



# Psychiatric Patient Advocate Office

Bureau de l'intervention en faveur des patients des établissements psychiatriques

June 5, 2006

Honourable John Gerretsen  
Minister of Municipal Affairs and Housing  
777 Bay Street, 17<sup>th</sup> Floor  
Toronto, ON M5G 2E5

Dear Minister Gerretsen:

**RE: BILL 109, *RESIDENTIAL TENANCIES ACT, 2006***

The Psychiatric Patient Advocate Office (PPAO), an arm's length organization of the Ministry of Health and Long-Term Care, provides rights protection and advocacy services to mental health consumers across the province. I am writing to advise you of the PPAO's concerns regarding Bill 109, the *Residential Tenancies Act, 2006*, (RTA) and its impact on our clients.

People with mental illness are often among the most vulnerable in our communities. Stable and safe housing is identified as one of the key determinants of health, yet for persons with mental illness, finding a home can be daunting, if not impossible. Our clients encounter many barriers including stigma, discrimination and inadequate social assistance, particularly minimal shelter allowances provided by Ontario Works and the Ontario Disability Support Program.

Reform to the current *Tenant Protection Act, 1997* (TPA) is long overdue. The PPAO applauds the new provisions pertaining to the following issues:

- a fairer eviction process that requires an eviction application to go to mediation or a hearing instead of issuing an automatic eviction notice if the tenant did not respond to the application within five days;
- the ability of the Landlord and Tenant Board (Board) to consider the tenant's individual circumstances when considering eviction applications;
- the obligation on the landlord to provide information to a tenant relating to the rights and responsibilities of landlords and tenants, as well as the role of the Board;
- the prohibition on landlords to require a tenant to permit automatic debiting of the tenant's bank account;
- the power of the Board to permit payment of rent into the Board if the tenant is disputing a maintenance issue; and
- the determination of the annual rent increase guideline based on the consumer price index.

That being said, several of the proposed changes are troubling. I have detailed specific issues below to illustrate our concerns with Bill 109.

### **Social Housing Exemptions**

- Sections 1 and 203 refer to social housing exemptions. The Board does not have jurisdiction to review rental determinations that were made under the *Social Housing Reform Act (SHRA)*.
- Social housing tenants who question rental subsidies have access only to an internal, not independent, review. It is discriminatory that these tenants do not have the same protections as private market tenants. In fact, there should be a higher standard of review of social housing landlords as their tenants are amongst some of the most vulnerable in the province.

Recommendation: Sections 1 and 203 should be deleted. The *RTA* should allow the Board to have jurisdiction over social housing tenants.

### **Exceptions to Rent Rules**

- Section 6(2)(c) says that rental units built since 1991 are exempt from rent controls.
- There is no logical rationale for permitting rental units built after 1991 to be exempt from the annual rent increase guidelines, potentially resulting in an increased number of units being beyond the financial reach of the economically disadvantaged. By distinguishing between newer and older units, the *RTA* is perpetuating the divide between the rich and the poor. Tenants with lower incomes, including many of our clients, may be forced to live in older buildings that will likely be more prone to disrepair. Meanwhile, tenants with higher incomes will be able afford to live in newer buildings.

Recommendation: Remove section 6(2)(c) from the *RTA*.

### **Entry to Inspect Rental Unit**

- Section 27(4) states that a landlord may enter a rental unit if written notice is given at least 24 hours before the time of entry to determine if the rental unit is in a good state of repair, fit for habitation and complies with health, safety, housing and maintenance standards.
- The PPAO is alarmed by this provision as it is extremely subjective and there is great potential for abuse. Landlords may use this provision to harass tenants, especially mental health consumers, and impose their own values on tenants and their living conditions.

Recommendation: Section 27(4) should be omitted.

### **Tenant's Responsibility for Repair of Damages**

- Section 34 and 89 relate to the tenant's responsibility for the compensation and repair of undue damage to the rental unit or residential complex due to the conduct of the tenant, other occupants of the unit or persons permitted in the complex by the tenant.
- Similar provisions in the *TPA* refer to "willful or negligent" conduct.

- Pursuant to the *RTA*, a tenant would be strictly liable for damages. As some of our clients are susceptible to unscrupulous individuals, it would be unfair for them to be liable if they are not at fault.

Recommendation: The words “willful or negligent” should be included in sections 34 and 89.

### **Disposal of Tenant Property**

- Sections 41(2) and (3) refer to the landlord’s ability to dispose of the tenant’s property 72 hours after the enforcement of an eviction order. There is no remedy available to tenants if landlords dispose of the property before 72 hours elapse.
- While 72 hours is an improvement over the 48 hours provided for by the *TPA*, this is still an insufficient period of time for a tenant to retrieve their belongings. If tenants are being evicted, it is more than likely that they are experiencing other stressors in their life that make it difficult for them to quickly collect their possessions. These sections will have an adverse impact on some mental health consumers who might not be able to respond in such a short time period.

Recommendation: The time limit for tenants to collect their possessions after eviction should be extended to one week. The Board should be able to make an order against landlords, in a quick and efficient manner, if they breach their statutory obligations respecting property.

### **Landlord Requires Unit**

- Sections 48 and 49 permit notices of termination to be given if certain members of the purchaser or landlord’s family, or a person who provides care services to these individuals, plan to move into the rental unit.
- The potential for abuse is ripe as purchasers or landlords may covertly use these broad provisions to remove unwelcome tenants.

Recommendation: Delete sections 48 and 49.

### **Small Buildings**

- Section 65 permits expedited evictions for landlords living in the same building as the tenant that has less than six units. Unlike the normal eviction process, a notice of eviction is not void if the tenant ceases the alleged conduct or corrects the omission.
- This provision is not justified as many rental units satisfy this criterion. Consequently, many tenants are denied the full benefit of the law. Further, these tenants are not afforded an opportunity to remedy the situation, even if the incident was an isolated event.

Recommendation: Remove section 65 from the proposed legislation.

### **Exception to Eviction Orders**

- Sections 63, 80(2) and 84 are exceptions to the general rule about the effective termination date. They permit a landlord to give a 10 day notice of termination or for

an eviction order to be enforceable prior to the determination date in the eviction notice if a tenant or other person willfully causes damage or if the premises are used in a manner inconsistent with residential use and the use has caused, or may cause, significant undue damage to the premises.

- The words of these provisions are overbroad. This expedited process is problematic as landlords may be able to procure an eviction order on the basis of allegations before the tenant is even aware of eviction proceedings. As previously mentioned, short timeframes are detrimental for many of our clients who may be at a low point in their illness and unable to respond quickly.

Recommendation: Delete sections 63, 80(2) and 84 of the *RTA*.

### **Rent Deemed Lawful**

- Section 136 deems unlawful rent charged by a landlord to be lawful after one year's time unless an application has been made to the Board within that year.
- Such a section provides an incentive to landlords to collect illegal rents and take advantage of vulnerable tenants who may fear reprisal and are unable to make effective use of the application process.

Recommendation: Section 136 should be omitted.

### **Care Homes**

- Section 140 requires landlords to give potential tenants an information package respecting the tenancy agreement.
- Tenants should also be educated about their rights as "tenants" under the *RTA* because they have the same rights and privileges as any other tenant across the province but this fact is often forgotten.
- This provision is a welcome addition to the proposed legislation. However, landlords should be required to go one step further and provide and abide by a Resident's Bill of Rights to ensure the protection of residents.
- In 1992, Dr. Ernie Lightman prepared a document entitled *A Community of Interests: The Report of the Commission of Inquiry into Unregulated Residential Accommodation* that contained an excellent Bill of Rights (please see Appendix 1) that should serve as a template for residents of care homes.

Recommendation: Add new sections to Part IX of the *RTA* incorporating a Resident's Bill of Rights and education to ensure just and consistent treatment of residents of care homes.

### **Landlord Tenant Board**

- Part XI sets out the composition of the Board, as well as procedural and other matters related to its proceedings.
- However, the *RTA* is silent about the training of the Board. Members of the Board will encounter many different people from many different walks of life, including those with mental illness. Accordingly, Board members should receive initial and ongoing training respecting mental illness. A culture of understanding and

acceptance of mental illness is essential if we are to be an inclusive and caring community.

Recommendation: Members of the Board should undergo regular training and education regarding the unique needs and issues facing mental health consumers.

### **Municipal Vital Services By-Laws**

- Part XIII gives the council of a local municipality the ability to pass by-laws requiring landlords to provide adequate and suitable vital services.
- Vital services are by definition essential and should not be left to municipal by-laws, a subordinate form of legislation. There is no rationale for the exclusion of vital services from the sphere of the provincial government.

Recommendation: Part XIII should be eliminated and provisions drafted whereby the *RTA* requires that landlords provide adequate and suitable vital services to tenants.

### **Vacancy Decontrol**

- Landlords are currently permitted to increase rents by an unlimited amount when a tenant moves out.
- Vacancy decontrol results in two tiers of housing whereby landlords improve vacant apartments to be able to rent them at an increased price but they allow occupied apartments to fall into a state of disrepair. This practice encourages landlords to ignore the needs of long-term tenants, especially those who are marginalized, such as mental health consumers. Despite promises from Premier Dalton McGuinty to end vacancy decontrol, the *RTA* fails to do so.

Recommendation: Draft provisions in the *RTA* to eliminate vacancy decontrol.

### **Setting Aside Orders**

- There are no provisions in the *RTA* to allow the Board to set-aside an order if the tenant does not attend a scheduled hearing.
- The omission of such provisions is heavy-handed as there will often be legitimate circumstances (e.g., illness) where a tenant cannot attend through no fault of their own. Also, it will undermine one of the main goals of the *RTA*, namely the elimination of default evictions.

Recommendation: Include provisions to permit the Board to set-aside an order in circumstances where the tenant can demonstrate that their absence was reasonable.

### **Limitation Periods**

- Several sections of the *RTA* allow specified tenant applications to be made only within one year of a particular event.

- The *Limitations Act* provides a general two-year limitation period with respect to civil actions.
- Due to the cyclical nature of many mental illnesses, some clients may not be able to assert their rights for an extended period of time. This one-year timeframe precludes many individuals from exercising their rights.

Recommendation: The general limitation period in the *RTA* should be extended to two years to protect the rights of tenants and to ensure consistency with other provincial legislation.

### **Regulations**

- Although the Lieutenant Governor in Council has the ability to make regulations prescribing a wide array of issues, it is silent about consultations with stakeholders. Mental health consumers should be directly involved in providing input regarding the statute and the legislation.

Recommendation: Regulations should be made so that stakeholders, including consumers of mental health services, shall have input on the *RTA* and its regulations.

Finding and maintaining housing is essential for mental health consumers. The PPAO is pleased with a number of the proposed amendments but we feel that the aforementioned changes are necessary in order to transform the landlord-tenant process, increase the quality of accommodation and to positively affect consumers of mental health services.

Thank you for your time and consideration.

Sincerely,



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Director (A)

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## **APPENDIX 1**

### **Bill of Rights**

(Dr. Ernie Lightman, *A Community of Interests: The Report of the Commission of Inquiry into Unregulated Residential Accommodation*, 1992)

1. Respect for the basic human dignity of the residents;
2. A safe, secure, and clean living environment:
  - a. clean and private bathing and toilet facilities including, without additional charge, sufficient soap, toilet paper, and hygienic pads;
  - b. a secure and locked storage area for personal effects, and the key to it;
  - c. a key to the home (unless there is open twenty-four-hour access), and to one's bedroom and bathroom, each of which must have a lock;
  - d. a secure locked area for storage of medications;
  - e. meals, as contracted, that meet the minimum standards of the Canada Food Guide, (with consideration given for the fact that persons with psychiatric histories tend to require more food, as medications increase their levels of hunger, as may anxiety, and boredom) and are served at appropriate times; operators must accommodate reasonable needs of residents (for example, with sufficiently flexible scheduling of meals to meet work or comparable needs of residents);
3. Personal rights:
  - a. the right to be treated as competent in all areas of decision-making in all personal and financial matters, the freedom to come and go, and a prohibition on operators' requiring residents to sign in and out;
  - b. the right to dress and to decorate one's own living area as one wishes;
  - c. the right to designate someone to receive any and all information to which the residents have a right of access;

- d. the right to know who owns and operates one's residence (including the names, addresses, and phone numbers of owners and operators);
- e. residents shall not be required to do work or services for or on behalf of operators;
- f. residents' right to privacy shall be respected at all times; this includes prohibitions on intrusion into residents' living areas, except as provided under the Tenant Protection Act, and on interference with residents' personal belongings;
- g. no physical search of the residents;
- h. no restrictions on communication by telephone and mail, or on access to print or broadcast media, including the right to send and receive written correspondence unopened;
- i. the right to unimpeded access to independent advocates, lawyers, or physicians at any time;
- j. the right to receive visitors, including staff from community-based programs;
- k. the right to form a tenants' or residents' association and to meet without the presence of owners, operators, or staff;
- l. the right to be addressed by name and in non-patronizing language;

#### 4. Confidentiality

- a. if files or records on residents are kept, the right to complete access by the residents to all information contained therein;
- b. no information about residents shall be released to any third party except with the written consent of the residents; residents shall have the right to correct any misinformation held or released by operators and to attach a statement of their position on an issue to that of the operators;

#### 5. Sexuality:

- a. the right to engage in consensual sexual behaviour that does not interfere with the dignity and privacy of other residents;

#### 6. Religion:

- a. the right to engage in religious practice in any manner that does not interfere with the dignity and privacy of other residents, and the right not to engage in religious practice;

7. Consent to treatment:

- a. the right to be considered competent to accept or refuse treatment in accordance with the law;
- b. the right to be free within the premises from pressure or coercion to accept or refuse medical treatment, including psychiatric treatment;
- c. the right to self-medicate in accordance with the law;
- d. if someone assists with medication, the right to one's own medication - not another's received from a competent person according to the prescribing doctor's instructions;

8. Restraint and seclusion:

- a. the right to be free from punitive restraint or detention measures. This includes a prohibition on the use of binding, tying, chemical, and/or other similar restraints, and locked rooms and enclosed spaces;

9. Abuse:

- a. the right to freedom from physical, verbal, emotional, and sexual abuse;

10. Advocates and other outside supports:

- a. the right to have unimpeded access to independent advocates;
- b. the right to have access to community support services and the right to choose the supplier of one's purchased goods and services;
- c. no one shall impede or deny entry to a residence of any person or advocate invited into the premises by the residents.