanded the Tenant Defence Fund (TDF) to include renoviction applications at the Landlord and Tenant Board (LTB). The Tenant Defence Fund Program provides financial and other support to assist eligible tenant groups to prepare and present a defence against “Above Guideline (Rent) Increases”, defined as a rental increase above provincial guidelines, and/or renoviction applications at the Landlord Tenant Board. The fund was originally established in 2019 with a budget of \$50,000.

Prior to the expansion of the Tenant Defence Fund to include matters involving renovictions, there was very limited uptake in the program. Since the expansion of the program, there has been an increase in the number of applications for funding through this program.

The Tenant Defence Fund has been a valuable resource for tenants to access and has been promoted and supported by the Hamilton chapter of ACORN Canada. The average ask through the program by tenants has been \$900 and has led to the majority of tenants successfully defeating an N13 termination notice and being able to remain in their residence. The tenants who lost at the LTB accepted their pay out and were required to find another residence. In multiple cases, the hearing didn't occur as the case was dropped by the landlord once they found out the tenant had representation.

To date, all the Above Guideline Increase related applications that were funded through the TDF have been successful and has represented 373 tenants. To date, 56 tenant applications through the TDF have been received related to N13's and 22 of the N13 related tenant applications have resulted in the tenant being able to continue their tenancy, with 29 applications of the 56 are still ongoing.

The following statement details the impact of the TDF as expressed by a tenant who accessed the funds:

"The Tenant Defence expansion to cover renoviction has been instrumental in ensuring low-income tenants have access to legal representation to fight to keep their affordable housing. Low-income tenants cannot afford to lose their homes."

Since the expansion of the TDF and the increases in utilization, the original budget of \$50,000 is expected to be exhausted by the end of April. This useful program is a major key to the impact municipal government can have on renoviction matters. The Tenant Defence Fund works within the jurisdiction of the current legislation but ensures that tenants are provided the information and resources required to avoid displacement by terminations of tenancy based on bad faith landlords.

The successful track record of the program highlights that this is a positive initiative to assist in the problem of bad faith renovictions, and that new funding for the program is a systemic support to tenants on this issue.

### **Tenant and Landlord Education and Engagement**

In addition to the recommendations in this report, the Housing Services Division will be reviewing existing tenant and landlord supports and resources currently available for impact and efficiency.

A recurring theme throughout the consultative process was the need to support tenants in knowing their rights, but also the need to support tenants in exercising their rights. Reviewing the existing tenant and landlord engagement and education resources will help to understand where there are areas of improvement and the resources required to enhance existing programs and processes, with a focus on educating and helping tenants be informed of their rights related to N13 evictions, exercising their rights with providing notice of their intention to return after a renovation to their landlord and keeping them connected to the landlord during this process as well as working with landlords to ensure they understand the scope of their responsibilities and requirements before issuing N13 eviction notices will be part of this review process. .

By focusing on new funding for the existing TDF and working within existing resources for education and supporting tenants in exercising their rights, the City is able to offer supports and resources to help minimize the issue of displacement while still allowing for the maintenance of quality rental housing in the City of Hamilton.

This work can proceed while we await the results of Licensing & Bylaw Services' two-year rental housing licensing pilot program.

A recent provincial update also addresses the issues in this report.

The Province of Ontario has proposed significant changes to the issue of Renovictions under Bill 97, *Helping Homebuyers, Protecting Tenants Act, 2023*. Bill 97 is proposing to make amendments to the *Residential Tenancies Act* and specifically subsection 50(3) to provide that a landlord giving notice of termination of a tenancy for the purposes of substantial repairs or renovations that require a building permit and vacant possession must accompany the notice with a report prepared by a person with prescribed qualification. In addition, section 53 of the *Residential Tenancies Act* is proposed to be amended that if a tenant gives notice for first right of refusal, the landlord must provide specified notices to the tenant respecting the unit's readiness for occupancy. When the unit is ready for occupancy, the landlord must give minimum 60 days to the tenant to exercise their right of first refusal to occupy the unit. Also, Bill 97 has increased fines within the Act under section 238 to \$100,000 for an individual and \$500,000 for a corporation. Staff will need to undertake a more detailed review of these legislative updates.

## **ALTERNATIVES FOR CONSIDERATION**

The City could look to create a funding source for renovations targeted at units where the landlord is considering displacement and increasing the rent they receive for the unit. This program could fund the renovations with a requirement for an affordability period. The program would require the voluntary participation from landlords. While not resolving the issue of displacement during major renovations, the program would



increase the ability of the City to ensure the displaced tenant is able to move back into the existing unit once renovations are completed.

The average cost of a renovation that requires displacement is not known, so a program budget could be established as a pilot program of \$50 K as an alternative to the above recommendations.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement and Participation**

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

### **Healthy and Safe Communities**

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

### **Built Environment and Infrastructure**

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

### **Our People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report HSC23023: Renovictions Stakeholder Consultation Report