Bill 97, the Helping Homebuyers, Protecting Tenants Act

On April 6, 2023, the Ontario government introduced ***Bill 97, the Helping Homebuyers, and Protecting Tenants Act***. Schedule 7 of the Bill proposes several changes to the ***Residential Tenancies Act, 2006.***
The Ministry of Municipal Affairs and Housing invited the Landlord's Self-Help Centre (LSHC) and other interested members and stakeholders to submit feedback on initiatives posted on the Ontario's Regulatory Registry.

LSHC would like to take this opportunity to provide our comments on **Bill 97, the Helping Homebuyers, and Protecting Tenants Act** which will amend the Residential Tenancies Act, 2006 (RTA).

Legislative proposals available for comment from April 6 to May 6, 2023:

1. Proposed Amendments to Increase Maximum Fines for Offences Under the Residential Tenancies Act

Proposal: The government proposing changes to the Residential Tenancies Act, 2006 to double maximum fines for offences from $50,000 to $100,000 for individuals and from $250,000 to $500,000 for corporations.

Proposal Number:23-MMAH008

LSHC does not support this amendment

The proposed amendments to the *Residential Tenancies Act, 2006* to double maximum fines for offences from $50,000 to $100,000 for individuals and from $250,000 to $500,000 for corporations are exorbitant and act as a deterrent.

- It is important to note that many landlords do not set out to contravene the Act and fall under this category due to several unavoidable circumstances. For small landlords, whether operating as individuals or operating as a corporation, an increase to double the fines, would create significant financial hardship if ordered against them. Speaking from the perspective of our target community (owner-occupied renting out a unit(s) within the same property to simply generate enough income to make ends meet), doubling the fines would signify serious impact on their livelihood. It is important to note that there are small-scale landlords who would not be able to financially recover from fines like this. This proposal will, without a doubt, be detrimental to so many small landlords, and in turn, set back the housing market and rental market significantly, because, when the legislators are concentrating on 'hefty penalties', they seem to have lost sight of the end goal, which is to provide more affordable housing to tenants in Ontario. Should this Bill pass, it will force many landlords to sell or lose their properties, which will result in LESS available, affordable housing for tenants.

- In addition, having these exorbitant fines associated with the Landlord and Tenant Board can act as a deterrent to prospective landlords. For example, if this amendment is passed, a prospective landlord seeing this may get turned away from renting their property as they may be fearful of

what the LTB is capable of doing to a small scale landlord (who is owner-occupied renting out a unit(s) within the same property). Our recommendation is that we should focus on legal education pertaining to the *Residential Tenancies Act* and creating awareness instead of increasing already exorbitant fines.

2. Proposed Amendments to Clarify and Enhance Rental Rules Related to Air Conditioning

Proposal:
Where the landlord does not provide A/C, the RTA would be amended to explicitly permit tenants to install window or portable A/C units, at the tenant's cost, if the following requirements are met:
1. The tenant gives written notice to the landlord of their intention to install and provides the landlord with information about the efficiency of the A/C and the tenant's anticipated usage.
2. The tenant must ensure the A/C units are installed safely and securely, not causing any damage to the rental unit or complex.
3. The installation must comply with applicable laws, including municipal bylaws, and any rules which may be prescribed under the RTA.
Under these proposed amendments, if the landlord pays for electricity, they can charge a seasonal fee to the tenant based on the actual cost of electricity to the landlord or a reasonable estimate based on the information provided by the tenant. Tenants would be responsible for covering any costs associated with the installation.
These amendments include the creation of a regulation-making authority to prescribe additional rules and circumstances, if needed.

Proposal Number:23-MMAH009

LSHC supports this amendment

Currently under the RTA, landlords and tenants can agree to the installation of A/C units in exchange for a seasonal rent increase as long as it is stipulated in writing in their rental agreement. Many small landlords may prohibit the installation of an A/C unit in their tenancy agreement due to landlords not being aware they can agree on seasonal increases if a tenant installs an A/C. The proposed changes, we believe, would clarify and enhance the rules around tenant installation and use of A/C units. Having this added to the RTA will take away the guesswork and give both parties the information they need in order to do this effectively. Although, we have the following concerns:

- Based on the perspective of our target community (owner-occupied renting out a unit(s) within the same property who are simply generating enough income to make ends meet) enforcing the landlord's rights that these amendments would bring would be challenging. In particular, considering the delays with the LTB, if there are any issues that arise from these regulations, that landlord will be forced to wait months to have this issue resolved and receive compensation. It would give the landlord another undertaking to struggle to evict the tenant if the tenant does not comply with the RTA amendments, and potentially incurring costs in damages done by the incorrect installation of the A/C unit. A mom and pops landlord cannot afford to incur more costs when he or she is already struggling to cover their own expenses with their pensions and rental income.

- It is important that Landlords be given remedies to address any infractions, as this has been a long-standing issue.
- If this amendment is passed, the regulations to prescribe additional rules and circumstances would have to be very specific and should include dates for when "seasonal" starts and ends, what is a reasonable amount that the landlord could charge as a seasonal fee, and that the tenant needs to agree as well.

3. Proposed Amendments to Require a Standard Form of Rent Repayment Agreement when the Landlord and Tenant Board (LTB) makes an Order under Section 206 of the Residential Tenancies Act (RTA)

Proposal:
The government is proposing to amend the RTA to make the use of a form approved by the LTB mandatory for repayment agreements made under S.206 of the Act.
The LTB has developed and already made publicly available on its website a repayment agreement form, which was developed in consultation with tenant advocacy organizations. Its use is currently not mandatory. This form provides a plain language explanation of what happens when the agreement is breached, additional information about related rental rules and tenant rights, including that the tenant may wish to seek legal advice prior to signing, and that if an eviction order is made without a hearing, the tenant can submit a motion to set aside the order and request a hearing.
Proposal Number:23-MMAH010

LSHC supports this amendment
The proposed amendments to the Residential Tenancies Act, 2006 to make the use of a form approved by the LTB mandatory for repayment agreements made under S.206 of the Act will help small landlords be more efficient about putting together a payment agreement.

- Having a mandatory form approved by the LTB will allow landlords to just follow the instructions and fill out the form. This could facilitate communication and reaching an agreement among the parties in a faster and more efficient manner.
- Many small landlords that contact LSHC are unaware of any repayment agreements. We recommend that more effort is needed by the LTB to raise awareness of this requirement and the availability of this repayment agreement on their website.
- The repayment agreement form should be easy to understand and not make it more complicated for the small landlords who are navigating the process on their own.
- We support the mandatory repayment form. However, we do not support tenants being able to set aside an order resulting from the breach of said payment agreement. To have an agreed payment plan, landlords would have already given great consideration to the tenant, to allow for a set-aside of any subsequent ex-parte order serves no benefit to the landlord and again, like in so much of the RTA, only favour the tenant. When knowing this, a landlord may not be motivated to enter such payment agreement.

- Having a mandatory form will reduce arguments regarding whether a payment plan that was entered into should be considered by the Board or not. This way, a landlord will be able to be confident that the payment agreement form they entering into is binding in the eyes of the LTB.

****Regulatory proposals available for comment from April 6 to May 21, 2023**:

4. Seeking Feedback on Proposed Changes to Help Protect Tenants from Bad Faith Renovation Evictions

Proposal:
To provide clarity to landlords and help protect tenants, the government is proposing to amend the RTA to support tenants in exercising their right of first refusal and returning to their rental units once renovations/repairs are completed. The Act would be amended to:
-Require landlords to provide tenants without delay - in order to preserve the integrity of their right of first refusal - with written notifications about the status of renovations/repairs, including estimated completion date and any changes to this date, as well as a final notification, once the renovations/repairs are completed stating when the unit will be ready for re-occupancy.
-Require landlords provide tenants with a grace period of at least 60 days after the day the rental unit is ready for occupancy for the tenant to move back in. This will help enable the tenant to provide the required 60-day notice to end their tenancy in their temporary accommodation, if they are renting elsewhere while renovations/repairs are completed
-Permit a tenant whose landlord fails to provide, or delays, written status notifications and/or grace period to apply to the LTB for a remedy for the landlord's failure to provide right of first refusal
-Permit a tenant whose landlord fails to provide right of first refusal to apply to the LTB for a remedy regardless of length of renovations/repairs (i.e. up to the later of two years after the tenant moved out, or six months after renovations/repairs are completed)
The Act would also be amended to require landlords obtain and provide, along with the eviction notice, a report from a qualified person stating the renovations/repairs are so extensive they require the rental unit to be vacant.
The Minister of Municipal Affairs and Housing would be provided with authority to make regulations that identify qualifications of a person who could provide reports, and set other requirements related to the reports.

Seeking comments on the following:
1 What feedback, if any, do you have on the legislative proposals above?
2 What types of qualifications should individuals who provide these reports be required to have? Are there specific professions that have these qualifications?
3 What information should reports be required to include?

LSHC does not support this amendment
The proposed amendments to the Residential Tenancies Act, 2006 to require landlords to provide tenants with a grace period of at least 60 days after the day the rental unit is ready for occupancy for

the tenant to move back in. This will help enable the tenant to provide the required 60-day notice to end their tenancy in their temporary accommodation, if they are renting elsewhere while renovations/repairs are completed.

- Allowing tenants to have the option to advice the landlord they would like to come back into the unit up to 60 days after the unit is ready for occupancy is prejudicial to the landlord. During this period, the landlord is losing rental income that they may have been able to collect. This will in turn cause further financial hardship on the landlord. Not only did the landlord have to pay for renovations to the property, but now will have to incur a loss of up to an additional two months' rent due to this proposed grace period the landlord needs to provide the tenant.
- We strongly believe this change may be viewed as a deterrent for a landlord to rent their property, if they know that in a few years they may need to complete a renovation, since this process has turned daunting and costly for a landlord.
- What also needs to be considered is that these renovations that landlords need to do may be mandatory to uphold the integrity of the rental property, and are crucial to maintaining the rental unit in a good state of repair, which is a responsibility of a landlord. Making this process difficult and over regulated can potentially interfere with the landlord's responsibility to maintain the rental unit.

LSHC does not support this amendment

Proposed amendment -The Act would also be amended to require landlords obtain and provide, along with the eviction notice, a report from a qualified person stating the renovations/repairs are so extensive they require the rental unit to be vacant.

- These amendments can potentially affect numerous small properties including, for example, those, which are restoring a property to a single-family dwelling after being, carved up into rooming houses or multiple dwelling units. This obligation represents a significant financial burden that will discourage owners from undertaking such restoration projects and offers another example of the ever-increasing regulations, which governs small landlords as well and is driving them out of the rental business.
- The overall system is unfair, overly procedural and over-regulated towards landlords. During the renovation process, a small landlord is faced with many financial burdens and costs. For example, landlords have to incur renovations costs, building permits, loss of rent during the renovations, evictions costs if the tenant refuses to vacate, etc. This would be another significant and unnecessary cost to an already costly procedure. In order to obtain vacant possession a landlord would have to obtain a building permit. A report from a qualified person stating the renovations/repairs are so extensive they require the rental unit to be vacant would only be duplicating the process.

5. Seeking Feedback on Timeframe for Occupancy for Landlord's Own Use Evictions

Proposal:

The government is proposing to amend the RTA to provide the Minister of Municipal Affairs and Housing with the authority to set, in regulation, a timeframe within which a landlord (or their family member or caregiver) must occupy the unit for personal use. If this timeframe elapses, the landlord would be presumed to have acted in bad faith if the tenant makes an application to the LTB for a remedy.
The LTB would retain the authority to determine the good faith intention of a landlord if the landlord can prove that the prescribed period could not reasonably be met (e.g., renovations to the unit were delayed or the landlord was hospitalized).
To help inform this proposed legislative amendment and a potential future regulation, the government is seeking **input on the following**:

1. What would be a reasonable timeframe to require that a landlord move in after the tenant has vacated the unit, and why?

2. What circumstances might prevent a landlord from reasonably meeting a prescribed timeframe?

Proposal Number: 23-MMAH007

LSHC does not support this amendment

The proposed amendments to the Residential Tenancies Act, 2006 to set a timeframe within which a landlord (or their family member or caregiver) must occupy the unit for personal use will be a burden on small landlords.

- Based on the perspective of our target community (owner-occupied renting out a unit(s) within the same property to simply generate enough income to make ends meet), the proposed amendments will be a burden on them. It is very difficult to establish an actual timeframe that will work for small landlords since we are talking about housing providers that are forced to rent out a part of their property to cover their basic expenses as their current income may not suffice entirely. The same small landlords may have various unforeseen circumstances that may not allow them to comply with a specific timeframe.
- Small-scale landlords that have to rent out part of their properties to supplement their current income are also vulnerable people. They may have physical or mental disabilities that may prevent them from complying with a specific timeframe. They may be suffering the loss of a loved one or their job that will make it challenging for them to occupy the rental unit within a time frame. They may have family coming from abroad that due to travelling internationally or to their immigration status are not able to comply with a specific timeframe.
- Adding this change would amount to extra pressure and financial burden on the landlord. When the landlord is serving the tenant with the N12, the landlord is doing this during a specific time and anticipates to move-in in 60 days. If the tenant does not move out, then the landlord needs to wait for a hearing, which alters the landlords' plans as to when they are moving in. Due to the delays that are caused by the Board, asking the landlord to move in within a reasonable time and setting a deadline for this can cause prejudice to the landlord.
- There are many external factors that are not in the landlords control when it comes to moving into the property. For example, if the landlord planned to move into the property over the summer, but due to the LTB delays, the hearing took place in January, the weather may affect the efficiency of the landlord being able to move into the rental unit. Landlords are already faced with challenges when wanting to move back into their property and implementing this change will only cause further aggravation.

- The time frame for the landlord to move-in is often case-specific and a cookie cutter approach would be detrimental to small-scale landlords in a vulnerable position. While in some cases a move-in date would be easy to determine, a large number of cases require flexibility. The current legislation which requires the landlord to move in within a reasonable time-frame is sufficient and gives the Adjudicator the discretion to set a termination date upon hearing the circumstances and balancing the needs and of both the LL & the TT. A mandated termination-date would remove the discretionary power of the adjudicator and is likely to prejudice the small scale landlord.