



Advocacy Centre
for Tenants Ontario | Tenant Duty
Counsel Program



Hamilton Community Legal Clinic
Clinique juridique communautaire de Hamilton

January 8th, 2024

SENT BY EMAIL : angela.mcrae@hamilton.ca

General Issues Committee
City of Hamilton
2nd Floor
71 Main Street West
Hamilton, Ontario
L8P 4Y5

Re: Challenges at the Landlord and Tenant Board and its Impact on Hamilton's Housing Crisis

Dear General Issues Committee;

Please accept this cover letter, slide deck, and a letter from the Municipality of Chatham-Kent written to the Province, Tribunals Ontario, and the Landlord and Tenant Board's ("LTB") seeking systemic changes to its service delivery letter for inclusion in the agenda for the meeting on January 17, 2024. These materials are in support for our request that the City of Hamilton send a similar letter and to direct staff to carry out its wishes on the matter.

About HCLC and ACTO

The Hamilton Community Legal Clinic (HCLC) is a community legal clinic that serves low income residents from anywhere in the City of Hamilton, including the Mountain, Stoney Creek, Dundas, Ancaster, Waterdown, Flamborough, Mount Hope, Glanbrook and Winona. Our aim is to be as accessible as possible to those who may need our services. We are committed to adapting our services to meet community needs and working with individuals, groups and service providers to improve legal rights and promote access to justice. Our staff and board members are active in local as well as provincial networks, agencies and coalitions to further this goal.

The Advocacy Centre for Tenants Ontario (ACTO) is a specialty community legal clinic with a province-wide mandate to advance and protect the interests of tenants living with lower incomes. This is accomplished through our work in systemic litigation, policy and law reform, community organizing, and public legal education. ACTO also provides legal information and assistance to self-represented tenants appearing at the Landlord and Tenant Board through the Tenant Duty Counsel Program.

Background

As Council may be aware, the Landlord and Tenant Board is entrusted to resolve disputes between tenants and landlords under the Residential Tenancies Act. The Board achieves this by adjudicating issues between the parties and assists in resolving matters before they reach adjudication such as the use of mediation or releasing important information guides on the rights and responsibilities of the parties. When the LTB is not operating effectively, the public loses faith that their rights and responsibilities will be protected. That dysfunction has a direct impact on the housing and homelessness crisis that has gripped the province.

Three years ago, the Board adopted a remote service model which permanently removed all in person services to the public. This change marked a significant decline in the Board's ability to resolve disputes in a timely fashion, created a digital divide for many tenants preventing them from fully participating in their hearings, and it created a situation whereby homelessness prevention programs that had worked well with the in-person services at the Board to save tenant households from being unfairly evicted and left homeless are now less effective.

Impact on Hamiltonians

For Hamilton residents this meant losing the regional office located at the Ellen Fairclough Building. That building also was known in the community as the ODSP office making it relatively easy for Hamiltonians to find and attend their hearing. Closing that office meant that Hamiltonians lost access to their counter service which provided support for people filling out forms and obtaining essential documents to understand their case. The loss also meant that Hamiltonians no longer had guaranteed access to the Board's Dispute Resolution Officers (mediators) on the day of their hearings and access to tenant duty counsel were reduced. Far more matters were proceeding to merit hearings because of the decreased support from mediators and duty counsel and thus lengthening the hearing blocks. Hamiltonians also lost the benefit of having three dedicated days every week to hear only their disputes at the Board. The removal of in person services created a situation where Hamiltonians in 2018 used to wait approximately 30 days to have their applications heard and now that wait has ballooned to between 6 months to two years.

The impact that this has had on the housing crisis has been profound. The removal of in person services created [situations](#), in Hamilton and elsewhere, where the majority of tenants (55.6%) participated in their hearings by phone whereas the majority of landlords (74%) participated by video and in other situations tenants could not participate at all due to the digital divide. This has led to evictions that could have been [prevented](#) and other negative outcomes that have exacerbated the housing and homelessness crisis.

Municipalities have had to devote more resources to supporting its vulnerable residents and in most cases are not able to bridge the digital divide that the LTB has created. Tenancies that would otherwise be sustained through intervention from a municipal

homelessness prevention program, tenant duty counsel, or mediation services are now falling through the cracks because of the removal of in-person services at the LTB. As you may know, once an affordable housing unit is taken from a community then it is lost forever because of rent control exemptions. As the city and the province are not replacing affordable units at the same rate as we are losing units it is imperative that the city does everything in can to preserve its affordable housing stock

LTB Operational Decisions Leading to Dysfunction

- 1) Removing regional scheduling and having disputes from across the province heard at every hearing block preventing adjudicators from understanding the local housing conditions and becoming familiar with the parties in order to issue just decisions, Toronto and other cities with larger tenant populations have their matters heard more frequently than Hamilton disputes, and homelessness prevention programs could no longer efficiently help residents without a hearing block dedicated to them.
- 2) The permanent closure of the regional office in Hamilton and elsewhere have slowed the LTB's ability to address urgent matters, parties cannot easily access documents without overcoming several digital barriers, and residents can not ask questions from knowledgeable and experienced staff to ensure that simple mistakes are caught prior to the day of their hearing.
- 3) Only select virtual hearing blocks are assigned mediators and moderators (virtual concierge helps participants on the day of their hearing to navigate the process) leaving adjudicators to themselves to manage the virtual waiting area, move people to breakout rooms and adjudicate the complex matters before them.
- 4) Where there are multiple applications regarding the same address they are heard in separate hearing blocks and assigned different adjudicators which is both inefficient and creates a situation where unfair and inconsistent outcomes may arise.
- 5) Hallway conversations that used to resolve a large number of applications before proceeding to adjudication are no longer possible with virtual hearings with most matters proceeding directly for adjudication and increasing the Board's backlog;

What Did the [Ombudsman Office](#) Say?

- 1) "A significant number of tenants, in contrast to landlords, do not have access to video technology and must participate in hearings by phone," while the landlord and the adjudicators are in a video hearing room. Some tenants lack access to phones, rendering their participation in virtual hearings impossible without accommodation (Ombudsman's report, para. 198).
- 2) Virtual hearings are "chaotic," with participants struggling and sometimes failing to join their hearing, or "losing audio connection part way through." Adjudicators reported being unable to find and share documents on screen during a hearing. People are inappropriately placed on mute. Tenants cannot review documents when the landlord presents them and cannot share their screen if they have relevant evidence to rebut the landlord's evidence (Ombudsman's report, para. 215-220).

- 3) Delays in issuing Orders, the former Associate Chair admitted, “this is not ideal – let me be clear. We used to do 4 [days to issue orders], now we’re at 30. We have a serious problem.” (Ombudsman’s report, para. 238)
- 4) Landlord applications took an average of 6 to 9 months to be heard but tenant applications about maintenance and tenants’ rights issues took up to 2 years with some applications from 2017 yet to be resolved. (Ombudsman’s Report, para. 6).
- 5) It was unconscionable to permit tenant applications to lie dormant for up to six years. “The official said the Board generally prioritized scheduling of landlord applications to reduce the backlog, because it could hear more applications in the available time. While tenant applications may be more time intensive, this does not justify shelving them in order to process landlord matters that can be more expeditiously disposed of. The Board should immediately triage the outstanding tenant matters”; (Ombudsman’s report, para. 148);

The Ombudsman concluded that “[d]espite the dozens of specific recommendations I have already made, addressed at improving efficiencies ... at virtually every stage, I believe that more is required...Over the past few years, the Board has proven itself unequipped for the task of reducing its extraordinary backlog of applications...[the] Board is fundamentally failing in its role of providing swift justice to those seeking resolution of residential landlord and tenant issues.” (para. 306)

Recent Announcements Will Not Resolve the Crisis

With over three years of dysfunction with its remote service model, the Board is continuing to forge ahead with this system even despite the scathing report from the Ombudsman. Over the last two years, the LTB announced that they would send a computer and/or a flip phone to parties if an LTB Vice Chair agrees that an accommodation is needed and the provinces funding announcements of more staff and adjudicators. During that same time the backlog increased from 32,800 in April 2021 to 53,057 by March 2023.

The most recent announcement was an influx of \$6.5 million from the province’s contingency funds to hire 40 additional adjudicators and five office staff. This announcement occurred at a time when the LTB was struggling to process a significantly reduced workload (compared to pre-pandemic levels) with an unprecedented number of adjudicators. There were 36 full time and 45 part time adjudicators in November 2022 when the Board was receiving anywhere between 19,000 to 7,000 fewer applications than its pre-pandemic caseload. By comparison, in 2010/11, the LTB had 46 full time and 10 part time adjudicators with a caseload of 80,000 applications. In that year, applications were heard between 5 weeks for most matters to 26 weeks for complex cases compared to the 7 to 8 month average for all applications in Fall 2022.

Our Request

In summary, the appropriate solution must address the problems created when the Landlord and Tenant Board removed in-person services by making in-person services the default and not the exception, returning to regional scheduling to support

municipalities other than Toronto and Ottawa, and re-opening counter services at the Ellen Fairclough building to improve early intervention supports to tenants.

We are available to answer any questions or comments that you may have.

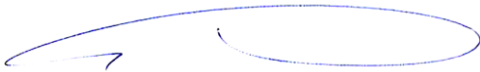
Sincerely,

A handwritten signature in blue ink, appearing to be 'DK', with a long horizontal stroke extending to the right.

Douglas Kwan
Director of Advocacy and Legal Services, ACTO

A handwritten signature in blue ink, appearing to be 'CF', with a long horizontal stroke extending to the right.

Clare Freeman
Executive Director
Hamilton Community Legal Clinic

A handwritten signature in blue ink, appearing to be 'MO', with a long horizontal stroke extending to the right.

Michael Ollier
Legal Director
Hamilton Community Legal Clinic