



# Landlord's Self-Help Centre

A community legal clinic funded by Legal Aid Ontario

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May 10, 2017

The Standing Committee on General Government  
Room 1405, Whitney Block, Queen's Park,  
Toronto, Ontario  
M7A 1A2

Attn: Grant Crack, MPP, Chair of the Committee  
c/o Sylwia Przezdziecki, Clerk of the Committee

**Re: Comments on Bill 124**

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We would like to take this opportunity to provide our comments on Bill 124, *Rental Fairness Act, 2017*, which will amend the *Residential Tenancies Act, 2006* (RTA).

Landlord's Self-Help Centre (LSHC) is a non-profit community legal clinic operating with a mandate to educate and provide information and legal support services to the small landlord community in Ontario. The community served by LSHC comprises the secondary rental market in Ontario and consists of private homeowners and investors who rent duplexes, triplexes, converted houses, condominiums, apartments over stores and second suites. These small landlords provide more than 520,000 rental units in Ontario and play a vital role filling the gap created by the lack of purpose built rental housing.

LSHC participated extensively in the Ministry of Housing consultation with respect to the "Long Term Affordable Housing Strategy Update, Proposals to Encourage Small Landlords to Provide Rental Housing" in June 2016. LSHC attended stakeholder meetings, engaged the community for input and provided a comprehensive submission suggesting a number of reforms that would have encouraged small landlords to create more rental housing.<sup>1</sup>

Although our comments seemed to have been well-received by the Ministry of Housing, it is now clear that the government has changed direction. Most of the reforms suggested by LSHC (and a number of other stakeholders) were not adopted by Bill 124. Instead, a number of the reforms that are proposed by Bill 124 will discourage small landlords from providing rental housing, thereby reducing the rental housing supply and driving up rents.

### Curb Abuse of Evictions Based on Landlord's Own Use

The province is proposing that landlords who require the use of their own property for their own use or for family members will be required to pay a tenant one month's rent (or find the tenant alternate accommodation) in order to regain possession of the rental unit.

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<sup>1</sup> See [http://landlordselfhelp.com/medialshc-submission\\_small-landlord-consultation-paper-pdf/](http://landlordselfhelp.com/medialshc-submission_small-landlord-consultation-paper-pdf/)

The requirement of having to pay a month's compensation will be unduly onerous on small landlords. Many landlords choose to rent out vacant units only because they know they will be able to regain possession for their own (or a family member's) use when necessary. Many landlords will now face punitive costs to take back their units, while providing a windfall for tenants who may not necessarily have been inconvenienced by the landlord's reoccupation.

During consultations, LSHC had recommended exempting owner occupied properties containing three and fewer units from any compensation requirements. (The three unit exemption would have been consistent with other provisions of the RTA.) LSHC also proposed provisions for extending the notice period from 60 to 90 days for own use notices, which would have mitigated the inconvenience to tenants.

Bill 124 would amend the RTA to deem bad faith by the landlord. The RTA already has provisions in place which curb potential abuse by providing that a former tenant may apply to the Board within one year of having vacated if the landlord or the family member does not take possession of the rental premises and obtain all of the tenant's damages if bad faith is found. The Board also has power to fine landlords it finds to have acted in bad faith. Bad faith should not be presumed because the landlord puts the property on the market for rent contrary to prior intentions as an unforeseen change of circumstances may have occurred. The landlord should be given an opportunity to show this without have to rebut a presumption of bad faith. The onus at the Board is the balance of probabilities so the burden of proof on the applicant is already minimal.

The amendments would prohibit corporations from utilizing the own use provisions of the RTA. The appeal courts of this province have held that a closely held corporation can use these provisions to regain possession of a rental unit. Removing this ability would unfairly target small landlords who have put property in numbered companies for a variety of legitimate reasons.

The proposed changes to own use provisions in the RTA will discourage a significant number of landlords from renting out their properties if they foresee potentially needing to re-occupy their premises in the future. This will lead to many units staying vacant unnecessarily and will have a negative impact on the supply of rental housing - particularly affordable units located in family homes. Such a result runs contrary to the province's mandate to provide affordable housing.

#### Loss of Exemption from the Annual Rent Increase Guideline

LSHC notes that the removal of the post-1991 rent control exemption and other date related exemptions will likely decrease demand for investor-owned rental housing in condominium buildings and reduce the number of people willing to rent out second suites in newer single family homes. This runs contrary to a key component of the government's Long Term Affordable Housing Strategy of promoting second suites.

For the past two years, LSHC has worked with the province to develop learning tools and resource materials which promote the benefits of second suites for both owners, tenants and the community. A key benefit to the creation of these new rental housing units was the exemption from the annual rent increase guideline. The government has implemented amendments to the Planning Act for inclusionary zoning to permit builders to create new homes with Code compliant second units.

The Honourable Chris Ballard, Minister of Housing acknowledged that:

*“... second units are an important tool in contributing to the supply of private sector affordable housing choices. They are widely recognized as one of the most affordable forms of rental housing. Second units help optimize the use of the existing housing stock and infrastructure, all the while providing an income stream for homeowners, particularly younger and older homeowners, who may respectively have a greater need for income to help finance and/or remain in their homes.”*

The loss of the exemption from the Annual Rent Increase Guideline will work to reduce the supply of new rental units, and make any remaining supply of private housing less affordable. It will significantly impact the decision for small landlords to commit to the business of renting, a pillar of the province’s Long Term Affordable Housing Strategy. Homeowners who do their research to learn about the regulatory environment by which landlords are governed in this province will recognize the limitations that accompany second suites, or any other residential rental unit, and be unwilling to rent.

#### Standard Lease

LSHC supports the introduction of a standard lease form provided stakeholders have an opportunity to participate in its development. The standard lease form should draw attention to the rights and responsibilities of *both* parties and should maintain flexibility to include additional terms.

#### Mitigate Impact of Carbon Costs on Tenants

This proposal would remove above-guideline rent increases for extraordinary increases in utility costs. Utility costs, and in particular, the cost of electricity, have risen dramatically in the past several years creating hardships for all Ontarians who struggle to pay these costs. Again, the landlords of this province are expected to subsidize the cost of living of their tenants.

By forcing landlord to pay for extraordinary increase in utility costs the legislation will create a disincentive for tenants to reduce their consumption of energy since they would not bear the cost of such use, including wasteful use. The proposed reform undermines the basic principle of above guideline increases – that landlords should be able to pass on legitimately incurred extraordinary cost increases to tenants. Again, this proposal shifts the burden of responsibility from the province to private sector landlords.

Landlords are expected to make costly capital improvements to their properties in order to make their buildings more energy efficient, but most utility costs are outside the control of landlords (i.e. global charges unrelated to electricity usage). Although the province has promised rebates and grants to do this work, there are no assurances that such incentives will meaningfully subsidize the costs of making these changes. Small landlords will be disproportionately affected by having to pay increased utility costs for utilities consumed by their tenants, making it more difficult for them to free up the necessary capital to make the improvements expected by this government.

#### Eligible Capital Expenditures

Bill 124 would allow the government to “further tighten rules for above-guideline rent increases for capital expenditures by creating a regulation-making authority to specify circumstances where otherwise eligible capital expenditures are not eligible”. This proposed amendment would create unfairness for landlords who are bound to keep their premises in a good state of repair by creating uncertainty with respect to which capital improvements are eligible for consideration in an AGI application. Further, the legislation compels the landlord to make certain capital expenditures which benefit the tenants and contribute to their standard of living and their enjoyment of the rental premises. Such changes would give the tenants the benefit of

such improvements but the landlord would be liable to bear the cost, effectively providing a free rent subsidy to tenants who are not rent-geared-to-income tenants, regardless of their ability to pay. While the intention is to keep tenants' housing costs affordable, that affordability is to be borne solely on the backs of the landlords of this province who are effectively being treated as subsidized rental housing providers without consideration as to the ability of the landlord to provide such subsidy and without consideration of the means of the tenants who should be responsible for the costs of their own housing. These provisions will apply to all tenants, regardless of their means or ability to pay and to all landlords, regardless of their means or ability to pay. This will create a disincentive to individuals who are landlords or who might consider becoming a residential landlord and will thereby adversely affect the supply of affordable rental housing in the province. The costs of subsidizing housing in the province should be the responsibility of the province and not that of individual private landlords. This is especially onerous on small landlords who provide affordable housing for thousands of tenants across the province.

#### Technical Amendments to Improve Landlord and Tenant Board Processes: Pay and Stay Clarification

The proposed amendments are intended to prevent unfounded 'stays' of eviction orders when a tenant files a motion to void an order on the basis that they have paid in full. The amendments would require the tenant to set out that the tenant has paid all the arrears in full. The amendments should require the tenants to provide proof of such payments in the form of copies of money orders or certified funds to support their position that they have paid in full. Currently, the Board often accepts the Tenant's unsupported Affidavit that they have paid the arrears in full and void the order without any substantiating documentation.

#### Summary of LSHC Recommendations

Our submission addresses areas of concern to LSHC and the small landlord community. Below are our recommendations based on the discussion of the issues raised by Bill 124:

- Hold off from creating a restrictive regime that inhibits eligible capital expenditures from inclusion in above-guideline increases.
- Retain a landlord's ability to obtain above-guideline rent increases for extraordinary increases in utility costs.
- Rather than require landlord to pay one month's rent (or find a tenant new accommodations) where the landlord regains possession of its unit for own use, landlords should be required to provide a longer notice period to their tenant. For example, landlords can be required to provide 90 days' notice to their tenant.
- Remove the wording in Bill 124 amendment in which landlords are deemed to be in bad faith in own use scenarios that are outside a landlord's control.
- Retain the ability for landlords that are corporations to apply the RTA own use provisions.
- Re-consider which buildings are outside the scope of the annual rent guideline exemption. For example, the exemption could apply to buildings older than ten years.
- Ensure stakeholders have an opportunity to participate in the creation of a standard lease.
- Clarify that in order for a tenant to file a motion to stay an eviction order, the tenant must also provide proof of payment (such as a copy of money orders or certified cheques) of all arrears.

In closing, many of the amendments proposed by the *Rental Fairness Act, 2017* will discourage small landlords from creating new rental accommodation and continuing to provide existing rental accommodation. Many small landlords in Ontario who rely on rental income to sustain their housing costs will likely remove their units from the regulated market and instead offer their

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units on short-term rental platforms (i.e. Airbnb) where they will be subject to minimal regulatory oversight.

Sincerely,  
**Landlord's Self-Help Centre**

A handwritten signature in blue ink, appearing to read "Susan Wankiewicz".

Susan Wankiewicz  
Clinic Director

cc: The Honourable Chris Ballard  
Minister of Housing