

Municipality of Chatham-Kent

Health and Human Services

Employment and Social Services

To: Mayor and Members of Council
From: Polly Smith, Director, Employment and Social Services
Date: October 24, 2023
Subject: Changes to the Landlord Tenant Board Tribunal System

Recommendation

It is recommended that:

1. A letter be sent to local MPPs, the executive chair of Tribunals Ontario, the Attorney General, the Minister of Municipal Affairs and Housing, the Premier of Ontario, and copied to all municipalities in Ontario requesting that the Government of Ontario immediately move forward on the 61 recommendations of the “Administrative Justice Delayed, Fairness Denied” Ombudsman’s Report to help preserve tenancies, affordable units, and the safety and security of both landlords and tenants in Chatham-Kent.

Background

On July 10, 2023, the Director of Housing Services Operations provided an update to Council on the state of homelessness in Chatham-Kent. This update painted a rather sobering picture of the challenges of ending homelessness, including the likelihood that homelessness will continue to increase in the near future. Federal, provincial, and local data shows that it is vital to increase affordable housing stock to reduce homelessness in Canada; Chatham-Kent is actively working to meet this need.

The only thing that most people experiencing homelessness have in common is the lack of access to affordable rental housing. The amount of people newly entering homelessness is increasing due to this and other upstream issues. In all situations, there is a need for additional affordable housing. Chatham-Kent cannot be a “Housing First” community without more available affordable housing.

However, there are other actions municipalities can take beyond building housing that will help preserve housing affordability in the community. There are still many privately owned units in Chatham-Kent that have affordable rents due to long-term tenancy and remaining legislated rent controls. These tenancies should be preserved whenever possible.

As noted at the Association of Municipalities of Ontario (AMO) Symposium on Homelessness, municipalities can support the preservation of lower cost housing and add affordable housing stock in their communities by taking steps like:

- Advocating to upper levels of government (i.e.: MPs, MPPs, AMO and OMSSA) for legislation that protects tenants, incentivizing or maintaining affordable housing, and increasing incomes of low income citizens.
- Creating public awareness campaigns to build community support, address NIMBYism, and involving the private sector and non-traditional partners like CK Cares and community forums.
- Offering supports to affordable housing providers after “end of mortgage agreements” to avoid losing more units.

Outside of social housing, tenants evicted from an affordable unit are replaced with a tenant who can pay a higher rent. This means that lower cost unit is lost to market rent forever. There are times when evictions are warranted or even desperately needed for the safety and well-being of others. However, especially in today’s market, there are also times when tenants lose their homes wrongfully and then are unable to find new affordable accommodations. Renovictions and “new owner move-in’s” are increasing; many are not legitimate and are contributing to the homelessness crisis. The Landlord and Tenant Board tribunal is where these kinds of issues, among others, are meant to be resolved to ensure housing is upheld as a human right, and that the rights of both landlords and tenants are upheld under the Residential Tenancies Act.

During the pandemic the provincial government changed the way that the Landlord and Tenant Board operates, moving to a primarily virtual/online system. Shortly after implementation, this system was made permanent and the former system was dismantled. Legal Clinics and tenant advocacy groups have been following this change and have expressed serious concerns about the equity and efficiency of the new system, as does the Ontario Ombudsman.

The Ontario Ombudsman released a report called “Administrative Justice Delayed, Fairness Denied”, outlining 61 recommendations calling for an overhaul of the system and legislative change after receiving more than 4000 complaints, 90% of those from landlords. [Administrative Justice Delayed, Fairness Denied - Ontario Ombudsman.](#)

Comments

Many low-income residents and seniors in Chatham-Kent are part of the ‘digital divide’. This means they may have less access to digital technology like computers, internet, virtual meeting software, and smartphones. Even with technology these individuals may lack the capacity to properly put forward their position before the Landlord and Tenant Board of Ontario (LTB).

This virtual model is more often adversely affecting tenants. It has been found that landlords are more likely to participate in these hearings by video than tenants, putting tenants in a disadvantage at their hearing. Tenants now have to file electronically

without any local support from the LTB and wait for seven months to two years to have their applications heard. Tenants cannot easily obtain the relevant documents for their hearing because documents are stored electronically and are not easily made available on the day of the hearing. Tenants receive less support from the Chatham-Kent Legal Clinic whose staff are serving numerous residents in multiple hearing blocks that now occur at the same time.

The new tribunal system is primarily online and has gone from three in-person hearing blocks per month that were dedicated to serving Chatham-Kent residents, to 30 to 40 virtual hearing blocks per day hearing applications from across the province. Regional offices are one to two hours away and are not open to the public. Wait times have significantly increased and the new system has created multiple barriers to access for Chatham-Kent residents.

Wait times were noted as a significant problem for landlords in the article “Landlords aren’t being paid. Tenants are feeling squeezed. And the system that’s supposed to help is broken”, of September 2023 by CBC News Toronto, where they outlined the story of a “small” landlord who owns one rental condo and was owed \$34,000 in rent arrears by his tenant. The owner purchased this unit several years ago to prepare for retirement and this delay has put him in crisis. CBC called the current state of affairs in the tribunal a crisis as well. [Landlords aren't being paid. Tenants are feeling squeezed. And the system that's supposed to help is broken | CBC News](#)

The Municipality had awareness of the backlog through the pandemic as Chatham-Kent is a landlord and a service manager for the partners in social housing, the private non-profits housing providers. Backlogs in the LTB tribunal system seem to have contributed to landlords being less likely to ‘take a chance’ on someone who has had any kind of rental difficulties in the past. It has taken up to two years to evict some tenants who were deemed dangerous. Community partners have experienced similar issues. At the same time in housing placement programming, potentially good tenants are being denied units because the risk to the landlord is too high with the longer tribunal wait times.

Chatham-Kent was further informed about the issues and potential solutions in June of this year at the OMSSA Leader’s meeting where 47 service managers heard from the Advocacy Centre for Tenants Ontario’s (ACTO) Director of Advocacy and Legal Services about these challenges.

ACTO is a specialty legal clinic with a provincial mandate to advance and protect the interests of low-income tenants. ACTO also provides legal information and assistance to self-represented tenants appearing at the LTB through the Tenant Duty Counsel Program (TDCP).

Employment and Social Services staff noted these challenges within the homelessness prevention program and have been spending additional hours trying to support clients to be able to participate in their hearings. Landlords have called the administrator of Employment and Social Services complaining about having to wait for nine or more

months before going to the LTB over unpaid rent, losing thousands of dollars. There was hope that these challenges would be resolved post-pandemic but it has become clear that the new virtual model is not temporary and it appears inefficiencies remain.

Highlights from the Ombudsman's Report

The Ombudsman's report was released on May 4, 2023. The investigation began in January 2020, when delays at the LTB were seven weeks for landlords to have their applications heard and eight weeks for tenants. When the report was released, those delays increased to six to nine months for landlord applications and up to two years for tenant applications. The report consisted of 97 pages with 61 recommendations that were accepted by the Ministry of the Attorney General, the LTB, and Tribunals Ontario who are responsible for the LTB and the cluster of provincial tribunals. In response, the government then announced 6.5 million dollars to add 40 adjudicators and five board staff. In 2020 there was a backlog of 20,000, and in May of 2023 the backlog increased to 38,000.

The Ombudsman's report noted that service standards were not being met. For example, entering applications into the system was supposed to be completed within three days of receipt but was taking three months. Hearings for evictions and rent collection were supposed to be held within 25 days but were not being held for more than 66 days. Proceedings in French had longer delays and forms only identify the applicants, not the respondents, who require services in French.

The following areas were identified by the Ombudsman for improvement:

- Member recruitment and appointments
- Application screening
- Hearing scheduling and case triaging
- Managing adjournments
- Identification and processing of urgent cases
- Tracking of the expiration of member terms
- Order issuance
- Monitoring of outstanding orders and mediations
- Identification and processing of cases requiring French language services

The report outlines numerous stories of tenants and landlords suffering under the current system failures. A few of the examples provided:

- A couple living on disability support sought compensation from their landlord in March 2020 for water damage to their belongings. They did not get a hearing until December 2021. **(Paragraph 36)**
- A tenant who had health issues due to her landlord's harassment and unkempt property applied for a hearing in December 2020. She moved out in May 2021. Her hearing was set for January 2022, then moved to April 2022. **(Paragraph 37)**

- A tenant who complained of criminal harassment by her landlord in September 2020 was denied an expedited hearing. The hearing was set for November 2021, then adjourned to February 2022. **(Paragraph 39)**
- A 74-year-old landlord applied in December 2019 to evict a tenant who assaulted him and damaged property; an order wasn't issued until January 2021. **(Paragraph 41)**
- A 78-year-old woman who depended on income from a rental unit to pay for a personal support worker for her 90-year-old husband applied to evict an abusive and non-paying tenant in March 2020. She became depressed and suicidal after waiting more than six months to hear from the Board. **(Paragraph 44)**
- Two tenants on disability support who are legally blind and suffered in an unsafe, vermin-infested apartment for years sought an expedited hearing in November 2020. They were denied and told they filed the wrong form. They had moved before the matter was finally heard in June 2021. **(Paragraphs 157-160)**

Before the LTB proceeded with its virtual model, the former system provided mediators at every sitting, adjudicators were able to hear both tenant and landlord cases (which was particularly helpful when disputes regarding the same address were brought forward to the Board), and some locations offered municipally-resourced eviction prevention services on site. In Chatham-Kent residents and landlords knew these sessions and services took place at the WISH Centre three times a month. If someone needed assistance filing, they could receive that help in person. Vulnerable people living throughout Chatham-Kent could be provided with affordable transportation options through the Municipality or local service providers. The services and supports through the process were well-used and consistent.

The Chatham-Kent Legal Clinic (CKLC) staff and others have noted that the new system was intended to be more modern and efficient but instead has caused fewer tenants to attend their hearings and fewer tenants being able to participate due to the digital divide. CKLC staff have reported multiple Chatham-Kent cases being heard at the same time and having to jump between hearing blocks to try to support residents. The stress to overcome the digital divide is often too much to bear with tenants giving up before their case is even reviewed. This leaves tenants at a disadvantage and increases the number of lost tenancies that otherwise would have been maintained when the LTB provided regional in-person services. Again, each time an affordable unit is lost, the household is displaced and the affordable unit is lost to market rent forever.

Douglas Kwan, Director of Advocacy Centre for Tenants Ontario, will present the challenges with the current system as well as potential solutions. It is these solutions that are the focus of a proposed letter (Appendix A) from the Mayor and Council of Chatham-Kent, with the goal to promote changes providing a better system for all and preventing unfair evictions that could lead to homelessness.

While the province has taken some steps to improve efficiencies and fairness at the LTB, there appears to be much more to be done to achieve their mandate to provide “fair, accessible dispute resolution to thousands of Ontarians”.

Areas of Strategic Focus

This report supports the following areas of strategic focus:

			
Deliver Excellent Service	Promote Safety & Well-Being	Grow Our Community	Ensure Environmental Sustainability
	2A		

Consultation

The Director of Legal Services was consulted on this report. As well the Director of Advocacy Centre for Tenants Ontario and the Executive Director of The Chatham-Kent Legal Clinic were consulted in the preparation of this report.

Communication

The Chatham-Kent Communications Team will create awareness of the issues as well as the supports and services available now for tenants and landlords as part of the CK Cares public awareness campaign.

Diversity, Equity, Inclusion and Justice (DEIJ)

A fair and accessible landlord and tenant board system is essential to maintaining equity to justice in the residential tenancies act. This report and recommendation is very much about DEIJ for Chatham-Kent area residents for the following reasons:

- Lower income, rural, and First Nations households have less access to high-speed internet to participate in virtual meetings.
- Fewer tenants than landlords have access to video technology and have to participate by phone.
- Hearing adjournments are being denied even for French language needs.
- Access and affordability of transportation for in-person supports at regional offices for lower income residents, for example there is no bus to get from Wheatley to London.
- There is a lack of bilingual adjudicators.

Financial Implications

There are no financial implications resulting from the recommendations.

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Consulted and confirmed the content of the consultation section of the report by:

Dave Taylor, Director, Legal Services

Attachments: Appendix A (letter)

c. Dave Taylor, Director, Legal Services