



Landlord's Self-Help Centre

A community legal clinic funded by Legal Aid Ontario

15th Floor – 55 University Avenue
Toronto, Ontario M5J 2H7

October 12, 2017

Mr. Carelton Grant
Director of Policy and Strategic Support
Municipal Licensing and Standards
City of Toronto
City Hall, 16th Floor West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Dear Mr. Grant,

Re: City of Toronto Proposed Regulation for Short-term Rental

We are writing on behalf of Landlord's Self-Help Centre (LSHC) to share our comments on the City of Toronto's proposed regulation for short-term rental.

Landlord's Self-Help Centre (LSHC) is a non-profit specialty community legal clinic funded by Legal Aid Ontario and mandated to provide summary legal advice, public legal education initiatives, and community development activities for Ontario's small-scale landlord community. LSHC also participates in law reform activities aimed at improving the operating environment for small landlords.

The small landlords served by LSHC are comprised of owners providing housing within the secondary rental market and typically rent rooms, a room and kitchen, flats, secondary rental units, duplexes, triplexes and/or apartments over stores. They leverage their property investment to create an income stream which is used to fund the cost of homeownership. These owners are vital to Ontario's rental housing landscape as their units fill the gap created by the lack of purpose built affordable rental accommodation.

LSHC assists thousands of small landlords navigate the onerous and complex regulatory environment which governs residential tenancies in Ontario to enforce their rights and resolve disputes with their tenants involving a variety of reasons each and every year. Small landlords are finding the legal process to be costly, time consuming and counter intuitive where assistance from a trained legal representative is becoming more of a requirement rather than an option.

We support the City of Toronto's vision for short term rental regulation as this would offer small landlords another option to leverage their property to generate an income. However, LSHC wishes to raise the following concerns with respect to the proposed regulation for short-term rental:

- The consent of the owner must be required where any long-term tenant wishes to rent their unit on a short-term basis to ensure compliance with the *Residential Tenancies Act, 2006*; and
- Long-term tenants must be prohibited from collecting rent for short-term rentals which exceed the rent paid to ensure compliance with the *Residential Tenancies Act, 2006*.

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Consent of the landlord required for sublet

The proposed Short-term Rental Regulation does not make distinction between the owner of a property and the tenant of a property in the context of providing short-term rentals. Rather, it places obligations on the “Operator” of the short-term rental, which is defined to include both an owner and a tenant.

In recent years, LSHC has received numerous inquiries from small landlords regarding tenants who have rented their unit as a short-term rental without first obtaining the consent of the landlord. Currently s. 97 (1) of the *Residential Tenancies Act, 2006* (RTA) provides that a tenant may sublet their unit **with the consent of the landlord**.¹

There are multiple media reports in circulation involving long-term tenants who rent out their unit on websites like Airbnb without the consent of their landlords. These short-term rentals often lead to thousands of dollars in damage of the rental unit, disturbances for other tenants or the landlord facing legal action by their condo corporation because short-term rentals are not permitted in their building.²

Therefore, the proposed zoning by-law definition for short-term rentals should prohibit unauthorized subletting by tenants who do not have written consent of the landlord. Without this important consent aspect included in the definition, landlords are faced with the added challenge of having to deal with conflicts between the *Residential Tenancies Act* and the zoning by-law.

In order to prevent the proliferation of unlawful sublets, LSHC recommends that the City should:

1. Require Operators clearly indicate and provide supporting evidence upon registration whether they are owners or tenants (proof can include a copy of a lease or proof of ownership);
2. Require any tenant Operator to provide evidence to the City that they have obtained the consent of their landlord to sublet the rental unit as a short-term rental;
3. Conduct due diligence to confirm whether someone claiming to be an owner is in fact the owner (or someone acting as an agent for the owner), like a search of property or tax records;
4. Design a system for enforcing the requirements; and
5. Conduct regular audits.

Conversely, removing the ability for tenants to use an entire dwelling unit as a short-term rental would mean they can rent a portion of the unit they designate as their primary residence. Having a roommate is a right afforded to tenants by the *Residential Tenancies Act* and they do not require the landlord’s approval for this.

Tenant cannot collect more rent than lawfully charged by the landlord

The *Residential Tenancies Act, 2006*, s. 134 (3)(a), prohibits a rental unit from being sublet for a rent that is payable by one or more subtenants and that is greater than the rent that is lawfully charged by the landlord for the residential unit.³

Further, offences defined according to the *Residential Tenancies Act* specify the following pursuant to section 234 (l). A person is guilty of an offence if the person,

“(l) charges or collects amounts from a tenant, a prospective tenant, a subtenant, a potential subtenant, an assignee or a potential assignee in contravention of section 134”⁴

¹ RTA, s. 97(1).

² <https://www.thestar.com/news/gta/2016/10/02/tenant-turned-airbnb-proprietor-becomes-landlords-nightmare.html> This involves a tenant who rented the unit and almost immediately had it listed for short-term rentals on Airbnb.

³ RTA, s.134(3)(a).

⁴ RTA, s.234(l).

In order to earn as much money as possible from subtenants, some tenants go as far as putting up walls to create additional rooms in a rental unit.⁵

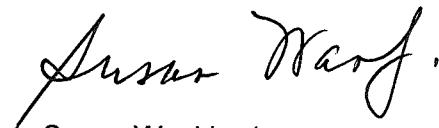
Landlord's Self-Help Centre anticipates the loss of numerous rental units from the long-term market to the short-term rental market as many small landlords would find the short-term market more advantageous and better suited to their needs. The current regulatory environment governing long-term residential tenancies is focused on tenant protection and is extremely risky and onerous for the small landlord community. In particular, the recent amendments to the RTA pursuant to Bill 124 have further exasperated this with changes to exemptions for rent increases, the requirement for landlords to pay compensation for units recovered for own use, etc. These changes will deter more people from becoming small landlords and renting out vacant units (for example, by making it more costly and onerous to recover a unit for landlord's own use). We are aware of many small landlords who no longer wish to rent out their units due to the increasing regulatory burdens involved.

A market that does not tightly regulate rents and numerous other aspects of renting may be the option many small landlords are looking for. We therefore expect some small landlords to opt to become short-term rental housing hosts rather than provide stable, long-term leases to long-term tenants.

In order to promote compliance with this provision of the RTA, LSHC recommends that the City should require that tenant Operators disclose the lawful rent for their unit, and that the City take measures to ensure that amounts collected by the Operator do not exceed the lawful rent.

In closing, we ask that you consider the position of small landlords in Ontario and the consequences that would ensue if these concerns are not adequately addressed.

Sincerely,
Landlord's Self-Help Centre



Susan Wankiewicz
Clinic Director

cc: Amy Buitenhuis, Senior Policy and Research Officer
City Planning - Klaus Lehmann, Acting Director
Corporate Finance - Robert Hatton, Director
Affordable Housing Committee - Councillor Ana Bailao, Chair
Ministry of Housing - Andre Trevisan, Acting Manager, Residential Tenancies Unit

⁵ <https://torontolife.com/real-estate/jesse-gubb-the-tenant-from-hell/> This tenant was a serial fraudster who had as many as 25 people renting rooms in a house. He was paying the landlord \$4,000 per month for an entire house, while collecting approximately \$550 per month for each room. TSL-64867-15-AM is another example of a tenant who collected illegal rent off a short-term rental.