



# Landlord's Self-Help Centre

*A community legal clinic funded by Legal Aid Ontario*

425 Adelaide Street West - 4<sup>th</sup> Floor  
Toronto, Ontario M5V 3C1

Landlord Self-Help Centre (LSHC) welcomes the "Right at Home" report released by Chief Commissioner Hall of the Ontario Human Rights Commission on July 8, 2008.

The report is the result of a public consultation launched by the OHRC in 2007 that invited the public to comment on a range of key issues related to rental housing, which are detailed in the "*Human Rights and Rental Housing in Ontario*" consultation paper.

The "Right at Home" report offers a Framework for Action which includes 37 recommendations aimed at government, decision-makers, partners in the development of affordable housing, social housing providers, private-market housing providers, service providers, tenant organizations and human rights advocates. It also identifies a list of ten commitments undertaken by Ontario Human Rights Commission itself.

A broad range of issues are addressed in the report and captured under the headings of:

- Housing as a Human Right;
- Housing Discrimination and the Individual; and
- Systemic and Societal Human Rights Issues in Housing.

It provides annotations of comments, suggestions and recommendations made by a broad range of consultation participants that included community organizations, housing providers, tenant advocates and social interest groups, individuals and many others. The viewpoints of consultation participants represent varying, and often opposing perspectives, some of which are detailed below.

## **Tenant Screening**

The Commission's report deals with many of the pre-tenancy issues respecting the landlord's rights to inform themselves about the creditworthiness or tenant worthiness of the prospective tenant. While the Ontario Human Rights Code currently allows screening of this nature, the report notes that some consultation participants suggest moving away from this approach towards a blind-selection system similar to a lottery in which the landlord is required to accept the first person who applies.

The report also details submissions from participants that suggest licensing authorities consider amending their bylaws so as to remove any limits to the number of persons who may live in a rental unit. This suggestion relates to newcomers that are charged more rent than others, and the only way they can afford the rent is to have many members of their extended family live in small housing units resulting in overcrowding.

Since small scale landlords often live in the same home as their tenants, LSHC believes that they should have a right to choose tenants based on their previous rental and credit history. The report recommends that the Government of Ontario consult with the people of Ontario with a view to implementing a range of far-reaching recommendations, detailed in item 17. LSHC welcomes the opportunity to participate in further consultation with the Government and represent the views and concerns of our client constituency and members in those discussions.

## **Last Month's Rent Deposit**

The Commission's report discussed the last month's rent deposit, currently the only deposit landlords in Ontario are permitted to charge a new tenant. The report notes that the Commission heard that the requirement of a last month's rent deposit can result in the exclusion of low-income people, particularly those receiving social assistance, from securing housing and has a discriminatory effect.

Some other Canadian jurisdictions permit last month's rent deposits in addition to damage deposits which are outlawed in Ontario. The length of time it takes in Ontario to achieve an eviction through the Ontario Landlord and Tenant Board when a tenant stops paying rent mandates that the landlord have some protection as a hedge. The report recommends that the Government of Ontario consult with the people of Ontario with a view to amending O. Reg. 290/98 to clarify what tenant selection practices are discriminatory in a way that can be understood by both housing providers and tenants. It suggests specific amendments could include, among others, a provision indicating security deposits, in excess of those allowed under the *Residential Tenancies Act*, may not be charged.

### **Supportive Housing**

The report also speaks to the issue of supportive housing and the lack thereof. It notes that the Commission heard that landlords, superintendents and other housing providers are put in the position of acting as support workers for tenants with mental health issues due to the lack of support services. And that the lack of support services may be a factor leading to eviction.

LSHC agrees that more money is required from government to build supportive and other types of non-profit housing, the burden for housing low income persons or those with health issues should be borne by the population at large and not the landlord community. For small scale landlords, rental income may barely cover the carrying costs of a house. Requiring these landlords to become funding partners in social initiatives will drive them out of the market reducing the number of units available.

LSHC supports the recommendation to increase the availability of supportive housing and appropriate support services to ensure social housing providers have sufficient funds to meet their duty to accommodate.

### **Duty to Accommodate**

The duty to accommodate to the point of undue hardship applies to housing providers and other responsible parties, such as governments or agencies that provide housing-related services.

The report states that many tenant advocates said that housing providers need more help to understand that accommodation is not just a good idea - it is a legal responsibility - and to learn how to fulfill this requirement.

The report's executive summary states "Housing providers and tenants described significant challenges relating to the duty to accommodate in rental housing, particularly in relation to mental illness" noting that the duty to accommodate requirement begins as early as the pre-tenancy stage, during screening. Accommodation might require a housing provider to be flexible in considering rental history, such as the circumstances surrounding a history of non-payment of rent as suggested by the Centre for Equality Rights in Accommodation. The report also noted that, where a tenant is able, the tenant bears the responsibility to make their needs known and to participate in the accommodation process.

The Commission's goals of having landlords physically accommodate a tenant's disability to the point of undue hardship, while admirable, cannot realistically be applied to small scale landlords. For the property owner who rents out a portion of the house to cover carrying costs, it is not

feasible to require him or her to perform extensive modifications. Building ramps, elevators, modifying washrooms, kitchens, doorways, entrances and exits could easily wipe out both the net revenue and appreciation in the value of a property going back ten years. Landlords who are required to accommodate a tenant suffering from a mental illness are at risk of losing other tenants if behaviour is an issue. Similarly they may be required to provide rent abatements for the indeterminate duration of the behaviour, if he/she fails to provide other tenants with reasonable enjoyment of the rented premises.

## **Rent Control**

The report states that with insufficient supply of social/supportive housing, many renters find housing in the private market. Tenant advocates raised the issue that vacancy de-control has led to the rapid decrease in the number of affordable housing units in Ontario. Tenant advocates also noted that landlords may have a financial incentive to evict tenants from affordable apartments or be less willing to work out payment plans for arrears when they know they can charge a new tenant higher rent.

It is the position of the LSHC that by removing rent controls entirely and allowing the government to set policy in terms of minimum wage and a minimum guaranteed income, that there will be more investment in rental housing, more choices for tenants and better maintained units.

The report makes recommendations related to vacancy decontrol:

- Recommendation 10 asks that the Government of Ontario review and improve laws and regulations to ensure that low-income tenants are able to afford average rents, foods and other basic necessities and that specific attention be given to assessing the impacts of rent control/vacancy decontrol, among others.
- Recommendation 20 asks that the Ministry of Municipal Affairs and Housing initiate a consultation with regard to amending the RTA to address any human rights impacts of vacancy decontrol (section 113); and of the definition of Tenant in Section 2 (and presumably Section 3 of O. Reg 516/06 which details the occupancy rights of a remaining spouse upon either the death of, or vacating of a tenant).

## **Conclusion**

LSHC is in favour of ending discrimination in housing, improving choice and reducing the barriers for low-income tenants and agrees that there needs to be legislative protection to prevent Ontarians from being denied safe housing for economic reasons or otherwise.

Landlord's Self-Help Centre, is the only clinic funded by Legal Aid Ontario to provide services to the small scale landlord community. Our resources are dedicated to informing landlords of their rights and responsibilities by providing summary advice and educational programs and community development initiatives. Of concern to Landlord Self-Help Centre is the report's emphasis on having landlords take on the responsibility for providing these protections in ways that will ultimately discourage the secondary rental market and reduce choice and availability of rental housing.

It is worth bearing in mind that there are currently no requirements by any level of government to inform persons who are about to enter Ontario's rental business, either by buying a tenanted property or renting out part of a property, of their obligations under the Ontario Human Rights Code. Having a clear understanding of what such information means would most certainly impact on the initial decision to buy or rent the property.

The report speaks about the insufficient supply of social housing and that most renters find housing in the private market. In fact, programs such as Ontario's Housing Connections and Toronto's Street to Homes programs, which have been created to combat homelessness, rely on private housing providers to some degree to supply housing. Ontario's secondary rental market is estimated to represent 41.3% of rental housing province-wide; investors and homeowners with little capital to risk will not consider renting out their homes if some of the basic protections currently available do not remain intact. The loss of a significant portion of the secondary market will intensify the challenges of housing the individuals this report aims to protect.

The goal of Landlord's Self-Help Centre is to:

- Participate in future consultations related to the recommendations contained in the Framework for Action to ensure the views and concerns of Ontario's small scale landlord constituency, which comprises our members and client community, are represented.
- Educate all landlords with respect to the requirement to accommodate a tenant's disability to the point of undue hardship to ensure they recognize, fully understand and accept this responsibility.
- Lobby to secure an exemption for small scale landlords from the Ontario Human Rights Code with respect to the landlord's duty to accommodate a tenant's disability to the point of undue hardship.

**Landlord's Self-Help Centre**

**Posted August 1, 2008**