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City of London
300 Dufferin Avenue
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Dear Mayor Josh Morgan and Members of London City Council:

Re: CPSC Item 4.2 – Municipal Options to Limit or Prevent Renovictions

We are the lawyers for the London Property Management Association (LPMA). The LPMA is a non-profit organization that provides information and education to landlords and represents the interests of both large and small property owners. The association has more than 400 landlord members representing approximately 35,000 rental units.

We are writing with respect to the motion passed on January 23, 2024 from Mayor Josh Morgan, Deputy Mayor Shawn Lewis and Councillor Peter Cuddy requesting city staff to study options to prevent or limit "dubious" evictions for renovations or because a landlord plans to have relatives move into residential rental units. Possible solutions have included proposed amendments to the Residential Rental Unit (RRUL) By-law (the "By-law") which currently dictates that a rental unit licence is only required on buildings containing four or fewer units or a converted dwelling, to include residential dwellings up to four storeys.

Another proposed solution would require landlords submit N12 and N13 notices of termination to the City as well as the tenants and the Landlord and Tenant Board (the "Board"), thereby permitting the City to evaluate the merits of the landlord's application to terminate a tenancy.

According to the proposed amendments to the By-law, the City of London seeks to regulate by way of licensing any landlord who intends to perform repairs and renovations and serves a notice of termination pursuant to section 50(1)(c) of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (the "RTA"). Subsection 50(1)(c) of the RTA provides as follows:

> **50 (1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,**
>
> (a) demolish it;
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> (b) convert it to use for a purpose other than residential premises; or

> **(c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.** [Emphasis added]

The proposed amendments would impose a positive duty on landlords who have served a notice of termination pursuant to subsection 50(1)(c) of the RTA to apply for a licence issued by the City of London. Inspired by the "Renovation Licence and Relocation By-law" recently passed by the City of Hamilton, on January 23, 2024, the London chapter of ACORN, the tenants' advocacy group, recommended specific regulations to the City of London. The recommendations include requiring landlords to:

- Apply for a licence within seven days of issuing a tenant a notice they are being evicted for a renovation
- Provide tenants with a tenant's rights and entitlements package
- Provide tenants wishing to exercise their right to return to their unit, at the same rent, with temporary accommodation or a rental top-up for the duration of the renovations

Although the RTA includes provisions for notice, compensation and a tenant's right of first refusal, it does not include any of the licencing requirements or other duties as required by the Hamilton By-law or the expansion proposed to the London By-law.

By way of Bill 97, the *Helping Homebuyers, Protecting Tenants Act, 2023*, the legislature has proposed amendments to the RTA that, once in force, will require a landlord to notify a tenant of the estimated date by which the rental unit is expected to be ready for occupancy following the repairs or renovations, any changes in that date, and when the rental unit is ready for occupancy. The amendments will also require that a notice of termination given under subsection 50(1)(c) be accompanied by a report prepared by a person with prescribed qualifications and that states that the repairs or renovations are so extensive that they require vacant possession of the rental unit and meet any other prescribed requirements.

Given that the RTA already "covers the field" and will do so to an even greater extent once the Bill 97 edits become law, it is our opinion that the licensing provisions proposed by the amendments to the By-law are ultra vires the legal authority of the municipality and are therefore illegal and unenforceable due to a conflict with the RTA.

Municipalities can exercise only those powers conferred on them by provincial or federal legislation. Consequently, as with any municipality, the City of London may only exercise:

(a) powers expressly conferred by statute;

(b) powers necessarily or fairly implied by the power expressed in the statute; and

(c) powers essential and not merely convenient to the implementation of the purposes of the municipal corporation.

Because the enabling legislation limits the scope of the municipality's lawmaking power, a municipal by-law will be illegal if it is inconsistent, not only with the letter, but also with the spirit or purpose of the enabling legislation. Public authorities, including municipalities, must not use their powers for purposes incompatible with or outside the scope of the purposes envisaged by their enabling statute.

If a municipality enacts a by-law or resolution to exercise authority that it does not have, then the by-law or resolution is illegal and without force and effect and may be quashed as *ultra vires* or, when it is possible to sever the illegal portion, quashed in part.

Pursuant to subsection 168(2) of the RTA, the Board has exclusive jurisdiction to determine all applications under the RTA and with respect to all matters in which jurisdiction is conferred on it by the RTA. Section 174 provides that the Board has the power to "hear and determine all questions of law and fact with respect to all matters within its jurisdiction under [the RTA]." By enacting legislation that amends the duties and responsibilities of landlords, the City of London purports to usurp the authority and jurisdiction of the Board by providing its own process for determining a breach of a landlord's duties under the RTA.

Subsection 3(4) of the RTA provides that if a provision of the RTA conflicts with a provision of another Act, other than the *Human Rights Code*, the provision of the RTA applies.

Although the By-law relies upon the authority of the *Municipal Act, 2001*, subsection 14(1) of the *Municipal Act, 2001* mandates the primacy of provincial and federal statutes and regulations:

> 14 (1) A by-law is without effect to the extent of any conflict with,
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> (a) a provincial or federal Act or a regulation made under such an Act; or
>
> (b) an instrument of a legislative nature, including an order, licence or approval, made or issued under a provincial or federal Act or regulation.

Subsection 14(2) of the *Municipal Act, 2001* clarifies that "without restricting the generality of subsection (1), there is a conflict between a by-law of a municipality and an Act, regulation or instrument described in that subsection if the by-law frustrates the purpose of the Act, regulation or instrument." In the present case, there is a conflict between the RTA and the By-law as the latter purports to expand the responsibilities of landlords as described by the former.

With respect to a similar By-law which purported to require a landlord to provide accommodation to a tenant displaced by repairs or renovations, in *Greater Toronto Apartment Association* v. *City of Toronto*, the Ontario Superior Court quashed a similar provision enacted by that municipality that required landlords to provide, at their own expense, appropriate temporary accommodations to tenants within 24 hours of the onset of a disruption.[1]

As the Court noted, the premise that landlords are legally obliged to provide habitable premises in all circumstances represents a misconception of landlord and tenant law relating to the rental contract and the RTA:

> Landlords are not universally obliged to provide temporary housing when the landlord's property becomes uninhabitable for whatever reason. Landlords are in the business of providing social services. Landlords are not universally obliged by contract to provide social services to tenants. Landlords operating retirement homes and landlords operating assisted living accommodation may provide social services to their tenants, but operators of conventional apartment buildings are in

[1] 2022 ONSC 6335 ('*Greater Toronto Apartment Association*').

> the business of providing accommodation in exchange for rent. Moreover, contrary to the City's submissions in its oral and written argument, landlords operating a typical residential apartment building do not have an obligation to provide accommodation to their tenants whenever the landlord's property becomes uninhabitable for whatever reason.[2]

The necessity of repairs requiring vacant possession contemplated by section 50 of the RTA is analogous to the electrical fire in *Greater Toronto Apartment Association* that resulted in the evacuation of 1500 residents and substantial expense to the City. Neither should be presumed to represent a state of affairs created by the landlord.

The premise of the present study appears to align with a popular presumption that so-called "renovictions" represent a presumptively disingenuous ruse to deprive tenants of their homes, likely in the pursuit of charging higher rents. However, the clear wording of section 50 of the RTA provides landlords with a process to conduct necessary repairs so substantial that vacant possession is required for their completion and the safety of the residents. There is no rebuttable presumption in section 50 that would place an evidentiary onus on a landlord serving the required notice of termination to demonstrate the good faith intentions of serving such a notice. For those landlords who do serve such notices in bad faith, there is a process provided in section 57 of the RTA to apply for relief to the Board. The By-law effectively serves to impute an implied finding of bad faith on the part of landlords at first instance by imposing licencing fees and other requirements on the apparent presumption that the work contemplated is largely elective and therefore requiring confirmation of its necessity.

Essentially, in the absence of any evidence to support the apparent premise that major repairs or renovations are inherently gratuitous, the proposed amendment serves to tax construction and repairs undertaken by landlords over and above federal and provincial taxes on labour and materials needed to bring properties into a habitable state. At the same time, the regulations and expenses posed by the amendments recommended by ACORN potentially discourage the same landlords from undertaking the necessary repairs and maintenance to their properties largely to the detriment of those residents the By-law purports to protect.

It may also be found that the licensing fee is an indirect tax – a tenant who intends to exercise his or her right of first refusal to move back into a renovated or substantially repaired unit, may ultimately be paying the licensing fee and costs of mandatory temporary accommodation by way of an Above Guideline Rent increase.

Moreover, municipal regulation of so-called "renovictions" would be extremely complicated and would have unintended consequences inevitably adding substantial and unnecessary costs to housing. The administrative costs to operate the present licencing program was estimated at approximately $400,000 annually according to a report generated by the LPMA in 2012. An FOI request by the LPMA revealed that the total costs related to licensing landlords between 2010 and 2012 totalled $1,260,000, ultimately resulting in a $1,160,000 net loss to taxpayers to September 13, 2012 to fund the program, a loss not disclosed by staff reports at the time. The increased costs associated with adding enforcement officers and staff to process an enhanced licencing program would exponentially increase these costs and ultimately pass to the very

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[2] *Ibid*. at para. 52.

tenants that council and advocacy groups seek to protect. The LPMA views the proposed expansion of this dysfunctional licencing program as inconsistent with responsible oversight by council.

The end result of such a significant increase in licencing fees and process will see rents increase to tenants across the City, where affordable rents for low income individuals are already in desperately short supply. Rather than exploring municipal options to limit or prevent renovictions through current and/or new by-law(s), policies and programs, we would suggest joint advocacy with stakeholders such as LPMA to encourage the Provincial legislature to implement the changes proposed by Bill 97 and to address the wait times at the Board.

Yours very truly,

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c.c. Client