Landlord's Self-Help Centre
Position Paper on Legislative Amendments
Prepared for the Parliamentary Assistant to the Minister
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GROUP 1 – ADMINISTRATIVE CONCERNS

1. Clarify rules about entry into the rental unit, both regarding time of entry and duration. The ***Wrona v.TCHC, [2007] Divisional Court 347/06*** decision on appeal of a Tribunal order dismissing a tenant claim was disturbing and inconsistent with the landlord's obligation to repair, maintain and keep fit for habitation. It also ignores the reality that landlords don't control the schedules of trades people. The application of s. 27(3) by the Courts, the Board and the Ministry's Investigations and Enforcement Unit are inconsistent, using different interpretations of what constitutes a lawful notice of entry.

2. Modify the Board's Rules of Practice so that email is an accepted method of service, <u>at very minimum for notice of entry into the unit.</u> If you contrast the percentage of tenants who use email versus fax for routine communication, including with their landlords, the current Rules are inconsistent with the concept that the law grows and must be interpreted so as to recognize and keep pace with changes within society.

3. Amend section 136 as follows to eliminate the unexpected effect of ***Price v. Turnbull's Grove Inc., 2007 ONCA 408*** which was decided at the Court of Appeal. This decision renders meaningless the one year limitation, amnesty or deeming provision that was added to the *Tenant Protection Act* and carried over to the *Residential Tenancies Act* to provide certainty and finality with respect to the amount of the lawful rent, particularly for those buying a rental property.

Rent deemed lawful

136. (1) ***Notwithstanding and despite section 116,*** *the rent charged one or more years earlier shall be deemed to be lawful rent unless an application has been made within one year after the date that amount was first charged and the lawfulness of the rent charged is in issue in the application. 2006, c. 17, s. 136 (1).*

Increase deemed lawful

(2) ***Notwithstanding and despite section 116,*** *an increase in rent shall be deemed to be lawful unless an application has been made within one year*

after the date the increase was first charged and the lawfulness of the rent increase is in issue in the application. 2006, c. 17, s. 136 (2).

4. Clarify section 43(2)(a) which is being applied by the Board to mean that once a notice of termination is given, the tenant's obligation to pay rent ends. The section should be amended to make it clear that an N4 notice given for rent arrears (or a conduct notice such as an N5, N6 or N7) does not eliminate the tenant's obligation to pay rent during a 60 day notice period or to the end of the lease term, assuming there is term remaining, if the tenant moves out after receiving the notice. This encourages lease-breaking conduct and is unfair, severely at conflict with the common law at contract. A party acting badly should not be entitled to unilaterally rescind the terms of an agreement.

5. Clarify s. 74(14) of the *Act* so that the Board has a consistent approach on void motions filed by a tenant after the landlord has filed an order with the Sheriff but before the Sheriff has enforced the order. The amendment needs to clarify that the tenant must have paid all the rent owing to the date of the motion hearing, and not just the date on which the motion was filed, which could be a month or more earlier. It's absurd and patently unfair that a tenant can void an eviction order for rent arrears, and still owe a month's rent or more.

Order of Board

(14) Subject to subsection (15), if a tenant makes a motion under subsection (11), the Board shall, after a hearing,

(a) make an order declaring the order under subsection (3) to be void, if the tenant has paid the ***sum of the*** *amounts set out in subsection (11)* ***as of the date of the hearing of the motion****; or*

(b) make an order lifting the stay of the order under subsection (3), if the tenant has not paid the amounts set out in subsection (11). 2006, c. 17, s. 74 (14).

6. Revise the disclosure Rule (Rule 19) to more closely mirror those in the Small Claims Court. A respondent, landlord or tenant, should have a right to be aware of the case against them before they arrive at a hearing, particularly with the tenant's right to raise s.82 issues at a rent hearing.

7. Fix the "*one year limitation*" problem on money unlawfully collected or retained. Currently a tenant can sue the landlord for years of un-paid LMR interest even though s. 135(4) seems to have been intended to limit it to one year. The decision **Dollimore *v. Azuria Group Inc., [2002] O.J. No. 4408 (Div. Ct.),*** was the source of the problem and the *Act* should be amended to fix the

confusion. This is consistent with the long-honoured tradition of the legislature and the judiciary engaging in a dialogue once a provision is struck down or interpreted in a manner that is inconsistent with the legislature's original intention:

Time limitation

(4) No order shall be made under this section with respect to an application filed more than one year after the person collected or retained money in contravention of this Act or the Tenant Protection Act, 1997. 2006, c. 17, s. 135 (4).

8. There should be consideration to amending the s.53 provisions of the *Act* regarding the tenant's right to return to the unit in applications for renovation, when the revised configuration of the complex makes it impractical or impossible to do so, for instance, a rooming house converted to a single family home.

9. The N5 notice of termination is confusing and not understood by most small landlords. To assist in preventing unreasonable dismissals, section 68 of the *Act* should be amended as follows so a tenant cannot, at a hearing, claim he or she "didn't" void the first N5 termination notice for conduct even though the landlord considered it voided and the matter resolved;

Notice of termination, further contravention

68. (1) A landlord may give a tenant notice of termination of the tenancy if,

(a) a notice of termination under section 62, 64 or 67 has become void as a result of ***in the landlord's opinion,*** *the tenant complying with the terms of the notice.*

10. Consideration should be given to broadening ss.62 and 89 of the *Act* (notice of termination and application for damages) so that landlords can go to the Board for damages arising out of a tenant's conduct if the damages are losses incurred, and not just physical damage. Considering the broad latitude that the Courts have given tenants on tenant claims over the last 5 years, it is paradoxical and inefficient that a landlord need go to Small Claims Court if the tenant is still in possession in cases when:

- A landlord has to bring in a company to clean up the mess because a tenant won't clean up an infestation, or

- The landlord incurs costs when he must tow a broken-down and un-plated car that a tenant won't remove despite a tenancy agreement that stipulates otherwise, or

- The landlord incurs costs levied by the fire department because of an alarm being pulled by a tenant or their guest as an act of vandalism.

The current legislation doesn't permit landlords to bring claims to the Landlord and Tenant Board for any of these conducts, although sometimes Board Members seem to look the other way or be unaware of the strict wording. The Courts have said that tenants have a right to general and special damages, almost every sort of damage is available to them through the LTB, in contract, tort and statute, with no requirement to make a separate trip to Small Claims Court.

GROUP 2 – COMMENTS AND SUGGESTIONS FROM CONSTITUENCY

11. Small landlords are frustrated by their interaction with the Board's adjudicative wing. They see the overall system as being unfair towards landlords, overly procedural and over-regulated. This extends not only to the statute and Rules, but to the predisposition of many of the adjudicators.

12. The Ontario Human Rights Commission's Rental Housing Policy, applied by Landlord and Tenant Board adjudicators, appears to be about punishment and compensation for tenants, not about education. A small landlord renting out his or her basement is treated the same as the largest, for-profit or non-profit landlord with respect to the application of the new policy. Small landlords do not have the financial resources or training to provide accommodation that would bring them to the point of insolvency.

13. There is a conflict between provincial statute and municipal regulation and enforcement in the area of terminating a tenancy when ordered by the municipality to have a unit vacated because it fails to comply with property standards. There should be a provision for early termination for this purpose under the *Residential Tenancies Act*.

14. Tenants are permitted to file applications with the Board up to one year after vacating the rental unit for things such as maintenance, bad faith notice, harassment etc. A landlord's right to file an application at the Board ends when the tenant is no longer in possession of the rental unit, even if notices of termination have been served while the tenant was in possession. Landlords would benefit and the system could be simplified if Landlords could file with the Board for issues such as rent, utilities and damage for that same one year

period rather than using the Small Claims Court process to recover monies owing.

15. The Tenant's T2 application is free to file and is often used for issues other than that for which it is intended. Tenant rights applications are often used to bring up maintenance issues because there is no fee to file that application. There should be consequences to litigation and there should be some barrier-fee to de-incentivize frivolous claims. Also, the Rules of Practice regarding costs are not used effectively as a deterrent to frivolous or vexatious claims. A tenant filing a no-cost application, and then simply abandoning the claim, not showing up at a hearing, will almost never face cost consequences.

16. There should be an absolute, fixed-term tenancy for those who wish to rent for a short-term and intend to move back into the unit after the term ends without having to go through the application process. This fixed-term tenancy should exist for those who clearly agree and who explicitly turn their minds to it. Snowbirds renting their homes can return to find that renters won't leave, and they have to file an application, which could take upwards of 6 months to resolve if the matter is disputed. Absolute, fixed term tenancies, whereby the parties agree to the ending date at the time the tenancy commences (currently not permitted), with strict financial penalties for landlords if the provision is used in bad faith, would be helpful.

17. Many landlords find that when a tenant fails to attend a hearing, adjudicators often hold lengthy hearings, adducing all the evidence and at times appear to be advocating for the absent tenant. It would be a better use of the Board's time if an order was issued based on the application filed, provided there are no jurisdictional issues or problems with statutory compliance in the documents.

18. From the perspective of landlords who attend at the Board, Tenant Duty Counsel is seen to be too cozy with the Board and its Members. The Tenant Duty Counsel offices are often co-located with Board offices, requiring parties to walk through the Landlord and Tenant Board office in order to get to the TDC office. There is an appearance that the Tenant Duty Counsel program is affiliated with the Board, and that advice given to tenants simply causes delay and adjournments. There is certainly an appearance of a conflict.

19. Board Members defer to Tenant Duty Counsel, often allowing lengthy consultations that go on for hours, resulting in *de facto* adjournments as the hearing block comes to an end. Tenants, as landlords, are expected to come to hearings prepared to proceed. Tenants have the opportunity to seek counsel prior to the hearing, through a private-bar lawyer, a community legal clinic or through a tenant duty counsel office prior to the hearing. Most of the delay

caused by adjournments currently being experienced and creating backlogs could be eliminated if tenants came to the hearing prepared.

20. Section 43 (1) requires that a notice of termination given either by a landlord or tenant must be in a form approved by the Board and must meet specific notice requirements as defined in s. 44 depending on the type of tenancy.

    Landlords routinely receive notices from tenants which fail to meet the notice requirements established by the RTA. In most cases, the landlord would gladly accept the defective notice however, if it becomes necessary to file with the Board to enforce the notice the landlord will risk the notice being rejected.

    LSHC believes that there should be mechanism within the RTA that allows a notice from a tenant, that fails to meet notice requirements, to be converted into an agreement to terminate as provided under s. 37(3) and enforced under s. 77(1) if the landlord signs it to confirm his/her acceptance.

    Further to this, s. 88 (1) acknowledges, and attempts to deal with the residual problem of rent owing as a result of improper notice from a tenant. However, while reiterating the landlord's obligation to minimize losses under s. 16, the Act does not allow the landlord the reasonable mitigation tool of signing back a notice from the tenant that may be defective (usually short) notice thereby treating the termination date as if it were agreed upon in a mutual agreement to terminate form N11.