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VIA EMAIL: cpsc@london.ca

Chair and Members
Community and Protective Services Committee
City of London
300 Dufferin Avenue, PO Box 5035
London, Ontario N6A 4L9

Dear Chair and Members:

Public Nuisance By-law; London Property Management Association Concerns

We are the lawyers for the London Property Management Association ("LPMA"). The LMPA is committed to promoting education and professionalism among its more than 500 members. The vast majority of LPMA members are owners and operators of multi-residential rental properties, including apartment buildings and converted residential dwellings providing student housing in areas of the City where post-secondary education facilities are situate.

The purpose of this letter is to communicate the LPMA's concerns regarding the proposed By-law amendments with respect to "unsanctioned and unsafe street parties" which are the subject of the Community and Protective Services Committee's (the "Committee") meeting on April 1, 2019.

LPMA's members are directly affected by the proposed by-law to the extent it seeks to make landlords liable for tenants' conduct. The By-law proposes that a City Hall employee will conduct a forensic assessment of the "reasonableness" of a landlord's conduct at the time of the unsanctioned event and then allocate a cost to be assessed against the landlord as a financial penalty. Some of the criteria for assessing "reasonableness" as expressed in the Report to your committee include "…attending the property or hiring a security guard and communicating with the tenants not to host a nuisance party"; and, "…where an absentee landlord, for example, takes no action to prevent, end or clean up after a nuisance party, they may be subject to invoicing". There is also a suggestion that if the landlord is invoiced, the costs of same can be passed on to the tenant, but of course, no recognition that the landlord would ever be able to recover those costs.

LPMA's members share the City's concerns about unsanctioned and unsafe street parties. The property damage caused by such parties and attendant financial loss is a strong incentive for

landlords to discourage and prevent such activities. The provisions of the LPMA lease and provisions of the *Residential Tenancies Act* (RTA), which is provincial legislation, provide landlords with some tools to address circumstances where tenants commit illegal acts on the rental property (but not on the sidewalk in front) or cause physical damage (not receipt of municipal invoices) to property. In all cases, where damage occurs at the rental property, a landlord is legally required to follow a process established under the RTA which usually takes months and, at most, will result in termination of the tenancy and, where physical damage has occurred, recovery of a judgment which in many cases is not worth the paper it's printed on.

What the proposed By-law incorrectly assumes, however, is that landlords have the legal right to control tenant conduct. Landlords do not have the legal right to control tenant conduct and landlords have, time and time again, been sanctioned by the Landlord and Tenant Board (LTB) and by the Courts for attempting to do so. If a landlord were to hire a security guard to prevent persons from entering upon a tenant's property, the landlord would be in breach of its RTA obligation not to interfere with a tenant's use and enjoyment of the rented premises (see Divisional Court decision in *Cunningham v. Whitby Christian Non-Profit Corp*.) If a landlord were to enter upon the property at the time of an unsanctioned event and demand that tenants and their guests comply with the By-law, the landlord would be in breach of its RTA obligation to give 24 hours' written notice of entry. In all cases where the landlord is in breach of the RTA, the landlord is liable to give the tenant a rent abatement and also subject to Provincial Offence charges which attract fines of up to $100K. Landlords do not have the legal right to engage in what Civic Administration characterizes as "reasonable actions to prevent a nuisance parties". Such actions are not "reasonable", they are illegal and the Province's RTA "trumps" a City By-law.

What LPMA can do in an effort to discourage the hosting or involvement by tenants in nuisance parties at rented premises is develop a further schedule to its existing industry leasing agreements and recommend that its members who lease properties near post-secondary educational institutions use the schedule. The schedule would put tenants (and, importantly, their guarantors) on notice of the existence of the City's By-law; of the financial penalties that tenants and their guarantors are subject to under the By-law; and, the consequences to their tenancy where By-law infractions occur. This would be a lawful approach to addressing tenants' potential future conduct.

When a landlord gives "possession" of a rental unit to a tenant, the landlord has no legal right to control the tenant's conduct or that of visitors while on that property. The landlord's legal right is to respond, after the fact, to conduct that is a breach of the tenant's obligations under the RTA and in some cases under the lease. In such cases, tenants must be given detailed notice of the event which gives rise to the Notice and in most cases must also be given an opportunity to refrain from such conduct in future (and if they do, the landlord's notice is deemed "void"). In some cases where the landlord is in a position to terminate the tenancy, there is usually a period of several weeks before the application is adjudicated and if successful, there is passage of at least two more weeks before termination is effective.

In summary, the provisions of the By-law which assume the landlord has any effective control over tenants' conduct are fundamentally flawed, and by extension, the provisions of the By-law

which purport to make the landlord financially liable for failing to engage in prohibited and illegal conduct under the RTA create an impossible situation for landlords, and arguably such provisions would be struck down if challenged in court. In addition, it is respectfully submitted that leaving the assessment of "reasonableness" to a City employee whose job it is to try to recover "costs" makes it a foregone conclusion that where costs are incurred, landlords will invariably be found to have acted "unreasonably" and invoiced accordingly.

We request, therefore, that the proposed By-law be sent back for further review, and in particular, a review by the City's legal department to ensure that what is ultimately enacted is lawful and does not put property owners in a position where they are compelled to act illegally in order to avoid being fined by the city for the actions of a third party.

Yours very truly,

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