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# Official Report of Debates (Hansard)

**Wednesday 31 May 2006**

# Journal des débats (Hansard)

**Mercredi 31 mai 2006**

## Standing committee on general government

Residential Tenancies Act, 2006

## Comité permanent des affaires gouvernementales

Loi de 2006 sur la location à usage d'habitation

Chair: Linda Jeffrey
Clerk: Susan Sourial

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# STANDING COMMITTEE ON GENERAL GOVERNMENT

# COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 31 May 2006

Mercredi 31 mai 2006

*The committee met at 1601 in room 151.*

## RESIDENTIAL TENANCIES ACT, 2006
## LOI DE 2006 SUR LA LOCATION À USAGE D'HABITATION

Consideration of Bill 109, An Act to revise the law governing residential tenancies / Projet de loi 109, Loi révisant le droit régissant la location à usage d'habitation.

## ONTARIO NON-PROFIT HOUSING ASSOCIATION

**The Chair (Mrs. Linda Jeffrey):** Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 109. I'd like to welcome our witnesses and tell you you'll have 10 minutes once you come up to the podium. Our first group is the Ontario Non-Profit Housing Association. Get yourselves seated comfortably. If you need to pour yourself a glass of water, please do. If you're all going to speak, I'm going to need you to identify yourselves for Hansard, and the group that you speak for. Once you begin, you'll have 10 minutes. If you use up that time, there won't be an opportunity for us to ask questions, but I'll give you a one-minute warning.

**Mr. Sharad Kerur:** Thank you, Madam Chair, and good afternoon, ladies and gentlemen. My name is Sharad Kerur. I'm the executive director of the Ontario Non-Profit Housing Association. Joining me here today, on my left-hand side, is Hugh Lawson, who is the vice-president of our association and director of corporate planning and performance for the Toronto Community Housing Corp. Also with me, on my right side, is Mr. Charles Dowdall, who is the manager of local networks and management support for our association, who is here to assist us with any questions the committee may have.

At the outset, we'd like to thank you on behalf of the 760 non-profit housing corporations that make up the Ontario Non-Profit Housing Association for giving us the opportunity to present our members' views to you here today.

The members of ONPHA provide affordable housing for families, seniors, persons with disabilities, the formerly homeless, those who are considered hard to house and those who suffer from mental health and addiction issues.

ONPHA's members account for more than 10% of all landlord-tenant relationships in Ontario, including many of the most challenging tenancy situations in the province. As social housing landlords, our members are committed to keeping people in housing they can afford, and we appreciate the difficult balancing act of any new law governing landlord-tenant relationships in Ontario.

Two years ago, when consultations were being undertaken on reform of the current Tenant Protection Act, ONPHA made a series of recommendations, requesting greater recognition for the unique nature of non-profit housing landlords from their private sector counterparts. We were pleased to see that the legislation does provide this distinction, particularly section 203 of the proposed legislation, which clearly states that the Landlord and Tenant Board has no jurisdiction in the area of rent-geared-to-income calculations and decisions regarding the withdrawal of subsidies and/or assistance for all non-profit housing providers.

There are, however, areas of the proposed legislation that, if enacted, will severely impose negative consequences for both the tenants and non-profit housing providers and will run counter to the government's intention of creating a more transparent and accountable process for landlord-tenant relations.

We are tabling with you here today a paper with a series of 18 recommendations that we hope the government will seriously consider before Bill 109 is enacted. But given the limited time we have here today, we will focus on only four key areas. I will ask Mr. Hugh Lawson, our vice-president, to talk to you about those four key areas.

**Mr. Hugh Lawson:** Thank you, and good afternoon. The first area I wish to address is the need for a default process. Under the Residential Tenancies Act, the province is proposing a major change to require all eviction applications to have a hearing. In non-profit housing, providers work very closely with tenants and generally file applications to evict only when all other means of resolving disputes have been exhausted. We agree that the process moved too quickly under the prior TPA by giving tenants only five days to dispute an application to evict. Legitimate eviction applications, however, should be allowed to proceed in a timely and efficient fashion. We therefore propose that the default mechanism be permitted to continue and that tenants be given 20 days to dispute an application to evict.

Second, section 82 of the RTA provides tenants with the opportunity to raise other issues at a hearing of an application by the landlord to terminate tenancy. This has the potential to cause very serious and substantial delays in resolving applications, particularly in smaller cities and rural areas, where it already takes many weeks to schedule a hearing. While ONPHA does not deny a tenant's ability to raise additional matters, we strongly urge the government to amend this section of the legislation to require that the tenant must raise any other potential issues in a separate application at least 10 days in advance of the hearing so that the housing provider has an opportunity to prepare for the issues in advance of the hearing. If there is no advance requirement for the parties to know the case, they will not have the opportunity to prepare for the issues, and this will result in a significant number of adjournments and delays in the making of orders. With just one adjournment due to the tenant raising a new issue, it could take three to four months to resolve an application in the already-underserved areas in Ontario.

Third, the RTA should be amended to make it very clear that any decision regarding a tenant's circumstances should not be impacted because the landlord is a non-profit housing provider. Additional training should be provided for adjudicators on this matter. Many of our members have concerns that they have sometimes been labelled by the adjudicators as the housing providers of last resort. While non-profit housing providers do house people whom the private sector has not been able to accommodate, there are issues of safety and security for all tenants in the building. Tenants in non-profit and supportive housing should not have a lesser standard of rights than any other tenant in the province. Everyone should have the same right to reasonable enjoyment, whether as a tenant or a landlord.

Finally, ONPHA requests that the proposed RTA be amended to explicitly make the orders of the Landlord and Tenant Board public. The Social Housing Reform Act, under which non-profit providers must operate, requires that a tenant who owes outstanding amounts to one social housing provider is not eligible to receive a subsidy in another social housing unit. However, without being able to access the information from the tribunal or the Landlord and Tenant Board, it is difficult to fully comply with the legislative requirement under the SHRA.

Although we have highlighted these four areas, the other 14 recommendations that we have made as well are no less important and we hope the government will see its way to incorporate these recommendations into the legislation so that a truly balanced tenant and landlord act, covering both the public and private sectors, can be attained.

Thank you for your time. We'll now answer any questions that you have.

**The Chair:** You've left about a minute for each party to ask you questions, beginning with Mr. Hardeman.

**Mr. Ernie Hardeman (Oxford):** I just want to quickly go to the days of notice, the five days that presently exist when they must say they want a hearing or they would have the eviction by default. Your suggestion is that that go to 20. Previous presenters stated the fact that when a person gets the notice in the five days, they have known for 20-some days prior to that that they haven't paid their rent, if that's the reason for it. So they would not be surprised to see the notice coming. But the real problem they've put forward was that everyone is forced to go that route, as opposed to—if we all agree and consent that we are being evicted for rent, why should we have to go through the hearing process? Why should the whole process have to carry on? Is the 15-day extension that you're proposing better than the present system?

**Mr. Lawson:** Yes, it is, because many of our tenants have difficulty comprehending clearly the intent. They need advice from either friends, family or legal clinics to assist them. So they need time to get that support.

**Mr. Rosario Marchese (Trinity–Spadina):** Thank you for the submission. In your recommendation 1, "The RTA should keep the proposed section 203 which clearly states that the proposed act and the forthcoming Landlord and Tenant Board should have no jurisdiction in the area of rent-geared-to-income calculations," I understand why you might want that, but you also know that many of the neighbourhood legal clinics don't support what you have brought here today with this recommendation. They're worried because a lot of the appeals that have gone to the tribunal are based on this, and they're worried that circumstances change in ways that, if they don't have an appeal process, they're stuck with a decision you might make. You might argue, "The decisions we make are thorough and there's due process," and so. But legal clinics are worried. How do you respond to that?

**1610**

**Mr. Lawson:** There's a process under the Social Housing Reform Act for appeals; it's called a review. The jurisdiction rests in the Social Housing Reform Act, so it's part—

**Mr. Marchese:** What about an independent review—is what they speak about—rather than your own review within your own housing powers?

**Mr. Lawson:** The government would have to consider that under the SHRA, if they were going to consider that. I think it's a problem mixing the two pieces of legislation.

**Mr. Brad Duguid (Scarborough Centre):** Actually, I'd like to expand on that area a little bit. You didn't look like you were happy with my saying that, but that's okay.

It is two different pieces of legislation. From our perspective, at this point in time, the Social Housing Reform Act appears to be the one that more adequately deals with the special relationship between a non-profit housing provider and a tenant. Could you maybe explain why you feel it's important that this type of housing be governed under the Social Housing Reform Act?

**Mr. Lawson:** It is governed under the Social Housing Reform Act. The rules there deal with the calculation of rent and so on, and they're rules that are followed by housing providers. It's hard to have another piece of

legislation say, "We're going to change our mind on the set of rules under that one." If you were a housing provider, you would have great trouble figuring out which set of rules applied in the circumstances. It's much easier having it just under the SHRA. It's just easier that way for us.

**Mr. Duguid:** Okay. Thank you.

**The Chair:** Thank you very much gentlemen.

## ETOBICOKE-LAKESHORE HOUSING TASK FORCE

**The Chair:** Our next delegation is the Etobicoke-Lakeshore Housing Task Force. Welcome. Thank you for being here today. If you could announce your name and the organization you speak for, for Hansard. When you begin, you'll have 10 minutes.

*Interruption.*

**Mr. Marchese:** You might want to speak up.

**The Chair:** Somebody at the back said they couldn't hear? I am miked. I don't want to be yelling at people.

If you could state the organization you speak for and your name. You have 10 minutes, okay?

**Ms. Toni Panzuto:** Good afternoon, everyone. My name is Toni Panzuto. I'm the chairperson of the Etobicoke-Lakeshore Housing Task Force.

The Etobicoke-Lakeshore Housing Task Force is a community group that, since 1999, has advocated for affordable housing and tenants' rights in south Etobicoke. We thank you for the opportunity to speak to your committee on this very important bill.

Fifty per cent of the people in our community live in tenant households. Half of those households struggle to pay their rent and put food on the table every month. These people need more than protection from unlawful rent increases and unlawful evictions; they need a system of tenant protection that truly recognizes their right to housing. This means rent control that works and protection from the threat—whether that threat is due to short-term economic hardship or development pressure.

In our community, affordable rental housing is located next to luxury condominiums on prime lakefront land. This adds constant pressure to demolish and redevelop tenants' homes to the other uncertainties they face.

Unfortunately, Bill 109 falls short in many of these areas. It is a major disappointment that this government has failed to honour its campaign promise to end vacancy decontrol where the vacancy rate is below 3%. Tenants are dealt another blow to their security through the continuation of a complicated and unfair system of above-guideline rent increases.

These issues have been, and will be, addressed by other speakers. We particularly endorse the submissions by ACTO and FMTA. However, we would like to address four areas that need improvement in order that injustices that we see in our community can be remedied.

(1) Spouses and children are not unauthorized occupants. Bill 109, like the Tenant Protection Act, provides no protection for a spouse or family member who resides with the tenant after the death of the tenant or breakdown of the relationship. These people could be evicted as "unauthorized occupants" under section 100. This creates a serious injustice for victims of domestic violence, who could be forced into the overburdened shelter system. Even worse, they could be forced to take the abuser back into the home to avoid eviction. In some cases, this could be a death sentence, and it has happened in the past.

Furthermore, families who have suffered the loss of a loved one should not be further traumatized by facing an eviction because that person was the one who was named on the lease. Section 100 should be amended to allow resident family members to choose to remain and take responsibility for the tenant's obligations.

(2) Demolitions, renovations and conversions should not be allowed without all permits and approvals in place. The city of Toronto has taken steps within its jurisdiction to protect the rental housing in our community. They require approval and permits for activities which would result in the loss of rental housing, and these permits are not given unless the public interest has been satisfied. Clause 73(b)(ii) of the bill would weaken the protection of tenants that city bylaws are seeking to address. If permits cannot be obtained until a unit is vacant, this may be because the municipality is trying to protect the tenancy. It will be very difficult for the board to determine if "all reasonable steps have been taken" to get the permits. No evictions should be granted by the board on these grounds unless all permits have been obtained. We recommend that clause 73(b)(ii) be deleted.

(3) Landlords should not be allowed to rewrite leases to allow extra billing for utilities. Many tenants in our community live in small buildings of six units or fewer. These are often the most affordable units, and the tenants who live in them cannot afford to take on additional costs. Section 138 is a complicated system of allowing landlords to unilaterally force tenants to take on extra costs that are not properly theirs. There is no reason to believe that any energy conservation will result from this change. On the other hand, the opportunities for abuse are great in that tenants have no way of verifying the information that the landlord must provide. This section must be deleted.

(4) Tenants with geared-to-income rents should only be required to pay rents that are lawfully charged. Section 203 requires the Landlord and Tenant Board to accept a landlord's claim about what the rent is, even if a tenant has clear evidence to the contrary. This does not permit the board to fairly adjudicate any dispute between these parties. Of course the tenant in these disputes is, by definition, economically disadvantaged, and social housing providers are not infallible. There is no appeal route within the social housing system from decisions on rent-geared-to-income assistance, and anyone appointed to the board should have the necessary expertise to review these decisions. Section 203 should be amended to allow the board to review the decision of a service manager, supportive housing provider or lead agency about the amount of a geared-to-income rent where this is an issue in a case before the board.

Tenants were extremely disappointed when the Tenant Protection Act was proclaimed. Thousands of them suffered from unfair rent increases, and record numbers of tenants were evicted. While in opposition and on the campaign trail, the governing party bitterly denounced the evils of this act. However, after three years of consultation and study, we have a warmed-over version of the same law, which in some cases removes rights that were given under the TPA.

The Etobicoke-Lakeshore Housing Task Force expects much better from a government that professes sympathy for the concerns of tenants. At the very minimum, we urge the committee to recommend the changes in the four areas we have outlined. What is really needed is a new system that will recognize that all Ontario tenants have a right to a decent home with an affordable rent.

With this law, you have a chance to take steps toward this goal. By your votes on this bill, all parties will be judged at election time on whether or not they had the courage to make a positive difference in tenants' lives.

Actually I meant to do this prior to—I'll let them introduce themselves.

**Mr. Kenneth Hale:** My name is Kenneth Hale. I'm the lawyer director of the South Etobicoke Community Legal Services. Our organization is a member of the task force. I'm here to give Toni a little backup if she needs it. But, as you can see, she doesn't necessarily need it.

**Ms. Maureen Boulter:** My name is Maureen Boulter. I'm a member of the committee also. I'm there as a representative of the board of LAMP; I'm the chair of the board. We are behind everything that Toni says so eloquently.

**The Chair:** You've left about a minute for each party, beginning with Mr. Marchese.

**1620**

**Mr. Marchese:** In second reading debate, I argued that not dealing with vacancy decontrol is a serious problem. It's the biggest disappointment in terms of a government's promise that was made and broken. A lot of people move from year to year. As a result of that, landlords take advantage of it. They like that. They're quite happy. Given the presentation they made on Monday, this is one of the best things that the government could have done. In my view, it's the worst thing that the government did not address. You addressed other areas of concern, but is vacancy decontrol equally as big for you in terms of what needs to be changed in this bill?

**Ms. Panzuto:** Yes, it is. Actually, I'll let Ken answer that.

**Mr. Marchese:** Yes, please.

**The Chair:** You have about 15 seconds to answer this.

**Mr. Hale:** It's a very strong concern. It undermines a lot of the other protections. It gives an economic incentive for evictions. We know that a lot of other people have addressed it. We thought that we should address some of the more minor, hidden concerns, but it is a very strong concern.

**Mr. Duguid:** I'll be as quick as I can. We're seriously looking at a couple of the concerns you've raised here. Spouses and children not being authorized occupants comes under the definition of a tenant, and we are seriously looking at that. The vehicle that we'll probably use would be regulations, because it's a complicated issue that may require some change as we go forward. We've seen in New York City and others where that's been a problem, so we want to make sure that we're able to tackle that. In all likelihood, we'll do that through the regulations.

Demolitions and conversions: We are giving, through the City of Toronto Act, the ability of the city to have full authority on those, so tenants will certainly be protected with regard to that.

You talked about this as not being a big change from the previous act, and—

**The Chair:** Mr. Duguid, you have 10 seconds.

**Mr. Duguid:** —nothing could further from the truth, frankly. You've looked at the eviction process changes, you've looked at the changes to the rates, you've looked at the AGIs—

**The Chair:** Thank you, Mr. Duguid. Ms. MacLeod?

**Ms. Lisa MacLeod (Nepean–Carleton):** In your words, you suggest that in some cases this act "removes rights that were given under the TPA." I'd like some examples, if you wouldn't mind providing us with some. And thank you very much for your great presentation.

**Ms. Panzuto:** Ken will answer that.

**Mr. Hale:** For example, tenants' rights to privacy: Under the present law, there's no right for landlords to come in just to snoop around or do an inspection; under the proposed law, that right is granted to the landlord, to come in and snoop around if they give 24 hours' notice.

Demolitions and conversions: An eviction cannot be granted under the present law unless the landlord has in his hand a permit; the government is proposing that if all reasonable steps have been taken to get the permit, if they don't have the permit, the board can still allow the eviction.

**The Chair:** Thank you very much. That's the end of our time; I'm sorry.

## LAMP COMMUNITY HEALTH CENTRE

**The Chair:** Our next delegation is the LAMP Community Health Centre. Not much changed, but I did notice one insertion. Welcome. As you can see, our time is tight today. We welcome you here. You have 10 minutes. Should you leave time at the end, we'll be able to ask lengthier questions. If you don't, we'll have to be short.

**Ms. Helen Armstrong:** Thank you for giving us a chance to speak to your committee today.

LAMP Community Health Centre has been operating in south Etobicoke for almost 30 years.

**The Chair:** Could you identify yourself before you begin?

**Ms. Armstrong:** I'm sorry. My name is Helen Armstrong. I'm a staff person at LAMP.

We work actively on the social determinants of health, including the right of all people to decent, affordable housing. Without such housing, people's mental and physical health can and does deteriorate.

LAMP's board of directors was compelled to make action on affordable housing an agency priority over five years ago. After the introduction of the Tenant Protection Act, there was a significant increase in rental evictions in our community. That act continues to provoke record numbers of rental evictions. We are concerned that Bill 109 does not remedy the worst aspects of the TPA, but only offers a few improvements. In some cases, Bill 109 shockingly will worsen the situation for tenants, as Mr. Hale just outlined.

The Lakeshore Housing Needs Study of 2002 reports that tenants are facing record eviction levels. Many Lakeshore tenants continue to struggle every month to pay their rent and buy food, and that includes families with small children. We see these people daily at LAMP in our housing help centre.

We agree with all the recommendations proposed by tenant advocates, including the Advocacy Centre for Tenants Ontario and the Federation of Metro Tenants' Associations and, of course, the previous presentation.

Our brief will focus on four main points.

(1) Vacancy decontrol must end: We are very disappointed that, despite repeated promises to end vacancy decontrol when the vacancy rate declines, Bill 109 continues this discredited policy. There is no guarantee that a high vacancy rate will continue in Ontario in the next five to 10 years. Landlords' own research reveals that vacancy rates will decline due to strong immigration and a widening gap between renting and owning. This will result in landlords being more able to raise rents to unfair levels and will encourage them to evict long-term tenants. We must have a strong law that prevents landlords from charging whatever rent they want on newly vacant units.

(2) All tenants deserve privacy: Under paragraph 27(1)4, landlords are given a new right to enter a rental unit to carry out an inspection at any time on a mere 24 hours' notice. No homeowner would accept such a limitation on their privacy by their mortgagee or insurer. Giving this right to landlords provides a licence to intrude on tenants and potentially harass them. Where work needs to be done on a unit, the right of entry makes sense. Where a landlord has other unjust motives, tenant privacy should and must prevail. This paragraph should be deleted.

(3) All tenants deserve a notice period prior to an eviction: In cases where undue damage is alleged, landlords are now able to give 10 days' notice of an eviction. This is a ridiculously short period of time to deprive someone of their home. But even this limitation is not respected by the exception in subsection 80(2), which permits the board to grant an eviction order that is earlier than the date specified in the notice. This essentially means eviction without notice. No law has provided landlords with such powers in the history of landlord-tenant relations in Ontario. While this is intended to apply in only a small number of cases, it can be used widely to intimidate tenants. LAMP is particularly concerned about the large and vulnerable population of people we serve who have mental health issues and other disabilities. This fast-track eviction does not acknowledge the time that may be needed to explore such issues in some of these cases. This section must be deleted. The police and mental health authorities are more than equipped to deal with any emergency situations of these types.

(4) Tenants who are evicted do not deserve to lose their personal belongings: One of the cruellest parts of the Tenant Protection Act was the section that allowed landlords to keep or dispose of a tenant's personal property once 48 hours had elapsed from their eviction. This was rightly denounced by the opposition parties and community groups across the province. Adding an additional 24 hours onto this period does nothing to resolve the meanness of a law that deprives people who have lost their home of the few possessions they might still own. As well, there is no way for a tenant to enforce the obligation that the landlord make the possessions available during the 72-hour period. Evicted tenants should have at least two weeks to remove their property, as they are often homeless and otherwise in crisis.

In conclusion, while there are some improvements in the proposed Residential Tenancies Act, overall this legislation will not result in meaningful improvements in tenants' lives. In some cases, tenants will face new hardships that were, ironically, not part of the much-hated Tenant Protection Act. We urge you to take notice of the recommendations offered by tenants and their advocates and make the requested changes to Bill 109 before it becomes law. LAMP looks to this government for meaningful change that will improve the lives of those who are vulnerable. Thank you.

**The Chair:** We have just over a minute for each party, beginning with Mr. Duguid.

**Mr. Duguid:** Thank you for taking the time to join us today and for your deputation. We'll certainly take a look at the four items you've raised. I don't think your requests are major in terms of changes nor were they major issues that were raised all that much during our consultations. Nonetheless, they're issues that have been raised with us, so we'll certainly take a look.

**1630**

I guess I'm a little surprised that in your deputation you haven't mentioned the changes to the default system for evictions, because I've got to tell you, we went and talked to tenants across this province. That was a major concern. We didn't just tinker with the default system; we've gotten rid of it altogether.

The other area was maintenance. What tenants were asking for in our consultations was to be able to have their rents frozen if landlords are not maintaining their units and if there are serious maintenance deficiencies. We've dealt with that as well, so that's a significant

change. I'm a little surprised that you didn't take notice of that.

As well, the changes to the AGIs: I think, if there was anything that tenants wanted us to do, it was to tighten up the AGIs and provide a cap on the AGIs. We've done that. I know that the tenants and tenant groups I've talked to were very, very pleased with that. Perhaps it was just in the interest of time that you didn't mention these very important items, but I just thought I'd bring it up anyway, because they were sort of—

**The Chair:** Thank you, Mr. Duguid. Ms. MacLeod.

**Ms. MacLeod:** Well done. Thank you very much for appearing here. You mentioned twice: "In some cases, Bill 109 shockingly will worsen the situation for tenants." You also mentioned, "In some cases, tenants will face new hardships that were ironically not part of the much-hated Tenant Protection Act." In your view, can you explain that to me?

**Ms. Armstrong:** I think it was highlighted in some of the areas that I alluded to. Did you have anything else to add to point 3, about tenants deserving a notice period prior to an eviction, for example, and some of the points that were raised by the last speaker—

**Ms. MacLeod:** I noticed you were writing ferociously there, so I just wanted to know if you had any more input you'd like to provide us.

**Ms. Armstrong:** Do you want to add anything, Ken or Maureen?

**Ms. Panzuto:** If we did, we'd need more than 10 minutes for that. That's part of the reason we haven't been able to address everything.

**Ms. MacLeod:** I'd be happy to take a written submission at any time, in addition.

**Ms. Panzuto:** Okay. Thanks.

**The Chair:** Mr. Marchese.

**Mr. Marchese:** Mr. Duguid likes to preach and doesn't give much time for you to answer. Maybe you can take that whole minute to respond to that, including his comment that the requests that you made are not major, including vacancy decontrol. Please take that minute.

**Ms. Armstrong:** Thank you, Mr. Marchese. I would like to point out that vacancy decontrol is a huge issue in our community.

**Mr. Marchese:** You think?

**Ms. Armstrong:** We are seeing continuing record numbers of evictions. I'm seeing tenants come to our offices daily who can't afford to pay their rent. Food bank use at LAMP has jumped 400% in a three-year period. This is all due to unfair rules around vacancy decontrol—much of it is. We used to be a community that had affordable rents. People were not forced to move frequently because they couldn't pay their rent. I really think that when you were campaigning and when you were in opposition, you said that you would end vacancy decontrol, and you're not doing that.

**Mr. Marchese:** That was then.

**The Chair:** Thank you very much for your deposition.

## EASTERN ONTARIO LANDLORD ORGANIZATION.

**The Chair:** Our next delegation is the Eastern Ontario Landlord Organization. This is a video conference. I understand that Mr. John Dickie is here. Welcome to the committee. We thank you for appearing before us today. You'll have 10 minutes once you begin.

**Mr. John Dickie:** Thank you. It's a pleasure to be here. I hope you can hear me.

**The Chair:** We can hear you well.

**Mr. Dickie:** Excellent. You should have a submission which I provided to the clerk just before lunch.

**The Chair:** Yes, we do.

**Mr. Dickie:** The Eastern Ontario Landlord Organization consists of the owners and managers of more than 34,000 rental units in Ottawa and eastern Ontario. Our members range from the largest residential landlords in Ottawa to the owners of one or two rental units, as well as many companies that provide services to our industry and to our tenants.

I have four main points to address to you today: first, section 82, the question of joining maintenance claims without notice. Under the current rules—that is, under the TPA—tenants are required to bring their own applications to obtain remedies for maintenance and other claims. That is the way proceedings work in virtually all other judicial or quasi-judicial procedures, and it affords notice to the landlord of the nature of the claim. As soon as section 82 is enacted, however, in any eviction application, a tenant can allege a maintenance problem. That will effectively buy them time, enabling tenants who are in the know to live rent-free for longer periods of time, because in that situation, landlords will either have to request an adjournment of the hearing to bring proper evidence or run the risk of losing a maintenance application because of a lack of evidence. At a minimum, tenants should be required to give notice of their intention to raise maintenance issues at least five days before the hearing.

Our second main area has to do with section 30, orders prohibiting rent increases. It is unusual in today's market, thanks to vacancy decontrol, for there to be much deferred maintenance. Landlords want to maintain their properties well in order to retain their tenants and attract tenants. For those unusual circumstances where landlords fail to provide proper maintenance, the current rules provide ample relief for those tenants. First, they can complain to the city property standards office, and that will produce a site visit by a trained property standards officer, or PSO, who will determine if the defects are real and, if so, issue a work order. In addition to that process, there is a straightforward application to the tribunal, which provides mediation or a hearing, if necessary. In the middle of page 2, the bullet points provide the remedies that the tribunal can order now, without any recourse to an OPRI, an order prohibiting rent increases. Those are five strong remedies that, in our submission,

are fully sufficient to both compensate tenants and ensure that any needed repairs are done.

What is being added here is the ability to prohibit rent increases. Such a power existed under the NDP's Rent Control Act, but it was mitigated by maximum rent. The ability to catch up again to guideline increases does not exist under Bill 109. This section 30 provision for OPRIs is unnecessary and will damage the rental market. It should be deleted. At the least, orders prohibiting rent increases should only be made where there is a municipal work order for a serious issue that the landlord has not complied with.

Looking at the bottom of that page, I've said "sub-section 20(1) should be deleted." That's a typo. It should read "subsection 30(1) should be deleted." Failing that, the subparagraphs that I've referred to should be deleted.

Our third main area has to do with above-guideline increase applications. Those applications are typically about catching up landlords who have not taken guideline increases or, very occasionally, landlords whose rents are way behind the norm in the community. Ever since rent control was introduced 30 years ago, this system has recognized that landlords need to be able to increase rents for major cost increases. Over the years, the grounds have been narrowed and narrowed, and now they are restricted to costs which are beyond our control, like unusual utility cost increases or necessary major repairs. This bill takes yet another step in that direction.

Despite those limits, it also gives the board the ability to deny such an application because there are serious maintenance issues. This is counterproductive. If there are in fact serious maintenance issues, and they are normally rare, when they occur it is because the building is distressed, and the AGI is taking place when a landlord has decided to buy the building and turn it around. Or it may be that someone has become ill and let the building fall into disrepair, and then their family is taking the building and putting it back into good repair. Under this remedy, at the very moment when the landlord is in fact fulfilling the maintenance obligations, then they're going to be penalized. It is an in terrorem remedy. It is inappropriate and should be removed.

There are other restrictions, such as the restriction to a total rent increase of 9%, that will bite particularly against small landlords, because in a small building with low rents, a major expenditure like a new roof can justify a substantial rent increase. We submit that that limit should be removed.

We've also made a number of comments about the sub-metering provisions. In particular, at the top of page 4, we address the concern that the bill would remove from a tenant's rent more than the cost that the landlord saves. I've given an example at the top of the page. It could be a common enough scenario that hydro costs might have been $100. Thanks to the smart meter, the energy costs will go down to $80, so the government saves because energy consumption goes down, but by the same token there is a charge for the cost of the sub-metering and the billing. The landlord is going to be stuck with that charge, whereas for every other homeowner in Ontario, they need to bear that cost. This is quite counterproductive and we would urge you to either remove or fix section 137.

I'll stop there and take any questions you may have.

**1640**

**The Chair:** Thank you. You've left just over a minute for each party to ask questions, beginning with Ms. MacLeod.

**Ms. MacLeod:** Nice to see you again, John. I haven't seen you since my days at Ottawa city hall. I hope things are well. I look forward to seeing you back in Ottawa in a couple of weeks at the housing conference.

You mentioned about "current market conditions and the current rules in the Tenant Protection Act, deferred maintenance is rare compared to its frequency under the legislation before the Tenant Protection Act." I'm wondering if you could expand upon that.

**Mr. Dickie:** Vacancy decontrol, the ability to set a new rent, has meant that landlords want to attract tenants. They no longer have, if you like, a guaranteed customer base. We have to go out in the market. We have to attract tenants. So we are making our buildings attractive, we are making sure they are well maintained, we are making sure we provide customer service, and that frankly is the one significant good thing this bill continues, which is very important. However, by the same token, given we have that, we don't want to lose everything else and be put in a poorer position to serve our tenants because of these other rule changes we've identified.

**Mr. Marchese:** Mr. Dickie, two quick questions: The Liberals broke their promise to end vacancy decontrol. Is that a small issue or is that a really big issue? That's the first question. The second one is, how accommodating are you to tenants who wish to organize a tenant organization?

**Mr. Dickie:** Tenants have the right to organize under both the current legislation—

**Mr. Marchese:** Sure. How accommodating are you to that?

**Mr. Dickie:** Our members respect the law. It can be useful to have a tenants' association in a building because then the comments come back in an organized manner. We have no issue with the way those rights are structured.

With respect to the government's promise, there are issues, but the biggest thing I would point out to you and others is that when that policy was struck, the rental market was extremely tight and we had not yet seen the benefit of vacancy decontrol, which stimulated construction—

**Mr. Marchese:** But you're really very happy about that, aren't you?

**The Chair:** Mr. Marchese, thank you very much. You're taking up your person's time.

**Mr. Duguid:** Mr. Dickie, thank you for taking the time to join us today via technology. My question is about the sub-metering. I'm still trying to get my head around this issue and some of the concerns that have

been raised. I suspect the concerns in terms of additional costs that landlords are talking about are the possibility of administrative costs and installation costs. Is that correct?

**Mr. Dickie:** Yes, it is.

**Mr. Duguid:** The installation costs, the capital costs: My understanding is that the service providers would be picking that up. That may not be clear today, but I think that's really the concept, that they would ultimately be picking that up and the costs of that passed through the system. But I suppose the regulations haven't come forward yet from energy on that, and that's something we won't know. I'll get you to verify: Is that your understanding as well, or do you have another understanding of that?

**Mr. Dickie:** Our understanding is that the costs will be passed through the system in the form of a charge on the bill, so there's a cost the landlord doesn't save because they don't incur it now, and admittedly the tenant isn't paying it now either, but that's the question of having the tenants have the opportunity to save on their energy bill. The tenants can save on the energy bill; they get to pay the cost of the sub-metering. We look at Bill 109 and we think that the way it's set up, tenants are going to get the benefit of the energy saving and the landlords are going to pay the cost of being able to do it. We think that's unfair and that it's inappropriate.

**The Chair:** Thank you, Mr. Dickie, for being with us today.

**Mr. Dickie:** Thank you very much for having me.

## ONTARIO MANUFACTURED HOUSING ASSOCIATION

**The Chair:** Our next delegation is the Ontario Manufactured Housing Association. Welcome, and good afternoon. If you're both going to be speaking, tell us who you are, for Hansard, and the organization you speak for. When you begin, you'll have 10 minutes.

**Mr. Jim Brothers:** My name is Jim Brothers, executive director of the Ontario Manufactured Housing Association. The member of our board who is with me today is Ursula Del Bel Belluz.

I want to thank you for having the opportunity to present comments regarding our unique housing alternative in the province and making comments about the Residential Tenancies Act.

Just a brief summary of what OMHA is: OMHA is a membership consisting primarily of mobile home parks and land-lease communities across Ontario. Some of our members have communities as small as 12 units and some communities are as large as 1,000 homes on one site. Some of our members are manufacturers as well as home builders who lease land to the homeowners.

Manufactured housing and land-lease communities consist of a very vigorous and affordable housing alternative to traditional forms of housing. These communities can be very small, but in most cases they're analogous to a small municipality that supplies its own water and sewer infrastructure, as well as being responsible for miles of roads, sewage systems, sewage plants and water plants, and for the administration and maintenance in the community.

We also have the burden of collecting all the property taxes from the homeowners on behalf of the municipality. That's another task we have. Primarily, the interest on the sites is a leasehold tenure available to the homeowners in the community.

OMHA is concerned about year-round residential communities. We are not concerned whatsoever with campgrounds or seasonal use parks. In all cases, mobile home and land-lease communities are, we feel, about the last-ditch alternative for affordable housing.

OMHA welcomes the opportunity to make comments about the new Residential Tenancies Act, but is really concerned about the lack of awareness about our industry through the government and the bureaucrats in respect to our unique housing nature. Traditionally, mobile home parks and land-lease communities have never fit into the nice square box for apartment legislation. We always seem to have gaping holes that don't seem to fit with vacancy decontrol and annual guideline increases, for example.

We would like to submit our proposals for change, which we have handed to the clerk, and speak briefly today about water and sewer testing charges. Mobile home parks have historically been faced with chronically depressed rents. When the first rent control legislation came in, back in 1975, the average rent in these communities was as low as $100 a month. With the annual guideline increase applied to the very low rent, the rents have not really increased as much as our operating costs, our exposure and our responsibility. The benefit has gone to the residents and homeowners of the community. With the chronically depressed rents, now they can take extraordinary gains on their housing product, their houses in the community, and the landlord is stuck with the chronically low and depressed rents. We didn't experience the vacancy decontrol like landlords of traditional apartments. We are capped at an annual increase of only $50.

**1650**

With the imposition, post-Walkerton, of the water and sewer regulations, the communities have been facing some real challenge with capital expenditures. When you apply for an above-guideline increase with a cap of 3% or 4% on rents around $200, you just can't get the recovery back to the landlord when you're required to spend $50,000 or $100,000, for example, on compliance with a chlorination system for the water.

The big issue that we're facing, although under the TPA in section 115 and now under section 166, is that the legislation allows us to pass on costs for water and sewer testing, although under the legislation we have not got the vehicle to actually collect this amount of money. So landlords in the province have been facing almost a kangaroo court when going to the tribunal to try to collect outstanding water charges. The tribunal feels that they can't issue orders for outstanding water charges and

they kick it over to small claims court. Small claims says, "You know what? That's a residential tenancy matter," and kicks it back to the tribunal. As a matter of fact, in one community they're facing in excess of $60,000 in outstanding water testing charges. The system is so frustrated with its ability to collect these charges.

Section 166 needs to be amended, and our suggestion is a vehicle for a landlord to go back to the new board with your reasonable water and sewer testing charges and have a declaration order that these charges are reasonable, along with the ability to enforce that if the tenant decides not to pay these reasonable water testing charges. Therefore, for public safety and the protection of the residents and society in the community, we certainly agree with that increased water quality protection. However, water testing charges that have been imposed on us, post-Walkerton, shouldn't be borne on the backs of the landlord.

Those are our comments on the section in regard to water and sewer testing charges.

**The Chair:** Thank you. Mr. Marchese, you have a minute.

**Mr. Marchese:** Mr. Brothers, so rent controls have put a damper on your business and, based on the kind of money you're getting from these mobile home tenants, you're not making much money.

**Mr. Brothers:** No.

**Mr. Marchese:** How do you stay in business?

**Mr. Brothers:** We're forced to stay in business because the system really won't let communities close.

**Mr. Marchese:** But if you're not making any money, why do you stay?

**Mr. Brothers:** We're trying to provide an affordable housing alternative, but the situation is getting grave in some community cases.

**Mr. Marchese:** Is there a high turnover of mobile tenants?

**Mr. Brothers:** Absolutely not.

**Mr. Marchese:** What is appropriate that they should pay?

**Mr. Brothers:** We feel that the vacancy decontrol provisions of an increase should go from $50 to $100 because the average stay of mobile home tenants in a land-lease community is about seven years. So the chronically depressed rents are staying chronically depressed because we're not getting that turnover.

**The Chair:** Mr. Duguid.

**Mr. Duguid:** Mr. Brothers, I appreciate your taking the time to join us. I believe that you were out during the public hearings as well. I appreciate your taking the time to do that.

I've had a chance to look through a lot of your submission here. I guess the area I'm trying to get my head around is the water system. That seems to be the biggest problem. If I could get you just to talk a little bit more about that in the 30 seconds or so that are left, I'd appreciate it.

**Mr. Brothers:** In a nutshell, the MOE requires landlords of land-lease communities to run a system like ordinary municipalities. There are water testing charges that have to be paid from the community to third party testing labs. The legislation allows us to pass on those charges, but there's no vehicle to collect those charges from the tenant just like rent. The legislation has gone a little bit beyond only rents, with allowing the tribunal to pass on NSF fees as well as fees for an application. What we're saying is, make the water testing charges part of the total rent that would be outstanding if the tenant doesn't pay, along with, say, municipal taxes if the tenant doesn't pay, so it gives us a vehicle, one place to go, to collect the outstanding charges. We want to make sure the charges are reasonable and are reviewed by the tribunal board.

**The Chair:** Thank you, Mr. Brothers. Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for your presentation. You didn't deal very much with the municipal tax issue and the producing of assessed values. I'd just like your comment on how we'd go about doing that, since the taxpayer for municipal purposes is the owner of the land, not the owner of the house, the dwelling on it. How would you propose that it should be MPAC that provides the information to the person living in the house, that not being a roll number on the assessment roll at all? How would you suggest that that be done?

**Mr. Brothers:** I suggest legislating MPAC to provide the homeowner the regular assessment notice and give them the obligation and right to pay their own property taxes in respect to their home and the site, just like a condominium—

**Mr. Hardeman:** Except that MPAC doesn't even know who the homeowner is, because the taxpayer—

**The Chair:** You have five seconds, Mr. Hardeman.

**Mr. Hardeman:** —is the property roll number, which is the owner of the property. I'm just wondering how we would go about doing that.

**The Chair:** I'll let you answer that question—short.

**Mr. Brothers:** I think it has to be some sort of turnover with a registration process for the homeowners, and that would be given to MPAC on the turnover, so maybe historically they don't have the numbers, but at least going forward they would have the names and contact information of normal homeowners, like they do on the land transfer tax affidavit.

**The Chair:** Thank you very much for being here today, Mr. Brothers.

## KIPPS LANE TENANTS ASSOCIATION

**The Chair:** Our next delegation is Kipps Lane Tenants Association. Mr. Dimitrie, welcome. We're glad you're here today. We're running on a really tight schedule. I'm sorry we haven't kept to the schedule exactly, but we're glad you're here. You have 10 minutes after you have identified yourself. If you leave time, we'll be able to ask you questions.

**Mr. David Dimitrie:** Good afternoon. My name is David Dimitrie. I represent the Kipps Lane Tenants Association in London. We have waited a long time for

changes to the TPA and the Ontario Housing and Rental Tribunal, OHRT.

In the past few years, above-guideline rent increases and other tribunal decisions have left many tenants in our group intimidated and bewildered. Most tenants in our group had never participated in a tenants' association or given much thought to the legislation that governs tenants until the TPA was passed.

For many years, the rules seemed simple: Pay your rent on time and respect your lease. The current adversarial relationship between tenants and landlords was not as prevalent before the TPA. Everything changed for the tenants in our complex after the buildings were sold. One year after the sale, we were served with an AGI application which resulted in a 6.07% rent increase over two years. The AGI hearing was a crash course in the TPA and the tribunal for the 75 tenants who attended the eight-hour hearing. The hearing was confusing and upsetting for tenants, many of whom were seniors who could ill afford a hefty rent increase. The hearing was the impetus for the formation of the Kipps Lane Tenants Association.

I will now address two areas of concern to the KLTA and present suggestions for amendments to Bill 109.

The first major area of concern relates to capital expenses and the aforementioned AGI. I have read the changes made to this area in Bill 109. Some changes, such as the three-year 3% cap, are very welcome. However, the promise to eliminate these types of increases after 15 years is somewhat misleading. Few tenants live in a building this long, and this sunset clause will be a moot point when tenants move out and landlords can raise rents as they see fit. I have also not seen anything in the legislation which clearly defines what constitutes a capital expenditure. In the case of the AGI application which tenants in our complex went through, we ended up paying the full cost for such items as a jungle gym.

**1700**

I propose the following suggestions for amendments in this area:

(1) Regulations to Bill 109 should clearly define the types of items or projects claimed as capital expenses. How are tenants supposed to know how old carpeting, lighting fixtures or tiles are if they are replaced and charged as capital expenses? With Bill 109, the onus remains with tenants, who are often unrepresented, to explain why an item should not be included. This is what happened at our AGI hearing, where the total bill, by the way, was $2.5 million.

(2) Since both landlords and tenants benefit from these capital expenses, they should both share in the costs. Tenants are currently paying the entire bill through rent increases granted to landlords. The owner of the building benefits from an appreciation in the value of the renovated property, as well as the improved facilities he can advertise to prospective tenants. Under the TPA and Bill 109, tenants are fully subsidizing the investments of their landlords. This item could also be legislated through regulations attached to the bill.

(3) Landlords who purchase buildings knowing that the building needs renovation and reconstruction before the sale closes should not be able to charge tenants for these pre-existing conditions once they have purchased the property. When a property owner decides to purchase a building, it is their duty to undertake due diligence. The prospective buyer has the choice to walk away or buy the building. The doctrine of caveat emptor should apply. If the building is in dire need of structural repairs, that factor should be reflected in the purchase price, not in a massive construction project that leads to an AGI application passed on to tenants once the sale and work are completed. This, by the way, is what happened to us. I have no problem paying my share for such work. However, I should not have to pay for work that a new owner was aware of before the purchase went through. Bill 109 fails to address this issue.

I now turn to my second area of concern, relating to the enforcement mechanisms of Bill 109. The TPA is enforced through the Ontario Housing and Rental Tribunal, OHRT, and the investigative and enforcement unit of the Ministry of Municipal Affairs and Housing. These are two distinct and separate entities which both enforce the TPA. Although the tribunal has been renamed, few details have been given as to how it will become user-friendly, as was promised in ministry literature. As a tenant, I've been served with two applications by my landlord, and I have filed two others. I've also attended hearings in order to better understand the system. The most glaring flaws I have seen and experienced at tribunal hearings are as follows:

(1) Inability of tenants to obtain legal certificates from legal aid in order to find competent legal representation for hearings as a complainant or respondent: At present, the duty counsel program funded by legal aid can only provide brief advice. Duty counsel does not represent tenants directly at hearings. Tenants have repeatedly complained to me about duty counsel service. The only form of direct legal representation in preparation for hearings in London is through the legal clinic at Western's law school. Bill 109 should guarantee legal aid to tenants who cannot afford to hire a lawyer or paralegal. Representation could be provided by a lawyer or paralegal, depending on the complexity of the case.

(2) Access to discovery before hearings: Currently, the way to obtain discovery is to obtain the application file at the tribunal office and pay $1 a page for copies. It's quite difficult and expensive to read and copy stacks of documents in tribunal offices which are not equipped for this purpose. To make matters worse, neither the TPA nor Bill 109 contains deadlines and specific requirements for discovery of pertinent documents related to hearings or means for tenants to obtain case law that lawyers have access to.

(3) Direct phone lines to tribunal offices—who would have asked, in the year 2006? Currently there is no direct phone line to the London OHRT offices. You can only send faxes and wait for an answer. Counter staff cannot or will not answer many questions necessary when pre-

paring for a hearing. I asked the current chair about this matter. A tribunal officer contacted me and defended the policy. I was told that the call centre can answer all questions. This policy has only added to the confusion and frustration tenants experience in dealing with the tribunal. The government has promised a kindler, gentler Landlord and Tenant Board, but Bill 109 gives few details. I have a hard time taking this government at its word. Over the past three years, I've received several letters from Mr. Gerretsen requesting the patience of tenants. We are now rewarded with a bill which breaks many of Premier McGuinty's campaign promises, no province-wide, accessible hearings, and a bill which is being rushed through the Legislature.

(4) MAH accessibility plans: Accessibility plans of the ministry depend heavily on online information. The investigative and enforcement unit's site remains out of service at present, even though I contacted the minister and the unit's manager about this. It has been out of service for three months. The tribunal uses type so small that it is of little use for most people. I question whether Bill 109 contains corrective measures to these apparent breaches of the ODA/AODA and the ministry's own accessibility plans. I also question whether tribunal staff and adjudicators understand how the ODA/AODA is to be applied when dealing with disabled tenants who request accommodations. Bill 109 does nothing to correct a tribunal/board which from my experiences does not understand or fully implement the ODA/AODA.

(5) Greater sensitivity to tenants who request accommodations during hearings in relation to the ODA/AODA: Current tribunal applications do not use the ODA/AODA disability definition or specifically offer accommodations to complainants or respondents—see appendix 1 in your copies. Disabled tenants should be given the opportunity to have a closed hearing which is less intimidating and in line with ODA/AODA principles. I have to wonder how many members of the Legislature understand the chaos and frustration that tenants have been subjected to in attempts to obtain services and assistance from the tribunal offices or I and E unit office. Perhaps MPPs should attend one day of tribunal hearings before they vote on this bill in June. The hearings I attended were both distressing and sobering for me.

Thanks for your time. Please consider my comments and suggestions for Bill 109. I'll take any questions.

**The Chair:** Unfortunately, you haven't left sufficient time for us to ask questions. We appreciate your delegation. Thank you very much.

## FLEMINGDON COMMUNITY LEGAL SERVICES

**The Chair:** The next group we have is Flemingdon Community Legal Services, Mr. Stevenson. Welcome. When you begin and you get yourself settled, you'll have 10 minutes. If you leave us time at the end, we'll be able to ask questions about your delegation.

**Mr. Gordon Stevenson:** I appreciate the opportunity to speak to you here today. Flemingdon Community Legal Services is one of the series of legal clinics that are found in the province. We represent low-income tenants. We appear in court at the tribunal regularly.

We are also endorsing the more extensive submissions that other tenants' groups, like ACTO and LCHIC and TAG, are submitting at this time. The first issue I'd like to raise—this is probably a novelty to you because my guess would be, you haven't heard it before—is about discount rents. It has always been kind of an esoteric part of the TPA, and it comes under subsection 111(2) of the new Residential Tenancies Act.

Under the TPA, you are basically entitled to take a discount up to about one month's rent. Under the RTA, that has been expanded to three months. Besides the regulations, and I urge you to do whatever you can to make the regulations as simple as possible around this matter, the ongoing problem is—it's been referred to as a bait and switch. We get calls from tenants about this matter quite frequently. What happens is that often the tenant—immigrants or those unable to understand legal matters—sign a tenancy agreement where they're paying, say, a rent of $900 a month, but under the RTA, the lawful rent, if it's discounted for the full three months, could actually be $1,200. So the tenants are paying $900, and then at the end of the year, provided they're on a year's lease, they get a notice of rent increase that takes the increase on to $1,200.

**1710**

My suggestion to you is that there needs to be a process where this is fully explained to tenants when they're entering into this situation, otherwise they simply don't know. They're paying $900 at the end of the year, their rent is going up to $1,200-plus, and this leads to what we call economic eviction, where the tenant simply isn't in a position to continue the tenancy where the landlord has increased the rent by $300-plus. The suggestion is that either there be a special form created or a requirement that any discount agreement provide tenants with no uncertain notice that after one year, the rent is going to go up the full amount, or the rent may go up the full amount if the landlord so chooses to remove the discount. That's the first submission.

The second issue I'd like to talk about is the lack of jurisdiction of the landlord and tenant board to look at subsidy issues. In every new piece of legislation, there seems to be a place where there's a traffic jam and you come to a dead end. My suggestion to you is that this is one of those places for tenants who are in receipt of a subsidy in social housing.

The Social Housing Reform Act provides for the ability to challenge the rent, but the ability to challenge the rent is not done in a transparent process. It's done in an administrative way where, basically, you can complain, they send in what they call an internal review, and then that decision is final. So you're in a situation where the landlord says that's the rent, and he comes to the LTB and says the rent is X amount. You haven't had a full right of challenging the amount of that rent. Unless the

board has jurisdiction, if there is a problem with that rent, that problem is going to be built into the LTB's decision to evict, particularly in a situation where it goes to market rent. For the tenants who are in our catchment area, the rent could jump from, say, $400 to $800 or $850. People are going to be evicted because they haven't been able to challenge the rent.

Just last week, I got a call from a guy who had applied for Canada pension disability. He had three appeals within that, which brought him from 1997 to 2004. The result was that he got a retro amount of some $2,000 which was added to his income just before he moved into social housing. Social housing set a rent, he complained about it, and they increased it. He's faced with the prospect of having to either eat the increase, or his other alternative is that he can do what they call a judicial review, and that's a complex legal process that's simply out of proportion to deciding the amount of a rent.

My suggestion to you is that to entitle the board to evict people without being sure, as they have the authority and jurisdiction to do, which is to look at all the components and the facts of the case, to compound an administrative mistake that the tenant really hasn't had an opportunity to challenge is simply to overlook the reality of losing people on this one.

This has been an ongoing problem in legal clinics for some time. The current board takes the position, "Well, maybe we can; maybe we can't," in terms of hearing about the subsidy matter. I'd suggest to you that the subsidy matter is really no different than looking behind the discount rent to see what the lawful rent is, because the lawful rent, if the subsidy isn't in accord with the act, can be altered by the tribunal and the landlord penalized accordingly, at least under the regs that exist now. I'm not sure what the regs are under this.

The last thing I wanted to talk about was section 82, the tenant's right to bring, as a response to a landlord's rent arrears application, any matter that they could have raised in an application of their own under the act. Going back some years, this was common practice in landlord and tenant court. What they would do is, the tenant would raise the objection. If the landlord wanted an adjournment, the landlord could have an adjournment, sometimes on terms that the tenant pay some money into court. I'd suggest to you that what this really goes to is in accord with the legal principle of avoiding a multiplicity of proceedings. Why not have the whole matter settled? You probably read the Globe today, the CAP REIT building at Jane and Finch. Tenants aren't really proactive about pursuing their interests. I'd suggest to you that there's no better time for them to be able to put forward as a counterclaim, if you will, their problems so that they get heard. You come to a global figure in terms of what rent is owed and what—

**The Chair:** Mr. Stevenson, you have one minute left.

**Mr. Stevenson:** Okay. I'll finish there. Thank you.

**The Chair:** It's going to be too short for anybody to ask a question, so if you want to do a summary statement—is there anything you missed that you'd like to cover quickly?

**Mr. Stevenson:** How about set-asides? To build into the act a problem—every other act and the rules have a procedure for a mistake, illness or inadvertence for procedural reasons that a person gets to bring their matter before the court or the tribunal to determine whether or not they had a good reason for not avoiding it. I suggest to you that that's totally different than a review. In a review, the onus to be met—a review is an appeal procedure—is whether or not there's a serious error. That's not simply a procedural issue. I'd suggest that to build into the act a problem like tenants who aren't going to be able to make it, for whatever reason, and an ability to proceed based on the fact that they were unable to be there for good reason is just to create another roadblock. Thank you.

**The Chair:** Thank you very much.

## SPAR PROPERTY CONSULTANTS LTD.

**The Chair:** Our next delegation is SPAR Property Consultants Ltd. Welcome. Thank you for being here today. Can you say your name and the group that you speak for? You'll have 10 minutes once you've begun.

**Ms. Heather Waese:** It's a company. My name is Heather Waese of SPAR Property Consultants Ltd. My company has represented landlords of rental properties ranging in size from four units to over 800 units. I've appeared before various government bodies that preside over rental matters throughout the province for the past 25 years.

I'd like to focus my comments on three areas of the proposed legislation from a practitioner's perspective in the hopes that my comments will provoke some consideration. I'm aware that it is the policy of this government to reduce both the maximum increase allowance for capital expenditures from 4% to 3%, as well as limiting the carry-forward allowance to only three years rather than an unlimited amount. What the government may not have considered is the impact this decision will have on owners of small residential properties, which make up a major portion of the available accommodation.

I think it can be most easily demonstrated by an example. A typical fourplex in today's market may likely achieve a monthly income of $4,000. If a landlord finds it necessary to replace his roof or the windows, he's looking at an average cost of $45,000. A useful life that would be considered according to the schedule of the current and past regulations for both of these items is 15 years. Using the current formula to calculate the justified allowance, the resulting rent increase needed to recover the investment would be 10.8%. The proposed limitation of 3% for three years will prevent that landlord from ever recovering his full investment. In fact, 17% of that allowance will be disallowed. Furthermore, after the useful life period has expired, they will be required to reduce the allowance by the awarded percentage but on a higher rent. This will either cause an economic hardship to those less sophisticated landlords who have invested their savings in rental property or cause them to reconsider making any major improvement to the property at all.

**1720**

Due to economy of scale, this limitation would not have as big an impact on the high-rise residential properties as the cost and allowance is spread over a larger number of units. It would be possible to coordinate the timing of the expenditure to ensure their costs eventually would all be recovered. It would not be economical for a landlord of a small residential property to replace half a roof or half the windows in the building. I urge you to consider incorporating either a slightly higher cap or a slightly longer carry-forward period for smaller residential complexes.

The second issue I'd like to bring to your attention is the issue of discounts. Contrary to Mr. Stevenson's position just prior to my own, we don't have that different a position on discounts, but it's coming from a different perspective. It wouldn't exclusively be for new tenancies, but looking at existing tenants as well. In this current competitive market, landlords would be more inclined to offer tenants discounts in rent if they were assured that the lawful rent would not be compromised in the future. Tenants who may be experiencing temporary economic difficulties could continue their tenancy at a reduced rent without the fear of falling into arrears. Landlords could accept a lesser rent while maintaining their lawful rent and not have to look for a new tenant. It is not unreasonable to ask landlords to provide greater details to ensure they are aware of their financial responsibilities in payment for the rent. We don't disagree in that regard at all.

Section 111 of Bill 109 attempts to address this issue, but landlords do not believe the approach taken in the legislation would solve that problem. The legislation only provides for discounts on a rent-free basis. No lesser reduction in the rent is permitted. This type of discount is not workable from both the landlord's and the tenant's perspective. There's no particular timing during a tenancy where an up-to-three-month free rent discount would be acceptable. If the discount is offered at the commencement of the term of the lease, landlords fear it would be too enticing for a tenant to skip out before the end of the term. If the discount is not offered until late in the lease, that would satisfy the landlord's concerns, but tenants don't feel it eases their financial burden when it's most needed.

I'm aware that clause (c) of section 111(2) provides for the ability to regulate other options relating to the offer of a discount. I'd like to urge the government, on behalf of both the landlords and perhaps some of the tenants, to consider more flexible discounts. The ability to offer discounts over a longer period of time is more valuable than the magnitude of the discount.

The last issue relates to the provision of the bill to permit respondents to raise maintenance issues at the hearing in reply to a landlord's initiated above-guideline-increase application. Currently, applications to recover capital expenditures and operating cost increases are heard in a relatively timely manner. This is the first time in my 25-year career that orders for application to increase rents above the guideline are issued prior to the first effective date of the increase. This is not only a benefit to landlords, but also to tenants. Tenants will know what they will be required to pay and can make an informed decision whether they wish to continue their tenancy or seek other accommodation before their increase is effective.

This timeliness will be seriously challenged by the current proposal to allow respondents to an above-guideline increase application to raise individual maintenance issues not related to the items claimed in the application, but at the hearing. I'm not suggesting that these matters are not relevant or should not be heard by the board, but rather than permitting such matters to be raised out of context and without complete disclosure prior to the hearing will force delays in order to comply with the natural justice provisions of knowing the case you're required to meet. There could be multiple complaints by numerous tenants that the landlord may not be aware of. Landlords will have to be given time to investigate, determine the facts and be in a position to provide information as to what was done to address each of those claims. This will require, at the very least, twice the number of hearings to ensure the integrity of the process. The timeliness of issuing orders will literally be a thing of the past. For landlords, it means serious delays in recovering the cost of their expenditure. For tenants, it means uncertainty in the rent they will be required to pay.

We suggest that it would be preferable to require tenants who have maintenance problems to raise them in their own application, with full disclosure. This will give landlords the opportunity to investigate each tenant's allegation prior to the hearing and will give the tenants the opportunity to fully explain their position.

Thank you for your consideration.

**The Chair:** You're just under the wire. You've left a minute for everybody to ask a question, beginning with Mr. Duguid.

**Ms. Waese:** That was the plan.

**Mr. Duguid:** I'm trying to understand your concern about the maintenance issues being raised at the same time. I can't imagine it happening too often where a landlord would go in and not know what the outstanding serious maintenance issues are that exist. If they don't know, they probably should know, going into the hearings. You obviously think it's going to create a problem, but maybe you could explain a little more.

**Ms. Waese:** This would not be the first piece of legislation that permitted that to happen. In an above-guideline increase there could be as few as two or three tenants who attend at a hearing or as many as 30 or 40 tenants. If, out of a large complex, even 25 tenants attend, and of those 25, 10 of them have what they believe to be serious problems—a leaking tap or cracking walls, many issues—in fact, a landlord may not be aware of those if no notice to repair has been issued, or maybe there was a repair done that wasn't satisfactory but he's not aware of it. There are a lot of issues that could come up. In dealing in a one-on-one matter in an environment where 30 or 40 tenants are paying attention to the hearing, it does take a considerable amount of time and I

believe a landlord should have the opportunity to investigate what really is the situation. So it couldn't happen at that hearing.

**Mr. Hardeman:** Thank you for the presentation. I need some information on the bonus—the free rent or the reduced rent—to fill an apartment. Of course, the Tenant Protection Act today has created an environment where in fact there are more units available than there are people who need units. That's fairly simple. But at the time that legislation was put in place, we also got rid of the registry that said what the allowable rent will be. The allowable rent, after the decontrol has come off, goes to whatever you rent it at. If you give more information, but if you lower the rent, would that not then lower the rent forever?

**Ms. Waese:** Not if the provisions of discount make it acceptable and permissive for the landlord to say, "Your lawful rent is $1,000. We are prepared to give you a $50 discount per month." It would protect the $1,000 maximum that he's established and previously could document. I think that's what we're looking at. To say you can have one month's free rent, as it currently applies in this legislation, for the reasons I outlined in my presentation, I don't think landlords in the past, nor would they in the future, offer that type of discount, because there's too much exposure.

**Mr. Marchese:** Two quick questions. You know that the government broke their promise to end vacancy decontrol. How important is that to you? Secondly, to your knowledge, how many landlords spend that regular inflationary increase that they're allowed, without having to justify how it's spent, on maintenance on a regular basis?

**Ms. Waese:** To your first question, I think the principle of the free market system is an important issue. To the landlords individually, though, it varies. Many landlords have already turned over 70% of their buildings, so vacancy decontrol really wouldn't play that much of a part to them. To some landlords who haven't turned over that many units, it would be, obviously, more near and dear to them.

**Mr. Marchese:** And the second one?

**Ms. Waese:** The second issue—

**Mr. Marchese:** The regular inflationary increase.

**Ms. Waese:** Yes, the guideline. I think it depends from year to year and landlord to landlord. For the most part, I would think that maintenance requirements require a landlord to spend that kind of money. With the nature of this legislation, where they're going to impose a freeze on landlords who do not do it, I think it even would push them further, in fact, to ensure that that maintenance is done.

**The Chair:** Thank you very much.

**1730**

## HAMILTON MOUNTAIN LEGAL AND COMMUNITY SERVICES

**The Chair:** Our next delegation is Hamilton Mountain Legal and Community Services. Welcome. Thank you for being here today. As you get yourself settled, if you could announce the group you speak for and your name, you'll have 10 minutes. I'll give you a one-minute warning if you get close to the end.

**Ms. Jay Sengupta:** My name is Jay Sengupta and I'm a staff lawyer at Hamilton Mountain Legal and Community Services. I'm here not only on behalf of my legal clinic, but also on behalf of a sister clinic, McQuesten Legal and Community Services, which serves low-income people in Hamilton's east end. I am also here to present on behalf of SHAC, which is a grassroots organization in Hamilton that's made up of community activists, housing providers, the local housing help centre that helps people find housing, the legal clinics and the Social Planning and Research Council. So it's a fairly broad group. They had applied for time to come and appear before you themselves, but regrettably they didn't have that opportunity. So I'm here on their behalf, as well as my office.

As you're aware, legal clinics practise in the area of housing law, so we speak from experience when we come before you. We welcome the government's move to reform the Tenant Protection Act. What we don't welcome is the package that's on offer. We urge you to consider some of the items that we've outlined in our submission to you because we feel that certain groups of people are being left behind in this reform—in particular, the people we represent and the people for whom we are trying to speak.

The first issue I'd like to address—actually, let me back up and say that we support the more detailed submissions that have been put together and submitted by LCHIC, the Legal Clinic Housing Issues Committee, and ACTO, the Advocacy Centre for Tenants Ontario. But from our perspective, let me begin by saying that the vacancy decontrol system being left intact poses a significant problem for the people we serve. Although the background material that was released with Bill 109 speaks about healthy vacancy rates in Ontario, the fact is that what impacts our clients is the shortage of truly affordable housing. There is very little affordable housing for our clients, and that's the key point we would have liked to have seen addressed, and the best way to have addressed that would have been to do away with the vacancy decontrol system. If or when the vacancy rates begin to shrink, we fear that vacancy decontrol will only exacerbate the problem that low-income Ontarians face.

Let me give you a sense of why I'm saying this and why this is a problem for the people we serve. In Hamilton—a medium-sized city, I guess—there were 4,258 active applications for social housing on the waiting list—people who were waiting to access affordable housing. Most of our tenants pay over 50% of their total income towards shelter, and the system is not working for them. We feel they're being left behind in this set of reforms and we urge the government to reconsider its decision to leave this system intact. We recognize that you've heard from a lot of people on this. In fact, we were part of the road show when Mr. Duguid

came calling in Hamilton. We made that point then. We urge that you take a look at our concerns and address them.

The other point I'd like to make, in keeping with the theme of who is being left behind: We feel that people who are on the margins are being left behind, people who are considered occupants, people who are under-tenants. The definitions of "landlord" and "tenant" need to be reworked in order to give the most basic protection that other tenants have to people who are in under-tenant types of relationships—people who walk and talk and sound like ducks but for some reason aren't being called ducks. We think that those people are being left behind, and a lot of our clients aren't able to afford self-contained units. They're forced to rent and share accommodations. They're being left behind here.

Who else is being left behind? We say that if you don't have an expedited process by which somebody who fails to attend a hearing can get that matter looked at and can get to a full hearing of the evidence on their case, if you don't have that set-aside type of option for people who fail to attend for legitimate reasons like illness, absence, inability to read, literacy problems like that or even language barriers or disability-related barriers, there should be an expedited route that is not cost-prohibitive. This is a factor for our clients. With the system the way it is currently, the $75 review request itself often poses a barrier for our clients. Sometimes people have to save for a couple of months in order to afford the $45 to bring the maintenance application under the current system. To put a roadblock in their way when they've missed an appointment for legitimate reasons seems harsh.

Who else is being left behind? We say, and I think quite forcefully, that social housing tenants are being left behind by this proposed set of reforms. We do a lot of work in our clinic with social housing issues. We sit at tables with the city of Hamilton. We're invited to participate with them in trying to help them cope with the downloaded social housing portfolio and the rules around it. Not all decisions to revoke subsidy are made fairly. People are human. Human beings often make mistakes. An internal review option is the only option that low-income tenants in social housing have to challenge that, and that internal review may often be conducted by the person sitting at the desk next to the person who made the original decision. That internal decision is the final decision. As Mr. Stevenson pointed out, the only option then is judicial review, and that is cost-prohibitive. It's a complex legal procedure and, quite frankly, for most tenants who are in social housing it's not something that's a reasonable and realistic way to address that problem. At the moment, what happens is that we've been able to persuade some board members at the Ontario Rental Housing Tribunal to look behind a landlord's basic assertion that this is what the lawful rent is. Section 203 closes off that route completely and leaves our clients with only this very expensive route, and there's no guarantee of adjournments being granted while we pursue judicial review options.

This is a significant problem. The Social Housing Reform Act appears to have been modelled on the social assistance legislation, but in that scheme there is an appeal route past the internal review stage. Of course, the internal review is meant for administrators who are operating in good faith to look at and catch mistakes that they make. But sometimes reasonable people disagree, and if there's a real disagreement, we have only a judicial review option, where in the social assistance scheme you have the Social Benefits Tribunal that reviews and scrutinizes those decisions. That's all we're asking—

**The Chair:** You have a minute left, if you want to summarize it.

**1740**

**Ms. Sengupta:** I will.

I just want to close by saying that we do welcome the fact that you've taken the opportunity to look at this piece of legislation that we've been sort of labouring under, and we commend you for that, but we do ask that you not leave behind an entire segment of the population that is unable to thrive under the system that we didn't enjoy before but will continue to suffer under with this bill as it stands.

**The Chair:** Thank you very much.

## TENANT ADVOCACY GROUP

**The Chair:** Our next delegation is the Tenant Advocacy Group. Welcome, Mr. Myers. We're glad you're here today. Could you announce the group you speak for and your name for Hansard? When you begin, you'll have 10 minutes.

**Mr. Joe Myers:** My name is Joe Myers. I'm a staff lawyer at Willowdale Community Legal Services, which is a community legal clinic in Toronto. Our legal clinic is a member of the Tenant Advocacy Group, which is a group of Toronto area legal clinics that deal with tenant issues.

To start, I'd sort of like to issue a disclaimer. I look at all of you there, and I know you're hearing a lot of the same things over and over again. I'd like to say I have something brand new to bring to you, but I don't. Having said that, I think the mere fact that a lot of these issues are being repeated speaks to their importance, and I'd like to speak to just a couple of issues before you today.

We have provided a written submission. Obviously, I'm not going to touch on all matters in the written submission, but I'd like to highlight a few, the first being one that's been spoken of many times today, which is section 82 of the Residential Tenancies Act. That permits a tenant to raise a number of issues in defence to a landlord's eviction application or arrears application; a tenant could bring their own separate application.

Under the system as it exists today, as you probably all know, a tenant can't raise those issues in defence to an application. They have to file their own application. Practically, what does this mean? It means that many times, a tenant goes to the tribunal, tells the adjudicator, "I have all these issues. There's a rent issue; I acknowledge that.

But we have these other issues." The tribunal member puts up his or her hand and says, "Can't hear it. You have to go and file an application." The tenant goes and files an application, gets a hearing date, sometimes six weeks down the road, and a separate, different hearing is held before the tribunal, before a different adjudicator, where the issues are raised.

In effect, you're having two hearings and there's often a six-week delay between first hearing and second hearing, dealt with by two different adjudicators and many of the exact same issues are being raised in the hearings. I would submit to you that that is not an efficient way to operate a tribunal. It is a waste of resources and a waste of an adjudicator's time.

Some of the deputants before you today will say, "If you permit tenants to bring these matters to the board, the place is going to come to a standstill and they're not going to adjudicate anything." I'm here to tell you that that's nonsense. Under the Landlord and Tenant Act—I practised before the courts before 1998, when the Tenant Protection Act was proclaimed, and it was permissible for a tenant to raise these defences to a landlord's eviction application before the courts. The courts did not come to a standstill. The judges made rulings, as Mr. Stevenson pointed out in his submission, permitting tenants to pay in a portion of the rent, providing receipts for the repair work they did and setting a hearing date to allow all matters to be adjudicated.

There's no reason to think that things would be any different under the landlord and tenant board under the RTA. I think it's a very important issue for tenants in that they need to be able to raise issues in response to a landlord's application. I would urge the government to stick with that provision.

If you read the Globe and Mail today, you read about 10 San Romanoway and the repair issues that were addressed in that article, including mice and cockroach infestations, stench so bad that people weren't leaving their apartments and general dilapidation of the building. Is it fair to tell a tenant living in those conditions who comes to a hearing that they can't raise those issues? I would submit to you that it's not fair for the board to do that. Those tenants should be allowed to raise those issues.

The second issue I want to speak is with respect to the elimination of the default process. Again, I would commend the government on eliminating the default process. I think it's a positive step. However, there needs to be a set-aside provision in the legislation.

As a practitioner for 13 years doing these types of cases, I can tell you that there are innumerable legitimate reasons why people don't show up for hearings. The most common one in the landlord-tenant vein is that a tenant gets served with an application by the landlord, and the first thing they do is to call the landlord and say, "You filed this application. You're claiming I owe you this," or "You're claiming there's this problem. How do we deal with it?" Many times landlords, like the majority of tenants, are reasonable. "This is how we deal with it. We can work out some sort of plan," and the tenant leaves that conversation with an agreement in hand, whether it be in writing or oral, and they think the matter is resolved. It's over. They don't go to the hearing. Under this proposed system, a hearing could be held, the tenant doesn't show up, and there's an order issued by the board evicting the tenant. There has to be a mechanism that permits a tenant to approach the tribunal, approach the board and have that order dealt with.

Under the current system, that would be a review application. As you know, a review application is costly. It costs 75 bucks to file a review application. Secondly, the onus that a respondent has to meet on a review application is that you have to show there's a serious error in the order. In the scenario I've presented to you today, where is the serious error? There is no serious error. If the tenant owes $500 but they've made arrangements with the landlord, and the landlord shows up at the hearing and says that $500 is owed: eviction order; signed off. Where's the serious error in that order? The serious error is in the way the order was given, the way the order was obtained, and that the tenant thought the matter had been worked out, so they didn't have to attend the hearing.

A review under the current system may not work, because there is no serious error. In the proposed RTA there needs to be a mechanism that addresses this situation where tenants, for good cause, do not show up at a hearing, and don't hold them to a $75 fee and an onerous legal test in order to have the order of the board dealt with.

Finally, you've heard a lot of horror stories today about the issues of the Social Housing Reform Act and having the board given the jurisdiction to deal with rent subsidy issues. I would implore the government to give the proposed Landlord and Tenant Board that jurisdiction. A recent case that we've become aware of will illuminate this.

A grandmother, pursuant to a CAS order, was given custody of her grandchild. She didn't tell the landlord in a timely way about the new tenant, the grandchild. Technically, the composition of her home had changed and she was required, under the Social Housing Reform Act, to tell the landlord. It didn't change anything in terms of her rent, didn't change her income in any way, but because she didn't disclose this in a timely way pursuant to the rules under the SHRA, her tenancy was revoked. She did an internal review. It's an internal mechanism. She's not given a chance to attend. She submits something in writing to the same people who basically revoked her tenancy and, not surprisingly, they upheld the original decision. If the landlord puts the rent to market rent, she can't pay the arrears of rent. The case goes to the proposed Landlord and Tenant Board, and there's no authority there for the board to look into the circumstances of the subsidy revocation. It doesn't make any sense. It's a ridiculous result, I think we could all agree, that that woman could be evicted for that reason. But as the legislation is drafted today, that's exactly what

could happen and she would be left with the long, tortuous process of doing a judicial review application to try to correct that result.

It's just not a practical way to deal with things. If the RTA can't be amended to give the board the jurisdiction, then the SHRA should include some type of independent body where these types of appeals can be heard. It's very important to low-income tenants in the province and of course in Toronto.

Those are my submissions, subject to any questions from the committee.

**1750**

**The Chair:** You've left just over a minute.

**Mr. Myers:** I timed it perfectly.

**The Chair:** If you have a summary statement you'd like to make—

**Mr. Myers:** No.

**The Chair:** Okay. Thank you very much.

**Mr. Myers:** I've bored you enough already.

**The Chair:** No, no. It was interesting. Thank you very much for being here.

**Mr. Myers:** Well, that's nice.

**The Chair:** It was. I know we were listening. Thank you very much.

Committee, we possibly have an upcoming vote any minute now. I'm going to ask our next delegation to come forward. We'll see how much we can get through. The following delegation has graciously agreed to appear after our dinner recess, so this would be the last delegation before our recess.

## O'SHANTER DEVELOPMENT CO. LTD.

**The Chair:** O'Shanter Development Co. Ltd.: Welcome, gentlemen. Should the bells start to ring, we will have a 10-minute break to go and vote. Hopefully, we'll get through as much of your delegation as we possibly can. It's not that we don't think you're interesting—

**Mr. Jonathan Krehm:** Should we stay around after or not?

**The Chair:** Let's see how much we get through and I'll tell you what we can do. Welcome.

**Mr. Krehm:** Thank you very much for the opportunity to appear here. My name is Jonathan Krehm. I'm one of the owners of O'Shanter Development. Our in-house legal counsel, Eric Ferguson, will speak on different matters.

O'Shanter is a privately owned company that has owned and managed rental housing in Toronto since the 1950s. Currently, we manage approximately 2,000 apartments. We are the only residential property manager in Canada to have both ISO quality management and environmental certifications. We are proud to have met the requirements of the Kyoto accord in the buildings we own.

One of the first things I want to address is the smart metering provisions in part VIII of the act. We support the intention of the act to encourage smart metering. Part VIII of the act unfortunately will have the opposite effect. We have already put on hold a plan to install smart meters at one building because of the proposed framework in the legislation.

Subsection 137(4) requires that the landlord's obligation to provide electricity will continue for one year after the smart meter is installed. The electricity costs in this period are the basis for a rent reduction calculation. This creates a regime where a tenant, by increasing his electrical consumption in this 12-month period, can increase the amount his rent will be reduced by. This is a Catch-22 that we don't plan to be exposed to.

Clause 137(3)(b) also requires a lowering of the rent by the amount the tenant will have to pay as a monthly administration fee for having a meter. In a 200-suite bulk-metered building, a landlord currently pays $30 per month as an administrative fee to the utility. The proposed legislation will have him lower his rent by $2,500 per month after smart metering. This is an onerous penalty and strong disincentive for anyone to proceed with smart metering of bulk-metered buildings.

Subsection 137(5) requires the providing of tenants' information that may or may not be forthcoming from the smart metering entity. This creates a potential breach of a landlord's obligations under the act, which adds to risk and uncertainty. After electrical costs have been assumed by the tenant, the situation is the same as with the many thousands of apartments that are currently separately metered in the province: The landlord is not party to the electrical costs that have been assumed by the tenant. Electrical usage varies enormously, depending on one's personal habits, and the information required to be given is of little value to anyone.

Subsections 137(7), (8) and (9) create an ongoing risk of being exposed to applications for rent rebates, orders to renovate and meeting ongoing "requirements relating to electricity conservation." This again exposes a landlord who installs smart meters to ongoing and unquantifiable risk.

We recommend that part VIII be amended as follows:

(1) That the calculation of rent reduction be based on an apportionment of the cost of providing electricity in the 12-month period immediately prior to the installation of the smart meter;

(2) That subsections 137(8) and (9) be deleted. Removing disincentives from energy conservation measures should be of primary importance for the government;

(3) That subsection 137(5) be deleted entirely.

The other matter I'd like to speak about is landlord applications for above-guideline increases. The changes in what is in the rules governing capital expenditures are onerous. Restricting capital expenditures to only eligible items is draconian in effect. There are over a million rental units in the province. Whatever list of eligible items ministry staff come up with, many situations will arise where perfectly legitimate capital expenditures will not be included. The test under the current law works well. The current test is that a capital expenditure may be disallowed if it is found to be unreasonable. This was no rubber stamp. In the very first application we made under

the TPA in 1998, a $1.5-million capital item was disallowed. We recommend changing the test of eligibility back to one of disallowing items deemed to be unreasonable.

Subsection 126(9) should be deleted. Under all preceding rent regulation laws, from 1975 until 1998, tenants had the right to oppose rent increase applications by alleging breaches in maintenance obligations. This matter has been brought up before by Mr. Duguid and Mr. Myers, and I'd like to address this.

Hearings were long and cumbersome, with an immense amount of time being spent with little effect on the outcome, and there were huge backlogs. In the 1980s, backlogs were such that applications were four years behind. The only time in my career since 1979 doing rent review applications when there has not been a backlog has been in the last four years. To say that somehow we'll return to something that wasn't the way it was is just not correct.

The costs to the government caused by the return to such a regime will be substantial. There would have to be a great increase in staff if you don't want to have the backlogs that were chronic under four different laws.

Tenants who have legitimate problems have the ability to make applications and seek remedies elsewhere in the act. This is fair and how it should be. Giving tenants the ability to turn all landlord applications into open-ended hearings is unfair and will be a burden to the new board.

**Mr. Eric Ferguson:** My name is Eric Ferguson. I'm in-house counsel at O'Shanter Development Co. I've been there since 1982. I've been before the courts, and also the Ontario Rental Housing Tribunal, on landlord and tenant maters. Contrary to some previous opinions, I'd like to begin by saying that, in my view, the tribunal is actually a good forum for the disposition of landlord and tenant matters. The staff is good. They're accommodating. The hearings are held in a reasonable time frame. Basically, I think the place works fairly well.

I'd like to comment on three suggested changes in this act and tell you why I think they will impact negatively on the way the tribunal, as it becomes the board, will work.

The first of these is the requirement for hearings on rent arrears applications even where tenants do not file disputes. Under the current system, where a landlord serves a tenant with such an application, it's very clear on the forms that in order for a hearing to be held, the tenant has to file a dispute. If the tenant doesn't file a dispute and there's a good reason for it, then the tenant can file a motion to set aside. If that motion to set aside is successful, then a hearing is held anyway.

If the default process goes away and all landlord applications that are rent arrears applications are brought before the board, then I think this is going to increase automatically the workload of the board, if only to deal with those matters that are now dealt with by default, because, frankly, most of the tenants who don't bother disputing under the current system are not going to be there on that day anyway, in my view. It seems to me that the default process does work. It may, at first blush, sound a bit draconian, but there is a fail-safe. If people really didn't have an opportunity to participate, then they have an opportunity to seek counsel, to seek legal aid, explain their position and bring a motion to have things set aside, and then a hearing will be held.

**1800**

The second negative change is the one about raising issues at arrears hearings without notice, and the same thing goes for above-guideline increase. Mr. Myers and Mr. Stevenson waxed eloquently about how it was back in the courts at 361 University Avenue. I remember those days, and I don't remember them in quite the same way they do: having to go before the deputy local registrar, find out that somebody had disputed on something, and then go before a judge on another day and be told, "Really, what I want to talk about is this maintenance issue, about the kitchen cupboard," or the fridge or the that. You didn't have any notice of it. You didn't know what they wanted to talk about. So yes, you had to have an adjournment, and you had to come back on another day, or you had to try to slug it out on the spot, call the property manager and try to resolve it.

If you want to do anything in this area, what I would ask you to do is somehow cause a tenant who wants to bring this kind of issue before a hearing on a rent arrears matter to give the landlord notice before the hearing so that the landlord has a chance to prepare.

The last item I'd like to deal with, very briefly, is the mediation area—

**The Chair:** You have 30 seconds to deal with it.

**Mr. Ferguson:** —okay—which goes as follows: Currently, mediated agreements are binding. If a party defaults, an ex parte order results. Now these mediated agreements are going to be the subject of set-aside motions. They won't be used as much. People won't use the mediation services as much, and I think that's a shame.

**The Chair:** Thank you very much, gentlemen. You've left 14 seconds; that's very good. That was all the time.

## WATERLOO REGIONAL APARTMENT MANAGEMENT ASSOCIATION

**The Chair:** Committee, we didn't have a vote, so I don't have to inconvenience our next delegation from the Waterloo Regional Apartment Management Association, Mr. Trachsel. Thank you very much for being so accommodating tonight. If you could introduce yourself and the organization you speak for, you'll have 10 minutes.

**Mr. Glenn Trachsel:** I would like to thank the committee for this opportunity. I see some familiar faces from the town hall meetings. My name is Glenn Trachsel. I'm with the Waterloo Regional Apartment Management Association. We represent landlords in the Kitchener-Waterloo-Cambridge-Guelph area. Our 450 members own anything from single condo units to multi-unit buildings.

It's a common acknowledgement by our members that one of the biggest challenges landlords face is various governments: Everybody feels the need to change the rules, and it makes it very difficult to do long-term planning. We at WRAMA would like to go on the record as questioning the need for these changes at this time. Rents are being held down due to market influences, tenants have choices, rental housing providers are improving their buildings, and Waterloo region has several new construction projects. We contend that the current government's motives are more political than practical.

*Interjection.*

**Mr. Trachsel:** I've heard that from various sources.

I would like to touch briefly on the issue of rent controls in general. We have long argued—there is overwhelming anecdotal evidence—that they do more harm than good. There are several studies from different countries to prove this. The cities in Canada that currently have the lowest vacancy rates are the ones with the tightest rent controls. Government and tenant advocates have to realize that private housing providers are just that; we're not non-profit social housing providers. That's a different issue that has to be addressed by government.

I find it ironic that the government, in selling the idea of hydro costs rising to the true cost of production and delivery, admitted it is going to be a burden on lower-income people. To justify that, they espouse the false economy theory. They say that if prices were held down artificially, it would mean poorer service and higher costs down the line. Why is it not clear that the same thing affects apartments?

To their credit, they have left in the provision that rents can be negotiated with new residents on vacancy. Without this provision, there would have been a major collapse of the industry as a whole.

To answer your question to the lady from SPAR, you asked if the landlords were using the inflationary increase to improve their buildings—

**Mr. Marchese:** On a regular basis—every year.

**Mr. Trachsel:** I have an 11-unit building. I provide all the utilities. The inflationary increase is just that: It covers the increase in the cost of gas, the increase in the cost of hydro. Personally, without this provision of being able to negotiate rents on vacancy—I've put in new front steps, a new chimney and a new water softener. The only reason I've done that is because on turnover I can recoup that money. Like I said, without that provision you'd see an exodus from the business.

Since I only have a few minutes here, I'm going to focus on the items that concern us the most. WRAMA works in conjunction with the Federation of Rental Housing Providers. We endorse any presentations they've brought before the committee. The issue of OPRIs, the above-guideline rent increases, again, we feel the 3% will deter improvements, and we feel that the submetering issue is just unworkable.

Our greatest bone of contention is with section 82, tenant issues in non-payment application. We feel this provision shows the bias of government and a true prejudice against hard-working, honest landlords. Under the current rules, and under section 29, a tenant whose rental apartment is not maintained or is unsafe can apply to the tribunal or the new Landlord and Tenant Board for orders for repairs. Under section 59, a landlord can apply for eviction for non-payment of rent. Why are these issues being intermixed? The landlord is the victim under section 59. Landlords will be subject to trial by ambush, not knowing what issues will be raised. To answer your question, Brad, a lot of times you don't know what's going on in that building because the tenant now has an opportunity to cause damage, and also, if he has done damage in the building and it's his fault, he's not going to notify us ahead of time. But now he has an out. He can use this. He's up against the wall if he's getting evicted and can use that, because he has no other way to go.

It's going to open a Pandora's box of conflict and animosity between landlords and tenants, as tenants take the law into their own hands in order to take advantage of a new, free hearing option by not paying the rent or creating the damage to be evicted. It puts undue responsibility on adjudicators who may or may not have the expertise to decide if the maintenance issues are legitimate, based on a few photos and testimony from someone who has nothing to lose by lying.

Under other provisions in the act, evictions will now take longer, since everything is going to a hearing. A longer eviction will mean a greater loss of rental income. Most orders for payment are never honoured by the tenant. We put them on the wall beside our Bre-X and our Enron stock certificates. It's a serious loss for landlords and other tenants and the whole economic chain. In a small building, one non-paying tenant and a lengthy eviction means losses in the thousands of dollars. This translates into a delay in buying that new energy-efficient fridge. This penalizes the tenant who doesn't get the fridge; it penalizes your government, which is trying to cut down on the hydro usage. I make this example somewhat tongue-in-cheek, but I really feel that people who draft this legislation don't look at the ripple effects.

As Mr. Milloy stated in Parliament on May 15, I believe, the landlord is not the enemy and the tenants are not the enemy. We can work together. Landlords are only concerned about the current losses and the time consumed by a non-payment tenant, and it will only get worse under this legislation. We're asking you to protect us by removing section 82 and allowing for default evictions for non-payment, even if you have to do something about the notice procedures. Thank you.

**The Chair:** You've left a minute for everybody to ask a question. Mr. Hardeman, did you want to ask a question?

**Mr. Hardeman:** Thank you very much for the presentation. I appreciate the blunt comments. We've been hearing a lot, and it seems that the legislation was designed to deal, the minister said—with good landlords and good tenants, this would be a good piece of legislation. The problem is, we all know that what we need is

legislation that deals with the problem areas, not with the good areas.

We've also heard that there seems to be an intention of the landlords to move people out of their apartments as fast as they can. Could you tell me why landlords would want to get rid of their tenants, as opposed to—I've been in business for many years, and I always wanted to get customers, not get rid of customers.

**Mr. Trachsel:** Exactly. I mean, if you've got someone in this market and you've got a reliable person who's quiet and they're paying their rent on time and they're not doing any damage—I don't have the costs with me; I feel a little remiss that I didn't actually bring the costs of advertising, the cleanup and the turnover—trust me, you don't want an empty apartment in this business.

**Mr. Marchese:** Mr. Trachsel, I have two questions, if we can. The first one has to do with the metering. I've noticed and heard that all of the landlords oppose it. They say it's unworkable or it's not smart, and I haven't heard one tenant say it's a great idea. Do you have a sense of where they got this thing from, this idea of metering? Where does it come from? Out of the consultations that they had?

**Mr. Trachsel:** You mean why it's in the legislation? Is that the question?

**Mr. Marchese:** The proposal to have submetering in the apartments.

**Mr. Trachsel:** It's a proposal that is valid in principle.

**Mr. Marchese:** Is what?

**Mr. Trachsel:** Is valid in principle. Yes, it's a good proposal—

**Mr. Marchese:** But it's not workable?

**Mr. Trachsel:** It's not workable the way it is in this legislation.

**Mr. Marchese:** Okay. So maybe Mr. Duguid will tell us where he picked up these ideas.

The second one—

**The Chair:** I'm sorry, Mr. Marchese. You don't get another question, because that one went a little too long.

**Mr. Trachsel:** I will say, though, that I—

**The Chair:** You can answer it when you get to Mr. Duguid.

Mr. Duguid, you have the floor.

**Mr. Duguid:** I'll leave him a little extra time. I just want to thank Mr. Trachsel himself for his input in this. He was very active during the hearings. I know he attended the one in Kitchener-Waterloo and some of the others too, I think. I just want to thank him for his input. He worked very hard on behalf of his association, and I congratulate him for that. I'll give you a little extra time to respond to Mr. Marchese's comment.

**Mr. Trachsel:** I do believe that the Federation of Rental Housing Providers asked for it. We do want it. It's just that it's not—

**Mr. Marchese:** It's not what they proposed.

**Mr. Trachsel:** Yes, it's not feasible the way it's in this legislation.

**Mr. Marchese:** And the—

**The Chair:** Whoa. You don't get the floor anymore. I'm sorry.

Thank you, Mr. Trachsel. We appreciate your being here today. Thank you for your patience.

Committee, this brings to a close our hearings for this afternoon. We are recessed until 7 p.m. this evening.

*The committee recessed from 1811 to 1901.*

## ROB HERMAN

**The Chair:** Good evening. We're here this evening to continue public hearings on Bill 109, An Act to revise the law governing residential tenancies. Our first delegation this evening is Mr. Rob Herman. Welcome, Mr. Herman. Do you have a handout?

**Mr. Rob Herman:** No, I don't.

**The Chair:** All right. If you could say your name for Hansard, I'll record your name. You're not speaking for a group, you're just speaking for yourself?

**Mr. Herman:** For myself.

**The Chair:** You will have 10 minutes. If you leave us any time at the end, we'll be able to ask you questions. I'll give you a one-minute warning if you're getting close to the end.

**Mr. Herman:** I'm Rob Herman. I wanted to address the committee because Minister Gerretsen said he wanted this legislation to be fair, and to reward good tenants and landlords and punish bad tenants and landlords. I wanted to try to put forward a case for how I think it's going to adversely affect good landlords with unscrupulous tenants.

I have a small building that I manage in Toronto. I had occasion where a tenant had not paid the rent for a couple of months and so I took him to the tribunal. The tribunal officer found that the tenant had not paid their rent for a period of April 1 to May 31, which is today, and the parties agreed the tenant was $2,100 in arrears. When the tenant came to the hearing, the tenant stated that they fell into arrears due to an incident where they suffered a grade 3 concussion, a bruise to his spinal cord and a torn knee ligament, that due to the incident he lost his job as an installer and was no longer physically able to carry out his job duties, and that contrary to the doctor's instructions he had a new job, had considerable medical expenses and had not yet filled his medical prescriptions due to the cost of the prescriptions and the lack of his income.

The tribunal officer went on to find that the witness was credible and that he accepted his evidence. When he said he accepted his evidence, there was no evidence presented. The tribunal officer, despite my protestations, didn't ask him to justify or prove a thing. The tenant had said he had all these prescriptions not yet filled. Well, if he had these prescriptions not yet filled, why didn't the tribunal officer ask him to show at least one prescription? He didn't ask him anything. I think this is grossly unfair, and it's only going to get worse under the new system.

It says here, "The landlord submitted that he did not believe that the tenant would pay the landlord the arrears

owing." The tribunal officer: "I disagree with the landlord's projection that the tenant will not pay the landlord the arrears owing. The tenant's non-payment of rent was due to an event entirely out of his control, and I find the tenant willing and able to repay the landlord the arrears owing."

The tenant was given eight months to come up with the arrears. The first payment was supposed to be on June 15. This afternoon I received by a fax a bill from the tenant for repairs that he supposedly undertook to his apartment, which he says were under the superintendent's instructions. Coincidentally, the bill happens to be in the same amount as the rent he's supposed to come up with for June. Obviously, we're starting all around the mulberry bush again.

I don't know what the Legislature wants me to do. Do you want me to look after the 31 good tenants in the building, or am I supposed to waste my time and resources on this person whom I'm just playing games with? That is a serious issue.

When you take into account the fact that in future the legislation is going to allow that all issues can be entwined, where you can bring up any issue and apparently without any evidence—if a landlord wants to do work to his building and wants to come before the tribunal to get remuneration, recompense, by way of a rent increase, he doesn't come before it and just say, "I spent all this money." He has to provide evidence. He has to provide bills and cancelled cheques. So if it's incumbent upon the landlord to have to provide evidence, then why is it not incumbent upon the tenant to have to provide evidence? To me, that is not fair and balanced legislation.

The other problem is that once the system bogs down, which it inevitably will due to the fact that default orders are no longer going to be allowed—plus, you're going to be entwining these orders. Even if they're there just for non-payment of rent, which now takes about 10 minutes, it's going to take an hour when they start being able to bring up all the maintenance issues. The system is going to get completely bogged down, and when that happens, what happens in the case where a tenant comes in and they're extremely disruptive and all the other tenants in the building are asking me to get them out? What am I going to do with that tenant when I have to bring this application forward and it takes me eight or 10 months to get this person out? I don't think it's fair to tenants either.

So for those reasons, I think the legislation is very unbalanced, very unfair. I think it's actually a breach of fundamental justice that we should all be allowed. I think if the tenants have to provide evidence, then we should have to provide evidence too, which actually we already do, but I think it's incumbent upon the landlord to have advance notice of what it is the tenant is going to bring up at a hearing. We should have an ability to remedy the situation if it's serious, and it should be incumbent upon the tenant to have to provide evidence as to what they are saying.

I think that's really all I had to say.

**The Chair:** Great. You've left a minute for each party to ask a question, beginning with Mr. Marchese.

**Mr. Marchese:** Mr. Herman, is this the first time you've been before the tribunal with a case?

**Mr. Herman:** No.

**Mr. Marchese:** So there have been other occasions where you've been before tribunal members to resolve a dispute.

**Mr. Herman:** Right.

**Mr. Marchese:** You described an incident where the tribunal obviously was unfair to you, at least as you described it. It didn't work for you, and it worked for the tenant. Were there other cases where the tribunal worked very well for you?

**1910**

**Mr. Herman:** I have received orders where, if a tenant didn't pay their rent, they were evicted.

**Mr. Marchese:** So the tribunal was, in this instance, not very helpful, but in other instances was very good in terms of dealing with your issues with other tenants?

**Mr. Herman:** In the other case, the tenants admitted they didn't pay the rent and they were asked to leave. In this case, though, there was no evidence provided by the tenants that what they were saying was true. They had never come to me, in all that time, and said, "Mr. Herman, there is a reason I can't pay the rent." My grandfather owned that building 50 years ago and I manage it today. We don't kick people out on the street.

**Mr. Marchese:** I understand. Thank you.

**The Chair:** Mr. Flynn?

**Mr. Kevin Daniel Flynn (Oakville):** Obviously, when you try to bring forward a piece of legislation, you try to bring it forward in as balanced a way as you can. Earlier this afternoon we heard delegations that were claiming that the proposed legislation does not go far enough in protecting the interests of tenants. Your view seems to be the same: that if it does anything, it goes too far in protecting the rights of tenants, or protecting the rights of bad tenants perhaps would be a better way of putting that. Could you just expand on that a little bit? And are there changes that are contained in the proposed legislation that you would find helpful?

**Mr. Herman:** I think it's a big mistake to be entwining other issues. If a tenant isn't paying his rent, then a tenant isn't paying his rent. That's separate. If they have maintenance issues, there are lots of avenues for them to bring forward—they can get reductions in rent; they can do all kinds of things.

**Mr. Flynn:** So that's one amendment that you would propose, that they be split somehow?

**Mr. Herman:** Oh, absolutely. That's going to completely bog the system down.

**Mr. Flynn:** Is there any other constructive—

**The Chair:** Sorry, Mr. Flynn, you're out of time. Ms. MacLeod?

**Ms. MacLeod:** Thank you very much for your presentation and for attending with us this evening. You say that your situation will get worse under a new system. Mr. Flynn has acknowledged that we've heard that throughout the day, that this piece of legislation is perceived by both tenants and landlords as being worse

for both. I would like you to explain to me what this committee should do to improve your situation.

**Mr. Herman:** As I said, they should not be entwining orders. I don't think they should stop the default orders. If anything, maybe a little longer notice period should be given to the tenant.

Maybe there should be some mechanism that if they legitimately didn't receive the notice for some reason, the issue could be revisited. I think they even have that ability now. But to just get away with it is ridiculous. The system is going to crash.

**The Chair:** Thank you, Mr. Herman. We're out of time. Thank you very much for being here today.

Our next delegation is Tim Rourke. Is he here? Not here.

## KENSINGTON-BELLWOODS COMMUNITY LEGAL SERVICES

**The Chair:** We'll go on to our next delegation, Kensington-Bellwoods Community Legal Services. Welcome. As you get yourselves settled, if you are both going to speak, it would be helpful if we knew both your names and the organization you speak for. After you've done that, you'll have 10 minutes. If you leave us some time at the end, we'll be able to ask you questions. I will give you a one-minute warning.

**Ms. Tracy Heffernan:** Tracy Heffernan. I'm here from Kensington-Bellwoods legal clinic.

**Ms. Nina Hall:** Nina Hall.

**Ms. Heffernan:** I work as a staff lawyer at Kensington-Bellwoods legal clinic. Prior to that, I worked at the Ontario Rental Housing Tribunal as a tenant duty counsel. Those are essentially the front lines of tenant advocacy.

I will be speaking about Bill 109 and the potential impact on low-income, private market tenants, and my colleague, Nina Hall, will be addressing the potential impact on social housing tenants.

We'll only be touching a few points in our presentation, but our brief details all of our concerns with the bill.

Our legal clinic is in downtown Toronto. Our clients are low-income and they include the working poor, seniors, persons with physical disabilities, mental illness and persons in receipt of social assistance. Primarily, it's an area of single-family homes and three- and four-storey houses that are subdivided into apartments. Sometimes landlords live on the premises; most often they do not. There are few high-rises.

The combined effect of increased gentrification in the area and the removal of rent control in 1998 has been absolutely devastating for our clients. We have witnessed skyrocketing rents, easily doubling and sometimes tripling, forcing long-term but low-income tenants out of our area. If there was ever a need for tenant protection, it is now.

We applaud the Liberal government for taking steps toward increasing tenant protection, but I would like to address the three following concerns.

First, we're concerned about the purpose clause at section 1 of the Residential Tenancies Act. Combined with the change of name, it appears to signal that the government is moving away from a tenant protection focus. The purpose section needs to be amended to clarify, for the Landlord and Tenant Board and for the courts, that the legislation is intended to retain its tenant protection focus. This would only be in line with previous court interpretations, including the Ontario Court of Appeal. It should be clear that landlords and tenants do not have equal bargaining power, and this should be recognized.

Secondly, the Liberal government recognizes that tenants should not be evicted without a hearing, and this is an excellent change. Our only concern is the fact that the RTA does not provide a mechanism to set aside an order if a respondent does not attend the hearing. There are many legitimate reasons why a respondent may not attend, and it could be a landlord or a tenant who doesn't attend that hearing. The RTA should include a provision that would allow a respondent to set aside an eviction order. This is standard practice in most jurisdictions, including Small Claims Court. It's a basic issue of procedural fairness.

Finally, section 65 of the RTA provides a fast-track eviction process, with no opportunity for a tenant to remedy, where a landlord resides in the same building that has no more than six units. As there is no chance to remedy, this may allow for an eviction for an isolated incident.

As described above, this section potentially captures a significant proportion of the rental accommodation in our community. Given our direct experience of the dishonest tactics employed by some small landlords to evict tenants from their rent-controlled homes in order to increase the rent, we are extremely concerned that this provision will be abused. The RTA already provides an expedited eviction process to all landlords when there are allegations of impaired safety. This is by far the more appropriate process in these circumstances.

Thank you for the opportunity to speak this evening. I'm going to turn it over to my colleague Nina Hall.

**Ms. Hall:** I'm going to speak to one particular point. I think you've heard it this evening already from some of my colleagues in the clinic system, and I see that you've heard from ONPHA today as well. I'm talking about section 203 of the act. Our submissions on this are at page 4 of our submission.

Why talk about this, as my colleagues have indicated to you, including Tracy? This is the meat of what we're dealing with: landlord and tenant issues and low-income tenants. Section 203 removes from the jurisdiction of the tribunal—and, I'll explain to you, from anyone's jurisdiction—the third-party review of the legality of rents for social housing tenants. You can read the text for yourself for what the act actually does, but it excludes that jurisdiction.

Why me to talk about it? Because in addition to my experience here as a clinic lawyer and on the legal aid side of the things, I spent nearly two years as counsel to

the Metro Toronto Housing Authority, back in the day when these disputes could be determined by an independent third party, that being judges in landlord and tenant court. The Metro Toronto Housing Authority has now merged with Toronto Cityhome and whatnot and is now literally the biggest public housing landlord in the province.

The significant thing here is that you're creating a subclass of tenant: social housing tenants who do not have an affordable, expeditious forum in which to challenge the legality of their rent. The place that makes sense to do that is at the board, because the board is the place where landlords go to evict them for the rental arrears that can result from the withdrawal of subsidy or from a dispute in the calculation of what that subsidy can be. Every other tenant in Ontario can raise the defence to an arrears application, "My rent has not been legally determined," except social housing tenants.

**1920**

The Social Housing Reform Act does not provide an independent third party to look at a dispute between the social housing provider and the tenant with respect to the determination of their rent. It provides for a paper internal review process, which some providers are turning into an in-person internal review process in smaller jurisdictions. But that's not a third party. That's your landlord, the social housing provider, reviewing the decision that it made. That process mimics a process that you may be familiar with under social assistance legislation. Under social assistance legislation, there is an internal review process—I mean Ontario Works or Ontario disability support. The distinction there is, if you still disagree with the result of the internal review, you have an appeal to the Social Benefits Tribunal. You have an appeal route to an independent, third-party decision-maker. The Social Housing Reform Act does not include any such review.

What's left for a tenant? Only theoretically—because practically, it's nonsense, and for the taxpayers of Ontario it's nonsense and it's bad public policy— theoretically, what's left is an application for judicial review. That's an application that you make in court to the Superior Court of Ontario. It involves documents; it involves having a lawyer. Where are the lawyers going to come from? They're going to have to come from somewhere. These are the lowest-income people, who are in the process of losing the most important asset they have, which is their subsidized housing. You're going to have to find the money for legal aid lawyers to present these challenges, because these challenges will exist; you are going to have to find resources for the disbursements, and landlords, social housing providers, will have to respond to these kinds of applications with their own lawyers. They will have to pay their own disbursements, they will have to pay their own legal fees so that we can use up court time, which is more expensive for taxpayers, so that we can have judges being the independent third party who can review the legality of a rent determination when it's made under the Social Housing Reform Act.

I am not going to compare salaries between judges and board members, but I'm guessing there's probably an exponential difference. This is completely inefficient and absurd. It's also a basic issue of fundamental justice for any tenant in Ontario that they have an expeditious and cheap place to go to challenge the legality of their rents if that's the issue they need to raise to prevent their eviction.

Why me? I said so at the beginning: to raise this issue with you. I had the experience of doing exactly that: defending a major social housing landlord with respect to arrears applications. The Social Housing Reform Act didn't exist. The rules about rent calculation were not fundamentally different; they just weren't codified.

What happens is, not every single tenant waits to get to court so they can have the ear of the judge. What happens is, every single social housing provider has to be sure that when they're going forward with their claim for eviction and it's based on arrears of rent or withdrawal of a subsidy, they'd better be sure that they complied with the law, because their decision is going to be subject to the scrutiny of an independent decision-maker, a third party. In this case, practically speaking, who should it be? It should be the board. If you make it judges on judicial review, you are going to, in the process of coming to that realization, see many people losing their housing, and practically, the taxpayers of Ontario will be hemorrhaging money, because it's the taxpayers of Ontario who are the social housing providers. This is all downloaded to the city.

Don't spend your money on judges to make these decisions. It's a complete absurdity, because these decisions have to bubble up somewhere in the system. There will always be these kinds of disputes. They will not overwhelm the system. It's about having accountability. When you've left the only person reviewing a rent as the landlord themselves, as well-intentioned as they are, there's no third-party scrutiny. That's what we're asking for. It should be the board. It was the courts before, and it did not overwhelm the courts because everybody behaved in a manner that resulted in these problems being resolved before you had to go and account, whether you were the tenant or the landlord. Thank you.

**The Chair:** Thank you. Unfortunately, you've exhausted your time. Thank you for your passion.

## TIM ROURKE

**The Chair:** Is Mr. Tim Rourke here today? Great. Okay. Mr. Rourke, you're the next delegation.

**Mr. Tim Rourke:** I didn't think I was going to make it here in time.

**The Chair:** Welcome. We're glad you're here. I know you've been here before, so you know the drill. If you could indicate your name. When you begin, you'll have 10 minutes. I'll give you a one-minute warning. You have 10 minutes.

**Mr. Rourke:** I'm Tim Rourke. Here is my seven-point green paper about reform of the LRT laws. It's very

concise. I'll just re-emphasize the most important in here. What the tenants of Ontario need once again is what we had before 1998. We need impartial judges, not bureaucrats who know who they're working for or soon lose their jobs. One of your own adjudicators, Paul Debuono, can tell you about it more eloquently than I can. I gave the girl his piece in the green paper. I'm not going to print it; it's 48 pages.

Justice is expensive; injustice is cheap. The best way of keeping the workload of these expensive judges down is to have a cadre of rental inspectors as described herein. What a landlord and tenant dispute needs is an intervener. The last thing needed is a mediator; mediation is not useful when there's an unequal power balance, as in landlord and tenant disputes.

The right to withhold rent to compel a landlord to do something or stop doing something is as fundamental to tenants as the right to strike is to labour unions. The monster created by the Harris government cannot be tinkered with; it needs to be buried 12 feet deep with a stake through it. That is the essence of what I have to say about L&T law on housing policy.

I printed up a few copies of a Now magazine article from 1986. I'll put them out when I get finished so that people have a chance of getting them before the tenant pimps grab them. The tenant pimp fraternity is famous for doing things like that and much worse. It's an auspicious time to be here talking to an Ontario Liberal government about L&T laws. It was exactly 20 years ago, 1986—

**The Chair:** Mr. Rourke, could I ask you to just speak into the microphone a little closer so they can—

**Mr. Rourke:** Is everybody hearing me?

**The Chair:** Just so they can hear you.

**Mr. Rourke:** Is everybody hearing me good?

**The Chair:** Yes.

**Mr. Rourke:** It was exactly 20 years, in 1986, when the last Liberal Ontario government introduced an atrocious act that caused people's rents to go up abruptly by up to 40%. They did this after talking to a committee of nine, appointed to represent the interests of tenants by the Federation of Metro Tenants' Associations, FMTA. Now, one member of that committee, Dan McIntyre, runs the FMTA. Another member, Leslie Robinson, was put in charge of picking the board of directors and then setting up the governing structure of the provincially funded Advocacy Centre for Tenants Ontario. A third member of that committee, Kathy Laird, is now executive director of ACTO. These two organizations have been able to stack these hearings. Supporters of these two organizations knew about these hearings a full two weeks before there was any effort by the government to advertise them, to solicit opinions on their proposed modifications to the tenant ejection act.

Excellent authorities on L&T issues, such as Bob Levitt and Dale Rich, were not invited to attend. I'm amazed I managed to slip through this. I have lawsuits going on right now against both ACTO and FMTA for defamation, harassment, wrongful arrest and other nice things, but I'm not here to talk about that.

I used the phrase "tenant pimp." Some people think this merely refers to people who set themselves up as fake organizers in order to grab money. It's more than that. In Toronto, all across the spectrum of social activism you see these fake groups being set up in order to brand themselves as the voice of some segment of society, especially ones who are very disempowered. The aim is to keep these social segments, like tenants, disempowered.

Tenants would be very dangerous if they were ever allowed to develop into a political force. So we have two poverty pimp organizations—one funded by the city, one by the province—to act as social police in the tenants' rights sector, preventing real tenants' organizations from developing, often by outright knee-capper methods.

ACTO sucks up hundreds of thousands of dollars of taxpayers' money. I or any of my friends alone could do a better job of advocating. All they really do is attack people. There are people who are effectively in hiding because of these people.

The province funds these people to come here and tell you what you want to hear. I've told you what you don't want to hear, I'm sure, which is the truth. If you want to know more about that, you can check out my own website, which can lead you to further websites; it's all in here. That is what I've got to say.

**The Chair:** Okay, we have about a minute and a half for each party, beginning with the government side. Does anybody on the government side have any questions?

**Mr. Mario Sergio (York West):** I have no particular question. I have enjoyed the presentation by Mr. Rourke, taking his time to come down here and make the presentation to us. But I have no question. I want to thank him for being here tonight.

**The Chair:** Okay.

**1930**

**Ms. MacLeod:** I just wanted, as well, to say thank you very much. We haven't had an opportunity to say thank you to the other participants because they went to the limit. On behalf of our side, I'd like to say thank you to all of you.

**The Chair:** Thank you.

**Mr. Marchese:** I just wondered, Tim, did you have a chance to read the bill?

**Mr. Rourke:** Yes, I've read it.

**Mr. Marchese:** Your main objections to it are—

**Mr. Rourke:** That it's there at all. It should not be just some modification of this thing that Harris set up. Just to reiterate again: Bury all that 12 feet deep. Drive a stake in it. Go back to what we had in 1998, where we had judges adjudicating this thing, and we can start from there. If there's some need to reduce the load on the judges, then some sort of a rental inspector, an intervener, would be a very good way of doing that. But this is nonsense. It is exactly what people call it: the tenant ejection act, the eviction factory. What's being proposed won't change anything. It's no serious change at all.

**The Chair:** Thank you, Mr. Rourke. We appreciate your being here today. Thank you very much.

## FRED JOSEPH

**The Chair:** Our next delegation is Fred Joseph. Is Mr. Joseph here?

**Mr. Fred Joseph:** Yes.

**The Chair:** You don't have a handout or anything tonight?

**Mr. Joseph:** I'm going to be providing one after.

**The Chair:** Great. Thank you. Welcome. I'm sure you've heard the beginning. If you could announce your name so Hansard captures it, and then you'll have 10 minutes. I'll give you a one-minute warning if you get close. The floor is yours.

**Mr. Joseph:** My name is Fred Joseph. First of all, I want to extend a very heartfelt thank-you, Madam Chair and the other members, for inviting me to speak here today about this issue of condominium tenancy in Ontario.

I am a condominium tenant in Toronto. I am also a mortgage broker. I deal with things like construction finance, tenants buying their first homes, landlords expanding their investment portfolios etc.

I've extrapolated from some data provided by government services in the past that in Ontario today we can safely assume that there are approximately 750,000 condominium units. I've extrapolated from additional data that we are probably looking at somewhere in the neighbourhood of 300,000 to 400,000 tenanted condominiums.

I can tell you from personal knowledge that there are many cases where you have four and even five people sharing space in a $2,000-a-month condominium unit. Not only do you have a huge population in these condominium units when occupancy gets stretched to those levels but, the last time I checked, that is not exactly what would be called luxury living either. In fact, it's a huge constituency. Members, a huge electorate exists in these condominium units.

I'm here today to open your eyes to something that has flown under the radar for far too long and simply needs to be addressed for both landlords and for tenants. That issue is that in condominium tenancy, there must be created in legislation a definite distinction as to who constitutes the landlord of the residential unit versus who constitutes the landlord of the residential complex. The landlord of a residential unit cannot possibly control the entire complex in a condominium building unless they own over 50% of the units in the building. It's just that simple.

I happen to be very happy to live in a condominium complex with a unit landlord who is truly a good landlord. However, I happen also to live in a condominium complex in which my unit landlord is virtually powerless to control anything beyond the first panes of double glass on the windows, or behind the 3/4-inch sheetrock on the walls or behind the interior side of the outside layer of finish on my unit's door into the hallway. Most of what's beyond that, in terms of what I would regularly use as a tenant, is referred to as "common elements."

According to subsection 17(2) of the Condominium Act, "The corporation has a duty to control, manage and administer the common elements and the assets of the corporation"—"corporation," of course, referring to the condominium corporation.

We have a real problem here, members. If residential tenancy legislation is going to be effective for both condominium tenants and unit landlords, you ought to take condominium tenants out of the present legal abyss that we are in—and we're definitely in one. I don't want my innocent unit landlord to be dragged into courts and tribunals because I happen to have an issue with the condominium board, which happens to like to run the complex like it's the Wild West. No unit landlord should be dragged through the mud when a tenant's dispute is with the care and control of the common elements of the building, over which the condo board exercises 100% control. Right now, lawyers are standing on all kinds of technicalities to defend wayward condo boards.

The party line is that there is no "privity of contract" between the condo board and a tenant contracting with the unit landlord. So the condo board is, for all practical intents and purposes, off the hook. And as for the TPA, condo boards couldn't care less about the TPA. Every condo board out there firmly believes that virtually the only provincial legislation they need to know about and respect is the Condominium Act, and the Condominium Act is a real toothless tiger. So those same condo boards are just laughing under your noses right now, hoping, praying, in fact, that you wouldn't catch on, that you wouldn't wake up and that you won't make a change.

Enacting a supremacy clause into subsection 2(4) of the TPA didn't work. Lawyers found clever ways around it. Now, to enact one into subsection 3(4) of the Residential Tenancies Act won't work either. Let me tell you why throwing that supremacy clause into the new act will not have the effect of truly overriding the Condominium Act in cases of residential tenancy—three reasons in fact:

First of all, the conflict-of-laws issue between the TPA and the Condominium Act is anything but clearly resolved by the supremacy clause. A former Ontario Rental Housing Tribunal adjudicator who was hearing an illegal entry application brought by tenants against the property manager wrote—and I read verbatim—"Who is Prompton Real Estate Services Inc. to its tenants? If it was not the landlord and it was not an invitee, was it then a trespasser when its employees entered the unit in October and December? Unlikely, as they entered subject to their authority under the Condominium Act, 1998, and the bylaws of the condominium corporation." Then the adjudicator continues: "While I don't include this as a finding, it may be that the tenants have no remedy for such an entry and that this is a quirk and a gap that exists when we have a residential tenancy subject to the Tenant Protection Act wrapped up inside a complex, with individual unit-holders governed under the Condominium Act."

In a legal text I found entitled Condominium Act, 1998: A Practical Guide, widely available in publicly

accessible law libraries in Toronto, we find an interesting line, and again I quote this verbatim: "For the most part, residential tenancy issues do not affect the directors or managers of a condominium, unless the corporation provides a suite to a superintendent."

A letter which I received on October 21 of last year from a condo lawyer states the following: "You are mistaken in your position that the TPA overrides the Condominium Act. The obligations imposed by the Condominium Act override the TPA. There are several court decisions which reinforce this position."

Second of all, the litigation process that condominium corporations will force a tenant to engage in to try and extract a favourable ruling from the tribunal or the new landlord-tenant board will be anything but simple. The expeditious procedures clause in section 171 of the TPA and now continued at section 183 of the RTA, as well as the real substance clause in section 178 of the TPA and now continued at section 202 of the RTA, are a cold comfort to this menace. Ambrose Bierce may have said it best by stating, "Litigation is something you go into as a pig and come out of as a sausage."

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When the present tribunal is faced with deciding whether it can seize jurisdiction on an issue which is not spelled out in a point-blank fashion, especially a conflict-of-laws issue, the widely-held view of lawyers practising in landlord-tenant law with whom I have spoken on the matter is that such section 7 applications, as they are called, traditionally fail. That means a tenant must generally appeal to divisional court, and of course the condominium corporation, with much deeper financial reserves than a tenant, would obviously appeal an unfavourable ruling to the court of appeal. The cost to a tenant of carrying on such litigation can be summed up in one word: prohibitive, both in terms of time and money.

Finally, my condominium corporation, for one, made very sure that any redress—

**The Chair:** Excuse me, sir; you have one minute left.

**Mr. Joseph:** —that any redress I would seek against them would have almost definitely soured the good relations I had with my unit landlord. In fact, the condo board sent a letter to my unit landlord advising them that any legal fees incurred in what would effectively have been a defence against their own mischief would have been billed to my unit landlord. That's an outrage. To argue that my unit landlord has any effective control over the activities of the condominium board, by virtue of their 1/120 interest in the condominium, is an exercise in theoretical formalism. My unit landlord—a good landlord—has no more control over the management of the common elements of the condominium than a shareholder of Enron would have had over the activities of Enron.

What I am urging you to do, members, is to legislate in plain, specific language that there be privity of contract between a condominium unit tenant and the condominium corporation that controls common elements. Make condominium boards unequivocally subject to the new legislation without the need first for incredibly complex and difficult test case litigation to get us there. Thank you.

**The Chair:** Thank you, Mr. Joseph. We appreciate you being here today.

**Mr. Sergio:** Madam Chair, can I have the presentation?

**The Chair:** I think he indicated he would provide it later on. It's in Hansard.

## PINEDALE PROPERTIES LTD.

**The Chair:** Our next delegation is Pinedale Properties Ltd. Welcome. Is it Mr. Bookbinder?

**Mr. Robin Bookbinder:** Robin Bookbinder. I have a short speech which I've distributed, I think, to everyone. Then if there's time, I can do questions.

**The Chair:** Could you let me go through my preamble and then you can do your thing? If you could identify yourself and the organization you speak for, you'll have 10 minutes. If you get close to the end, I'll give you a one-minute warning. If you leave some time, we'll be able to ask questions.

**Mr. Bookbinder:** Fair enough. My name is Robin Bookbinder. I'm vice-president of Pinedale Properties Ltd., a company which has owned and managed residential rental properties in the greater Toronto area for over 50 years.

Current market conditions in rental housing have been the healthiest in Ontario in almost 35 years. Landlords have invested hundreds of millions of dollars. Our company alone has invested $15 million in capital expenditures in the past five years. Tenants have more choice and better-quality accommodation, with landlords providing better customer service than has been the case in the past. It is under this backdrop that Bill 109 has been introduced.

As I have a very short time this evening, I would like to focus on one particular aspect of the legislation which I believe is ill-conceived and for which the ramifications have not been thought through, and that is section 82. Where a landlord makes an application to terminate a tenancy for non-payment of rent, section 82 allows a tenant "to raise any issue that could be the subject of an application made by the tenant." This is designed to presumably allow a tenant to raise perceived maintenance problems.

There are two fundamental flaws with this section. First, the system will lead to abuse and will be good for bad tenants but bad for good tenants. Secondly, the new Landlord and Tenant Board will be overburdened and could effectively collapse. I will address these two issues.

There are no parameters around how a tenant can raise any issue and have it deemed to be an application by the tenant. Principles of natural justice require that the landlord know the case they are to face. The landlord will be forced to request an adjournment, even though such a delay is the last thing they would want in a situation of non-payment. This section could also create incentives

for tenants to cause damage themselves and then present evidence of the damage at the tribunal hearing.

When Ontario's rental system rewards non-paying tenants by giving them opportunities for even longer delays, it is the good tenants who lose. In rental buildings, it is the good tenants who pay regularly and on time who will ultimately bear the cost of a system where non-paying tenants are rewarded with longer delays. This results in much greater bad debt losses, legal costs, fees and charges, which are ultimately borne by other tenants. There is no question that making it harder for owners to evict non-paying customers is quite unpopular with tenants generally. Most tenants pay their rent, are fair-minded, and do not support a system that rewards non-paying tenants.

This section also has serious ramifications for the viability of the new Landlord and Tenant Board. Coupled with the fact that all non-payment applications now go directly to a hearing, which itself doubles the new board's hearing workload, section 82 will massively increase the amount of hearing time required and the number of hearings required, and will be a major contributor to what will almost certainly be the effective collapse of the new Landlord and Tenant Board.

Since the objective of most tenants in non-paying situations is delay, this provision will foster that delay. It will also unnecessarily burden the tribunal with hearings and rescheduling. This section will encourage tenants to simply withhold their rent rather than to file a tenant's application if they have any dispute with the landlord, because they can then put the onus on the landlord to bring an arrears application and raise their dispute in response. Unilateral withholding of rent will result in unwarranted hardship for small landlords. Currently, adjudicators have the ability to respond to such tactics by telling tenants that if they have maintenance issues with their landlords they should file a separate application and demonstrate that they have a bona fide complaint and are not making a reactionary, tactical complaint.

As can be seen in the attached survey—a small survey—the process for eviction is already upwards of over 70 days on average in Ontario, which exceeds all other provinces. This will be further exacerbated by the operation of section 82 and could become a huge deterrent to being in the rental housing business, as owners will no longer be able to count on a relatively stable judicial environment in which to lawfully collect rents and earn the revenue necessary to operate their buildings.

The reality is, section 82 is unnecessary and should be deleted. Separate applications by tenants ensure that landlords will be aware of the case they are to face, and give tenants every opportunity they need to raise maintenance issues. Failing that, we believe that there should be a requirement on the tenant to notify the landlord prior to a hearing that they intend to raise an issue, and to identify the issue they are raising. This would give the landlord an opportunity to prepare for the hearing.

We would also like to see a requirement that the tenant pay any arrears into the board as a demonstration of good faith. This would deter frivolous, unfounded or reactionary complaints.

Finally, there should be regulatory powers established under this section to allow the minister to put some parameters as to how this section of the legislation can be used.

That's my presentation. Thank you. If there are any questions—

**The Chair:** We have left almost a minute and a half for each party to ask a question, beginning with Mr. Hardeman.

**Mr. Hardeman:** Thank you very much for the presentation. I was just kind of taken by the issue of the eviction and that most tenants would be opposed to making it a longer eviction period because of the costs that would accrue to them. Yet as we go around—I was going to say "go around the province," but that wasn't the case with this bill; it hasn't been going around the province. But as we had presentations to this bill, we have yet to hear a tenant come in and put that position forward.

Is there any—

**Mr. Bookbinder:** I don't think good tenants who pay their rent are all that interested in legislation, to be frank with you. I think they're interested in having good, decent accommodation that's clean at a rent that's fair. I can't speak to politically minded tenants. In surveys that we have, and generally in our position, 98% to 99% of our tenants are good. They pay their rent, no problem, and I think that's the case throughout. I don't think those people would like a system that rewards people who don't pay their rent.

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**Mr. Marchese:** Mr. Bookbinder, most landlords have made the same concern around section 82, so you're all unanimous in that regard.

**Mr. Bookbinder:** I don't know about that.

**Mr. Marchese:** I'm just saying it. Are there good things about this bill that you would like to comment on? What do you like most about this bill?

**Mr. Bookbinder:** I haven't looked at the bill thoroughly on every section. I know that one important aspect of the bill is not so much what it says but what it doesn't say. I know that we are pleased, as free market people who invest in real estate and realty property, that the government has allowed for the continuation of vacancy decontrol. As I said initially, we think that has provided an environment where both landlords and tenants have flourished, where tenants have had the opportunity to have decent—I'm answering your question. Give me a second.

**Mr. Marchese:** We don't have much time.

**Mr. Bookbinder:** Decent accommodation—I'll wrap up in a second, sir—good accommodation where landlords have invested hundreds of millions of dollars and where the general quality of rental properties has flourished over the last five or six years.

**Mr. Marchese:** What about the requirement of paying 6%—

**The Chair:** Thank you. I'm sorry; your time has expired. Mr. Flynn.

**Mr. Flynn:** I'm just wondering about the general process a smaller landlord might go through. Obviously, you're saying that most tenants in Ontario are good, most landlords are good, and everybody seems to be kind of focusing on where we get a dispute between either a good tenant and a bad landlord or a good landlord and a bad tenant. Assuming that I'm not a corporation, that I'm just somebody who's got a rental property and I run into a bad tenant I'd like to not have in my property anymore, is the process onerous to go through? Is the process fairly simple?

**Mr. Bookbinder:** I'm not involved in the legal day-to-day of that. In terms of research I have seen, it does take very long, as I've said here, for landlords to evict bad tenants. I think you have a situation that is difficult. The point I'm making here is that you're taking it and multiplying it by a considerable amount as to the 70-day average I have here, which could multiply another 30 days—who knows?—because of all that I've said here in terms of delays, rescheduling, landlords not prepared for tenant actions they can bring without notice, without knowing what they are. So as good or as bad as it may be for smaller landlords, for sure this is going to make it a lot worse. That's the point I'm making.

**The Chair:** Thank you very much for your time here tonight.

## SOUTH ETOBICOKE TENANTS' ASSOCIATION

**The Chair:** Our next delegation is the South Etobicoke Tenants' Association, Patricia Smiley. Welcome. We have your delegation package here. Thank you for being here. Perhaps you could identify yourself and the group you speak for here for Hansard before you begin. You'll have 10 minutes. I'll give you a one-minute warning if you get close.

**Ms. Patricia Smiley:** My name is Patricia Smiley, and I'm the chairperson of the South Etobicoke Tenants' Association. Before I begin my comments on the legislation, I'd like to take the opportunity to tell the committee who we are and what our purpose is. In doing so, our following comments on the legislation itself might be better understood.

We formed last year, in 2005—we're still a very new group—to give private market tenants an organized and collective voice, first in advocating for fair laws governing relationships with landlords, and to assist tenants in dealing with their conflicts with those landlords.

While most tenants' organizations, associations, are building- or complex-specific, because of the nature of rental housing in south Etobicoke we chose to form an area-wide association. We've had financial and organizational support from LAMP Community Health Centre, the south Etobicoke legal clinic, and organizational support from Parkdale Tenants' Association, the Federation of Metro Tenants' Associations, and Albion Neighbourhood Services, which runs the housing help office at LAMP.

Our area is that part of Etobicoke which makes up the neighbourhoods known as Mimico, New Toronto, Long Branch and Alderwood. The rental properties are, for the most part, smaller, low-rise buildings with fewer than 50 units. If you drive through this area and you see high-rise apartment buildings, they're either co-ops or condos. It doesn't apply to our membership. There are numerous apartments above stores, in duplexes, in basements, in small buildings with six to 12 units on side streets. The vast majority of those buildings were built in the l950s. They are modest buildings. They were meant to house low- to moderate-income households, and for the most part, they still do house those who fall into that category. The better buildings have been well maintained over the years, but the wear and tear of the decades still shows. Many of our members have lived not only in the community but in the units they occupy for many years. I'm probably the newest member of that community after three years.

About Bill 109, I don't want to repeat what has been said by other tenants and their advocates. I would like to say what I've talked about with the tenants in the area, for the most part whom I know. I'm also not going to comment on the landlords' position. We are simply tenants who have had to fight and have perhaps become politicized over the situation with our landlords. I've heard landlords make claims to this committee, which I would ask you to disregard because they're not true.

These are the provisions of Bill 109 that most affect the tenants in this area, and they're specifically focused around above-guideline increases and evictions. First of all, above-guideline increases: If the new legislation has ameliorated some of the worst provisions, and allowed for above-guideline increases in the Tenant Protection Act—they're still allowed. We as tenants are wondering why. The principle of tenants who have paid rent to the landlords who own the properties for capital expenditures is simply unfair. Capital expenditures on aging buildings that prevent those buildings from turning into dumps that are on a fast track to becoming slums, which is happening, should be the responsibility of the landlord, not the tenants who pay their rent.

If this landlord can't afford to maintain either the individual units or the building as a whole, such that it is, so it remains a healthy and safe place to live on the basis of the rents collected, the amount of rents collected, that landlord can't manage what we have paid for. Our increases on rents are consumer-price-index based. With respect to a landlord being a consumer for repairs and the cost of those repairs and upgrades to these aging buildings, that's what they pay, but instead tenants are paying for them. We would like our landlords to be businessmen and to manage their businesses such that they reinvest capital as businessmen.

The most glaring example in the sections that outline eligible capital expenditures is deeming energy conservation a financial responsibility of tenants. We're not

objecting to the notion that all of Ontario wants to conserve energy; so do we. We recognize the vital necessity of energy conservation. We object to tenants paying for expenditures that will, in the long run, probably save the landlord money. Too many of us have experienced repeated breakdowns of furnaces that even if repaired properly leave us for hours—in a few cases I've heard of from our members—without heat. If a more energy-efficient furnace is installed and tenants pay for that new furnace through an AGI, it's the landlord, who in almost all multi-unit properties pays for heat, who will conserve energy and save money on heating costs. The same applies to paper-thin windows, inadequate and rotting electricity, worn-out plumbing, rotting wood in kitchen cupboards, missing tiles, endlessly and overly patched roofs, shaky foundations—all the things that happen to a building that's maybe at least 50 years old.

Evictions: We appreciate that there will be no more default orders for evictions and that there will be time for tenants to defend themselves appropriately and in front of the board. We also appreciate being able to void eviction orders by catching up with our rents. It may seem a small thing, but I would have hoped in the best of all possible worlds that an eviction order is not issued and then voided. I think this may be very problematic. An eviction order will be ordered, it will be voided, and ordered and voided and ordered. This could take up a lot of time with the tribunal. In a sense, it's essentially a waste of time. It's better than what we had before, but I think it could be significantly better than that. Obviously, the general hope is that there will be fewer evictions and the cruel stories of vulnerable children and seniors losing their homes and personal property will become history.

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We accept the basic obligations of tenants to pay their rent in a regular and timely fashion, and we are more than aware of the fact that there are tenants who wilfully damage property and break the law in their homes. It does affect us. The faster that crack house down the hall is closed, the happier we are. However, a landlord requires almost no proof that whatever damage has been done to the property was done by either a tenant or that tenant's invited guest. On the basis of that, on very little, a landlord can apply for and receive an eviction order. We're concerned that this will become a legal excuse for landlords to harass tenants they don't like.

As many of us live in buildings with six or fewer units, we are also concerned about the speed with which we can lose our homes if the landlord occupies one of those units. I can myself attest to how difficult it is to live with a bad landlord downstairs. However, we believe that the same rules should apply for all tenants, no matter what kind of a building they live in or where their landlord lives.

These are our major concerns. There are many problems associated with housing that can't be addressed by a single piece of legislation, and I would encourage the members of this committee to think about them, particularly those of you who are in the government party. The reality is that most of us have no housing alternatives to the private market. We all know why; I don't think I need to say, particularly in Toronto. The rules of consumer choice do not apply to this particular market, and while we struggle with a long list of issues, we want to know that when we pay our rent we have decent, livable homes.

This bill has come faster than tenants and tenant advocates expected. We haven't had much time to digest and consider the various provisions or to prepare our comments. Debate in the House has been limited. I would request that you give more time to this bill before its third reading. Over the past several months, I have communicated, largely through e-mails, with tenants' associations in Guelph, London, Waterloo, Ottawa—mostly southern Ontario. As these hearings have been limited to Toronto, most of those tenants from other cities have had no opportunity to appear here. Please give any written submissions sent to you careful consideration. Thank you.

**The Chair:** You've left 34 seconds, which isn't enough time for me to offer anybody a question. Thank you very much for being here today.

## MISSISSAUGA COMMUNITY LEGAL SERVICES

**The Chair:** Our next delegation is Mississauga Community Legal Services.

**Mr. Harry Cho:** Thank you, Madam Chair.

**The Chair:** Welcome. It's just you tonight?

**Mr. Cho:** Yes, ma'am. My friend Daniel Amsler has taken ill and regrets that he is unable to attend.

**The Chair:** We're sorry to hear that, but we're glad you're here. If you could say your name and the group you speak for. When you do begin, you'll have 10 minutes, and if you get close to the end, I'll give you the one-minute warning.

**Mr. Cho:** Super. Thank you very much, Madam Chair. I don't actually anticipate taking my full 10 minutes.

My name is Harry Cho. I'm a staff lawyer at Mississauga Community Legal Services. It's a non-profit corporation that provides free legal services to low-income residents of Mississauga. In seeing the speaker list, I can see that many of my colleagues and friends from various other legal clinics have already appeared before this honourable committee. I don't really want to waste anybody's time by reiterating things that we've already heard. Instead, I'll focus on the general purpose; perhaps I'll take a more holistic approach to tenancy legislation.

The Interpretation Act of Ontario, and I believe it's section 10, instructs us that all legislation in this province is remedial, in the sense that legislation is meant to correct either past injustices or perhaps past inequalities. Particularly with respect to housing legislation, the purpose generally of housing legislation is, I would suggest to you, to augment and protect security of tenure. The courts—and in fact a friend of mine, Mr. Harry Fine, who was a former adjudicator of the rental housing tribunal—

in speaking to the current Tenant Protection Act, and interpreting it pursuant to the Interpretation Act have held that the purpose of the Tenant Protection Act is to protect tenancies, to augment security of tenure. Notwithstanding some of the provisions that exist within the Tenant Protection Act, for example, the default provisions—I suppose this does speak somewhat to the efficacy of Orwellian titles—the Tenant Protection Act has been interpreted to protect tenants.

My friends and colleagues at the Kensington-Bellwoods Community Legal Services office have already explained that in all likelihood section 1 of the current Residential Tenancies Act will not be accorded the same type of interpretation. Viewing the legislation as an entirety, I am certainly inclined to agree. The legislation purports or seeks to prevent unlawful rent increases. It also seeks to prevent what are unlawful evictions. Certainly, the Tenant Protection Act has always sought to prevent unlawful evictions. Certainly, the Landlord and Tenant Act that came before the Tenant Protection Act sought to prevent unlawful evictions. What the current legislation does, however, is eliminate several safeguards that existed in the preceding legislation that I mentioned.

I'd like to speak specifically to the landlord's ability to seek an expedited eviction based on what we may refer to as activities that impair personal safety or activities that may result in the interference of the enjoyment of the property.

A number of the clients I represent before the rental housing tribunal appear with quite apparent mental health concerns. Under the current legislation, when I have appeared before the rental housing tribunal defending a low-income tenant who is facing eviction for activities based on her mental health concerns, we have in the past managed to, for example, void notices of termination and avoid hearings altogether by correcting the behaviour, by seeking assistance from our community partners in getting the proper medical treatment, the proper supports that are available. Certainly, when we meet with landlords and when we explain the context of the tenant's individual needs and when we recognize that the landlord doesn't want an empty unit and the tenant wants to remain housed, there is always some common ground that we can reach. As it stands today, the Tenant Protection Act provides us with some opportunities to meet that middle ground; that is, we can create a plan to correct the behaviour, to ensure that the enjoyment of all people will be respected and will continue throughout the tenancy.

What this does, when we are able to resolve matters without attending the tribunal, is relieve a great deal of hardship on both, I would suggest, the tenant and the landlord. Let's face it: Nobody likes to appear before courts. Whenever you get lawyers involved, I think everyone has basically lost. I think it is far better if we can, through the provisions in the legislation, work toward resolving matters without needing to fight it out before what is oftentimes a very intimidating and quite ominous venue. So that's certainly one area in which we have a concern.

Another speaks to, of course, the rules relating to rent. This government was elected on a promise that nobody would be left behind. That was really something that resonated with Ontario voters. There was also the promise, of course, to reintroduce rent controls. I don't need to review what the current legislation has done with respect to the reintroduction of rent controls.

One of my concerns is the guideline increase that is indexed to the consumer price index. The vast majority of clients we represent in the legal clinics are recipients of social assistance. Certainly, their benefits are not indexed to the consumer price index. My salary is not indexed to the consumer price index. I know very few people whose salaries are. What this, in effect, represents is free money for the landlord—free annual money for the landlord that will every year, year upon year, result in higher rents. These higher rents, we foresee, will inevitably lead to economic evictions. Once these units have been vacated, the landlord can then raise the rents to whatever the market may sustain. Unfortunately, that market does tend to leave behind the people whom we in the clinics represent—the people on fixed incomes, the people on social assistance and people on ODSP. Again, this is a large percentage of the population, an entire swath that is in effect being left behind by this legislation.

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So I guess what I would encourage the government and my friends in the opposition to remember is, really, the general principle that no one should be left behind. No one party has a monopoly on compassion. I would really encourage all parties to take a good, hard, long look at this legislation and to keep in mind the principles of the Interpretation Act when they do take this proposed act to committee.

**The Chair:** Thank you. You've left exactly a minute for everybody to ask you a question, beginning with Mr. Marchese.

**Mr. Marchese:** Thank you very much. One of my biggest concerns is vacancy decontrol. That's the promise the Liberals made; they said they were going to deal with that. They obviously kept it here, and the landlords are very pleased with that. I think that's a big problem for tenants, because landlords take advantage of that. Quite naturally, if someone leaves, you're going to jack up the price as much as you can, and they have. Even where vacancy rates are very high or low, rents have gone up. So it's a big concern for me. How big is that concern for some of you in the field? Because you talked about it a bit.

**Mr. Cho:** Certainly. Thank you, Mr. Marchese. I've been acting for a rather large residential complex in south Mississauga right by the lakeshore on Front Street. It is a building occupied primarily, I would suggest, by senior citizens who are on old age security, Canada pension plan, things of that nature. There have been a number of turnovers in the management of that rental complex. The

most recent management has in the last few years undertaken significant capital improvement projects, I guess the legislation would call them, seeking above-guideline increases. Some of these projects are of a questionable nature, replacing, for example, gym equipment, things of that nature. They have claimed for these things before the Ontario Rental Housing Tribunal to augment rents and to gain above-guideline rent increases. The purpose of all this, of course, is to raise the rent to the level where current tenants are unable to afford the rent. Whether it be a rapid process through above-guideline increases or whether it simply be through the guideline based on the CPI, rents will increase; unfortunately, incomes often do not.

**The Chair:** Thank you. You're going to have to wrap it up, make it a shorter answer.

**Mr. Cho:** The ultimate end of this, of course, is to get the empty unit so that—

**The Chair:** Excuse me. You have to really shorten your answer because no one is going to get to ask another question. Can you wrap it up?

**Mr. Cho:** Certainly I do agree, because the purpose of this ultimately is to get the unit empty so that they may charge whatever rents the market can sustain for whoever may wish to move in. Unfortunately, that does make it hard for those who live in poverty.

**The Chair:** Mr. Flynn.

**Mr. Flynn:** Thank you, Mr. Cho, for the presentation. I thought it was very well balanced. In seeking some balance in the legislation, you cited some examples where perhaps somebody has acted out of character and that has led to an eviction, and somehow you've been able to intervene on their behalf or to get assistance and that situation has been able to right itself. How do you bring in legislation that would cover that circumstance? A previous speaker said tenants want the crack house at the end of the hall out of there as soon as they possibly can. How do you bring in legislation that allows you to do the intervention that works and yet still allows for the quick removal of someone who is just a pain in the rear to every tenant in that building?

**Mr. Cho:** Thank you very much, Mr. Flynn. I certainly am sympathetic to the landlords and to the other tenants who reside in a residential complex when these problems do arise. My friends who do appear with me at the Rental Housing Tribunal know that I am quite pragmatic in my approach and that I am not as political as some may be.

I think, however, this really is a matter of balancing competing interests. Where we lose sight of the needs of the individual who may suffer from a mental health impairment, for whom something such as the Human Rights Code shall and must apply, I would suggest to you that incorporating the principles of the Human Rights Code where a landlord must accommodate a disability to the point of undue hardship would offer one of those balances of the competing interests of the general population of the tenants to that one crack house in the corner.

What I'm picturing here is not the crack house environment—

**The Chair:** Mr. Cho, I'm sorry; you're going to have to make your answers really short. You've really doubled your time. Is there a quick answer you can give Mr. Flynn, because I've got to go on to my next—

**Mr. Flynn:** Do you know what? I think I understand what you're saying. Thank you very much, Mr. Cho.

**The Chair:** Ms. MacLeod, you have a minute.

**Ms. MacLeod:** Thank you, Madam Chair. You're running a tight ship here, and we're all appreciative.

**The Chair:** I'm trying to.

**Ms. MacLeod:** Harry: great presentation, very fascinating. I'm glad to see you're pragmatic about everything. You mentioned potential impacts of this interpretation by the judiciary on the purpose of the act changing the name from the Tenant Protection Act to the Residential Tenancies Act. I would like to know what direct impacts you would foresee with the name change.

**Mr. Cho:** Certainly the courts and my friend Mr. Fine have held that the purpose of the act is to protect tenancies and that eviction is a remedy of last resort. In the absence of a strong purposive clause to that effect, it is my fear that evictions will no longer be the remedy of last resort.

**Ms. MacLeod:** What's your recommendation?

**Mr. Cho:** My recommendation is to rewrite the purposive clause to indicate that the purpose of this act is to augment and protect security of tenure.

**The Chair:** Thank you very much.

**Mr. Cho:** That was short.

**The Chair:** Yes. That was much better. You had a good questioner, I noticed.

## LANDLORD'S SELF-HELP CENTRE

**The Chair:** Our next delegation is someone who has been referred to earlier: Mr. Fine, from the Landlord's Self-Help Centre. Welcome.

**Mr. Harry Fine:** Thank you. I could have sworn I heard Mr. Cho say he was going to give up some time to us.

**The Chair:** I didn't hear him say that at all. Thank you for being here tonight. If you're both going to speak, if you can give your names for Hansard and the group that you speak for. You will have 10 minutes. I'm going to hold you to 10 minutes, and I will give you a one-minute warning if you get close to the end.

**Mr. Fine:** Thank you. My name is Harry Fine. I'm a paralegal looking forward to paralegal regulation. I'm the president and owner of Landlord Solutions, a company doing work for landlords and, occasionally, tenants at the tribunal and small claims court. I'm also a member of the board at Landlord's Self-Help Centre, and I'm here tonight speaking on their behalf. I also teach landlord-tenant law at Humber College and at the Toronto Real Estate Board, the Mississauga Real Estate Board, the Ontario Non-Profit Housing Association, etc.

Beside me is Glenn Sheridan. Glenn is one of the principal people at the Landlord's Self-Help Centre. He is there as a community legal worker, and he interacts with the community small landlords every day. I'm going to start by turning it over to Glenn to give some context as to what our organization does.

**Mr. Glenn Sheridan:** Good evening, and thank you for the opportunity to speak to the committee regarding these changes. I'm a community legal worker from Landlord's Self-Help Centre. Hopefully the following information will underscore the difficulties that small-scale landlords already face with the existing legislation and why any changes that are made should be fair and practicable.

At our centre I'm one of four legal workers who provide our client community with summary legal advice, information, referrals and, sometimes, document preparation. We do not provide legal representation for landlords; we leave that to people like Harry. This advice ranges from basic issues such as screening tips and how to complete eviction notices to more complex and frustrating situations such as drugs in the tenant's premises or the futility of attempting to collect amounts owing from an order when a tenant is actually on assistance and the landlord cannot get the money.

The centre is a specialty legal clinic and the only one that provides services exclusively to Ontario's small-scale landlords—approximately 10,000 enquiries every year. Our clients are generally small-scale landlords, commonly referred to as the secondary rental market. This market represents approximately 40% of private rental housing providers in Ontario. In Toronto, this is about 15% to 20% of the rental housing stock. Rents charged in these units are generally 20% lower than in units in larger rental properties.

These housing providers are typically not professional landlords. They may be small-scale real estate investors or entrepreneurs, but most times we find that they are people from low-income families, seniors and recent immigrants often possessing little or no property management skills or experience. Many have purchased a single-family home or small investment property such as a duplex or condominium unit, while others simply rent a flat, basement unit or so forth in their home in order to subsidize the cost of home ownership.

It's rarely acknowledged that language issues and a lack of familiarity with the tribunal system are huge barriers to access justice for both tenants and landlords. The difference is that there is a great deal of support and resources available already to tenants to help bring them up to speed. This support comes from the tribunal, legal aid clinics and the tenant duty counsel program, as well as other community organizations.

Judging by the feedback we get from our small landlord community, the experience of going through the tribunal simply allows no room for error on their part and often results in unfair delays, dismissal of their application, or worse, an order that has no way of being enforced.

**2020**

This bill seems to make specific provision for the small-scale landlord in section 65, and we applaud this recognition; similarly, the undertaking to reduce fees for above-guideline increases, which at $500 is currently just too prohibitive for small landlords.

Our centre will shortly provide a written submission outlining our comments and concerns when we get the time to complete it—our small staff—on such issues as removal of the default eviction process; allowing tenants to raise claims on applications filed by a landlord—it has already been mentioned while I've been here tonight; smart meter issues; the potential to limit small claims court remedy created by section 88; also, the expansion of the definition of "tenant."

We urge the committee to recognize that there are a large number of obvious disincentives to renting faced by the small-scale landlord, and that the vacuum created by many of these landlords getting out of the renting business must logically be filled by either the larger private sector landlords charging higher rents or the creation of publicly funded housing.

I'd like to hand over to Harry to complete.

**Mr. Fine:** Legislation by its nature needs to be, or tries to be, a one-size-fits-all approach, and often it doesn't work. There's almost no similarity between the constituencies in rental complexes operated through ONPHA members, for instance, or by the Landlord's Self-Help Centre, versus a Greenwin building. They're different animals. In our constituency, through the Landlord's Self-Help Centre, they are different. They're emotional, they're difficult and they're often messy. Small-scale landlords, as we deal with every day, don't have the resources, don't have the training, and often not the knowledge to deal in the complex, highly regulated environment that is currently the Tenant Protection Act and soon will be the RTA. Both section 183 of the TPA and section 171 of the RTA call for an expeditious process without sacrificing fairness. The courts have recognized that the process needs to be expeditious, that common law has recognized that we're dealing with summary matters that should be dealt with quickly and fairly, that speed does have some special meaning in landlord-tenant law.

Our constituency of small landlords makes up about 40% of the private rental market. I think they'll be the hardest hit by the types of changes in the RTA. It is so complex, time-consuming and highly procedural to achieve a remedy to the tribunal today. I'm very busy in my work, but small landlords have an impossible time. Landlords lose their homes as they can no longer pay mortgages because the rents aren't coming in. The cumbersome system permits tenants who, oftentimes—sometimes, certainly—are confrontational, aggressive and sometimes even violent, to remain in a unit for months, sharing a common laundry room, sharing a common deck or outside lawn with a landlord and their family in situations that boil over into confrontations. So often the police are called and the police say, "It's a tribunal issue.

Go through the tribunal." There's a fine line and that's the way the police get their training. The truth is that some of these matters go on for six months and the situations are explosive.

It's ironic that legislation such as this, and even the TPA prior to this, in discouraging small landlords from staying in the business will ultimately, ironically, affect the poor, create more homelessness, because it's those people who are on social assistance who are most often in basement apartments. So many of my landlord clients, after we've gone through the process, say, "I will never rent again." What will happen to this 40% of the private rental market when they can't find cheaper rents in basements of houses, in a small triplex?

I also foresee terrible backlogs with the implementation of the RTA, for two reasons primarily. The elimination of the default order process is going to create enormous backlogs; 50% of all arrears applications are resolved currently by default. Having every one of these go to a hearing and be resolved through questioning and evidence, and the adjudicator having to make notes and write down his decision—those things take time. I know that because I was there. I don't know that the government is planning to put in the resources that will be required to handle an increase in workload of probably 20%, 30%, 40%.

Adding to that increase in workload, of course, is section 82, which you're hearing about from all landlords here at this process. Section 82 is problematic in so many ways. First of all, it flies in the face of the principles of natural justice that say the respondent has a right to know the case to be met. Respondents will not know the case to be met, so they have one of two choices: They can continue and defend the action, defend the maintenance action, because they don't want an adjournment—and they'll get one. If they ask for an adjournment and say "I'm being ambushed," they'll get an adjournment of one month, and during that one month, they'll get no more rent for that period. So landlords may decide, "I'm here. I don't want the adjournment. I'm going to try to defend the maintenance application." Of course they'll do it badly.

**The Chair:** Mr. Fine, you have a minute left.

**Mr. Fine:** It is questionably contrary to all the principles of administrative law, and it flies in the face of natural justice.

A typical arrears application takes three months to get through the system, and that's three months from the time the landlord serves the notice. If the landlord waits two months, hoping, listening to promises, accepting guarantees from tenants: "You will get your rent, you will get your rent," it can easily be five months or $5,000 before the landlord finally gets an eviction through the sheriff. At that point, there's no guarantee of getting any funds, again because so many tenants in small tenancies are getting ODSP or OW. You cannot garnishee. The ODSP or the OW set out that you can't get money from tenants on social assistance, so the landlord has lost $5,000 that he can never recover.

Section 63 of the bill, the provisions for wilful or serious damage, supposedly fast-tracking: It'll never happen. Landlords won't make applications under section 63. They'll be frightened to, because an application under section 63 can be so easily dismissed if the adjudicator says, "I don't think that that's an application that should have been made under section 63 because it's not serious or wilful enough. You should have made it under section 62; therefore, the notice is defective. It had 10 days rather than 20. You have to re-serve, refile and repay the ministry your money for another application." There's no threshold set out—

**The Chair:** Thank you, Mr. Fine. I'm sorry. You've exhausted your time. I know we're going to be getting another written document as well. Thank you very much. You've been very helpful tonight.

Committee, just so you know—I think I mentioned it earlier—the Coalition of Residential Care Facility Tenants cancelled earlier today.

## DAVID PIASECKI

**The Chair:** Our next delegation is David Piasecki. Have I stated your name correctly? Have I pronounced it properly?

**Mr. David Piasecki:** Yes.

**The Chair:** Great. Could you state your name for Hansard before you begin. When you do begin, you'll have 10 minutes. I'll give you a one-minute warning if you get close. If you leave some time, there will be a chance for us to ask questions.

**Mr. Piasecki:** My name is David Piasecki. You'll have to pardon my presentation. I was just informed this afternoon, if I was willing to attend. When they called, actually I was in the midst of a two-hour meeting with my mother and a caregivers' association. I really didn't think I was going to be called, so I'm going to do the best I can on such short notice.

I've read over some of the proposals on the new act. I'm here under another reason, and that's an area that has not been addressed. I want to take this opportunity to address this panel on this because it's a matter that I feel—not myself; many landlords I've spoken with—is of significance because if it's not addressed, all these proposals have no meaning. The brunt of what I'm getting down to talking about is that there is a problem with the tribunal itself in regard to the whole process with the adjudicators, the discretion that is given them.

Another area that I'm going to address very quickly and briefly is the matter of the recordings, or the lack of recordings, that the tribunal supplies for hearings and the inability, because of the poor recordings and lack of recordings—it is totally unfair for landlords and tenants alike in order to pursue a review and possible appeal of issues that are being decided before an adjudicator. For example, if one is not at all happy with the decision of the tribunal adjudicator, of course, one can go for a request to review.

**2030**

The request-to-review process in itself is something that has to be addressed. First of all, the problem with the request-to-review process, as I've found out and as many landlords have found out, is that it goes to another adjudicator within the same office, so there is a lack of independence. This review process should be conducted with a greater independence between the reviewer and the decision-maker. What I'm suggesting is that it's just too close. You pay the $75 and as a matter of fact, for example, in one recent case, a 10-page, single-spaced request for review, the adjudicator whom that was given to in the same office was going to give a decision on that request to review within five minutes, and then there was the second thought that maybe it looked too obvious. That's one part I wanted to address.

I want to address this area of the lack of recordings. Many landlords harbour the perception that members of the tribunal under the TPA are not adjudicating the disputes properly. A landlord's recourse is obviously to lodge an administrative review, and ultimately to the Divisional Court. Oftentimes the tribunal is unable to provide recordings of the proceedings because the recordings are either incomplete or missing.

This lack of recordings will prevent proper review of tribunal decisions in many cases. In order to have a more efficient administration of justice at the tribunal level, it would be beneficial to have the tribunal record the proceedings in a better manner. Staff at the housing tribunal should be encouraged to take better care of recording disks. In order to ensure that the parties to a dispute are dealt with fairly, the tribunal should be encouraged to record the hearings properly and to archive the recording disks efficiently to minimize loss.

The best way to encourage these changes would be to amend the TPA and the rules and regulations to encourage better recordings and archiving of the recordings. A few changes in this direction would create an environment where tenants and landlords would have greater faith in the adjudicative process of the TPA. The lack of complete recordings oftentimes prevents a litigant from advancing an appeal and undermines a proper review of the decision, and possibly finding out whether or not the member of the tribunal is acting in an unbiased way. Really, it's difficult to advance errors in evidence.

Another area: What are referred to as the guidelines and the rules that the adjudicators follow basically allow very large discretion of the part of the adjudicator to put down fines and costs. It's just too broad.

I was referring to the rules and regulations of the tribunal. Rule 21.1 should be amended so that recordings are mandatory and every effort will be made to provide good and complete recordings.

Originally, I was compiling a much larger presentation in written form that I was going to present to the Minister of Municipal Affairs and Housing and also a copy to the Attorney General's office. With the timing of this panel, I thought maybe I would come forth. I've gone into much greater documentation that shows exactly the cases that happened where there has been such unfairness to landlords and tenants because of this inability to advance errors in law because of the lack of recordings. It really has just become a joke.

I basically wanted to address quickly the discretion that adjudicators are given. Adjudicators have to be made more accountable for their actions. Another problem is that we found out that some adjudicators are not even familiar with certain types of housing. Take, for example, a rooming house type of residence. They are not at all familiar with that type of housing and how it works.

**The Chair:** Mr. Piasecki, you have one minute left, just so you know.

**Mr. Piasecki**: Section 35 of the Tenant Protection Act gives far too much power to adjudicators. It's an area that should be amended because they use their utmost power—there's just too much discretion. Without really going into documentation, I have difficulty going further, but I will forward my documented case to the Minister of Municipal Affairs and the Attorney General.

**The Chair:** If you'd like to, you can submit your written submission by June 5. That's our deadline for this committee's work before we go to clause-by-clause. So if you can get it to this committee by June 5, that would be the deadline for this committee.

**Mr. Piasecki:** Thank you. I apologize for this—

**The Chair:** Don't worry. We're pleased you came. You did a great job.

**Mr. Piasecki:** I had a half-hour of preparation.

**The Chair:** For somebody who didn't have a lot of time to prepare, you sounded quite eloquent. Thank you very much for being here.

## STRATACON INC.

**The Chair:** Our next delegation is Stratacon Inc., Mr. Mills.

**Mr. Ian Stewart:** Actually, Mr. Mills can't be here this evening.

**The Chair:** Okay. Welcome. If you could identify the company and your name so Hansard has it, you'll have 10 minutes.

**Mr. Stewart:**. My name is Ian Stewart and I'm president of Stratacon Inc. Stratacon is a leader in the space of smart submetering in the multi-family sector. We're currently metering and billing thousands of tenants across Ontario.

What I'd like to focus on this evening is section 137. Although it's well intended, I think that in its current form it will most assuredly halt the proliferation of smart submetering in the rental sector and may well cause the Legislature to miss the Premier's stated goal of installing over 800,000 smart meters by 2007, and maybe more importantly, I think perhaps one of the biggest opportunities for conservation in the province will be lost in terms of submetering in the multi-family sector.

I know time is short so I prepared a very brief presentation for you. Essentially it outlines the issues as we see them, as well as the issues that we hear from our

clients, who are apartment building owners and management companies.

One of the key points to recognize is that about 15% of the existing rental building stock in Ontario is already separately metered and was so since the suites were built over 35 years ago. I've made presentations to both members from the Ministry of Housing as well as the Ministry of Energy and at every turn this is always surprising to them, that 150,000 to 200,000 suites in the province are already paying electricity bills and have so for the last 35 years. I think it maybe speaks to the issue that, absent complicated government regulations and rules, it's natural for Ontarians to want to conserve a scarce resource and natural for Ontarians to be rewarded when they choose to be mindful of a scarce resource. The fact that it has flown under the radar screen of ministry officials for 35 years really speaks to that point.

**2040**

For the balance of the suites, 85% of the building stock, it is not separately metered and the cost of electricity is embedded in the rent. What it gives rise to, of course, is that residents have no clear incentive to conserve electricity. Submetering the 85% of existing building stock in Ontario would translate into roughly 350 megawatts of electricity savings. More importantly, about 140 megawatts of those savings would be incurred in the city of Toronto, where it's needed most.

In terms of submetering, what we do is place meters past the bulk meter such that we're recording in-suite consumption accurately at each resident's suite. Every smart submeter that's installed is, of course, Measurement Canada approved and sealed for accuracy. The rates that a typical submetering company charges to each resident tend to be about 30% to 40% less than what a traditional LDC would charge those same residents in the 15% of suites that are presently directly metered.

In every case we've looked at, and indeed across about a million suites I've looked at in other jurisdictions, consumption at the bulk meter tends to drop between 15% and 25% immediately after folks start to become bill payers. We think it's literally the quickest, easiest and fairest way of conserving electricity, particularly in Toronto.

The next slide really shows why submetering will benefit the majority of tenants. If the resident is given a fair rent reduction, the majority of residents would probably be below the rent reduction out of the gate. The slide you see shows a gas-heated building, so it has nothing to do with whether the suite is located on one side of the building or the other and nothing to do with weather; it's simply lifestyle choices. You see at the top that we have Suite 802, which in the month of January consumed $58 worth of electricity, yet Suite 501 used $1.76 worth. This is pure lifestyle choice and one of the reasons why submetering offers tremendous opportunities for conservation.

In terms of what we see in section 137 as barriers to conservation, it really starts at clause 3(b). We believe, as do our clients, that rent reductions should be based on current in-suite electricity costs and should not include future related costs.

Another barrier would be in subsection (4), where it suggests that meters should be installed for a period of 12 months or longer. We believe this to be excessive, particularly in buildings that are gas-heated, where there's no issue vis-à-vis weather, and that three months or less should be more than ample to document a proper and fair rent reduction to each residence. If, for whatever reason, that formula spits out a bad result, clearly there should be a true-up mechanism in place for those buildings and that can be corrected. We think that waiting 12 months with meters in place and no clear way to finance them would not be needed and would be excessive.

Subsections (5) and (6) require that a building owner share in-suite consumption patterns with a prospective resident. I think there are certainly privacy issues in play. For the 15% of the building stock that is separately metered by the LDC, the building owner won't and hasn't had access to that information for the last 35 years, so they clearly would not be able to share it. I'm also concerned what it would say to a prospective tenant if the family that moved out had six children and the new tenant was a single occupant. I'm not sure that their consumption would be that indicative of what the new resident might be expecting to see in that particular suite. It may be more practical to use a building average as opposed to the consumption that was occurring in that particular suite.

Subsection 137(7): If a landlord does install new appliances, I think it's reasonable and certainly practical that they put in an Energy Star appliance that is energy efficient. However, I'm not sure, and don't think it's at all reasonable, to suggest that a building owner now be forced to put in an energy-efficient appliance, especially in those cases where residents have been paying their utility bill for the last 35 years.

Subsection 137(8): We saw in the previous slide that lifestyle choices more than anything generate high utility bills. But should a resident have a high utility bill, I'm not sure their first choice should be the ability to go to the tribunal with an application. I think the tribunal would be overwhelmed with cases. In our opinion, and I think in the opinion of our clients, the first thing they should be looking at is things they can do within their suite to minimize their hydro bill. Certainly at Stratacon, with our client base, we're constantly offering, through our website or through bill stuffers and handouts, little tips and suggestions on simple things any resident can do to minimize electricity usage.

I'm joined by my colleague Paul Brown, casually dressed, right from the golf course, who wanted to be here.

**Mr. Paul Brown:** I apologize. I was with the Power Workers' Union today and we got rained out. This is the only garb I have access to.

I guess Ian has made most of the points from our point of view as the leading submetering company.

**The Chair:** Gentlemen, you have just over a minute, just so you know.

**Mr. Brown:** If I cut it down to the main message, unless changes are made to the current drafting of the bill, there will be no smart metering of a million apartment units in the province of Ontario. The provincial government will fail to meet its objective of 800,000 smart meters by 2007. It will not happen, and the conservation goals that all parties in the Legislature have set will not be achieved. The only way to do it is to smart-meter individual units, and under the current drafting of the legislation, it will not happen. We have a letter from just one of our customers, which we'll make available. It's very direct and quite clear as to what they'll do, how they're reacting. These are people who have recently signed agreements with us to smart-meter, and when they read the wording of the legislation, they said, "We will not move forward."

The bottom line, also, is that there are not huge differences—

**The Chair:** I'm sorry, but you've exhausted your time. We appreciate your being here. Thank you.

**Mr. Stewart:** Any questions?

**The Chair:** Unfortunately, you've used your time, but thank you for your slides. That's great.

## LARRY FASERUK

**The Chair:** We have our last delegation: Mr. Larry Faseruk. Welcome. We've saved the best for last. Thank you for being here. We are anxious to hear your presentation. You're just speaking for yourself tonight; you're not speaking for an organization?

**Mr. Larry Faseruk:** Not for an organization.

**The Chair:** Great. Could you say your name for Hansard, and when you begin, you'll have 10 minutes. If you leave us some time at the end, we'll be able to ask you questions. You can begin when you're ready.

**Mr. Faseruk:** My name is Larry Faseruk. Thank you for allowing me the opportunity to address the committee today. Bill 109, like its predecessor legislation, lacks any safeguards for a very vulnerable segment of the population, to wit, post-secondary students. As a father of two post-secondary students, I have first-hand knowledge of the plight of post-secondary students, and I'm making this presentation as an advocate for this vulnerable segment of society.

Very often, this segment is at the mercy of landlords who charge very significant rents, and the students are facing systemic discrimination in the procurement of rental housing. In many cases, the housing that students can procure is substantially below the property standards of the community in which it is situated.

First I'll deal with the systemic discrimination that students face when trying to procure adequate housing for their student years. No one will doubt that the leaders of tomorrow are the post-secondary students of today. In certain college towns, landlords are notorious for saying, "We do not rent to students." Hence, students face discrimination in obtaining housing. The current bill does not address this point, but makes provisions to allow this discrimination and therefore exempts this discrimination from a human rights complaint, as it is discrimination that is allowed by statute.

**2050**

Let's examine section 10 of Bill 109: "In selecting prospective tenants, landlords may use, in the manner prescribed in the regulations made under the Human Rights Code, income information, credit checks, credit references, rental history, guarantees, or other similar business practices as prescribed in those regulations."

This legislation is a very thinly disguised piece of legislation that allows landlords to discriminate against young, first-time renters, especially students. When students usually require rental housing, it starts with the second year at a post-secondary institution when they are only 18 or 19 years old. How many 18-year-old and 19-year-old students or workers have any credit history for a credit check, a credit reference or any rental history, for that matter? The only rental history they can offer is one year at a university/college dormitory without any assessment of fines or damages.

This year, my daughter required a guarantor because she is a student. If she were not a student, then a guarantor would not be necessary, which results in discrimination against students.

If this was not enough, then Bill 109 goes on, "or other similar business practices as prescribed in those regulations." This bill makes it very easy to allow discrimination against students when they attempt to procure housing.

It has to be acknowledged that all components of buildings have a finite span of being useful and eventually have to be replaced. When a person wants to be in the business of providing rental accommodation, that accommodation must initially meet the property standards of the community and continue to meet those property standards throughout the time the building is used as rental accommodation. Otherwise, the safety of the tenants may be at risk. If one acknowledges that eventually all of the components of the building have to be repaired or replaced, then the costs of maintaining the building against normal wear and tear should be factored into the rent.

Bill 109 allows a landlord to treat all the income from the ongoing rental as profit when a portion should have been set aside for major periodic repairs, such as a new roof or heating system. Section 126 of Bill 109 allows the landlord to treat all the previous rent as profit and allows the landlord to neglect the maintenance of the building and then allows a rent increase to pay for those periodic repairs. Major periodic repairs have to be considered as a cost of doing business and not an extraordinary expense.

On section 126, I want to concentrate on clause (b), "it is necessary to comply with subsection 20(1) ...." Subsection 20(1) deals with maintaining property standards to allow it to be in a habitable state.

This leads to several disgusting scenarios. First, under Bill 109 the landlord is not required to disclose to a

prospective tenant that upcoming repairs are necessary and that these repairs may constitute "capital expenditures" under section 126, which means unexpected rent increases. The most odious is clause 126(b) as it allows as capital expenditures the costs of keeping the property up to the standards of the community as per subsection 20(1). This will lead to tenants who will not complain about property standard violations as it will lead to rent increases. Hence, Bill 109 is a prescription for the creation of slums.

Since students face statutory-allowed discrimination, they are forced to rely on landlords who will rent to students. In college towns, these landlords usually own buildings that are adjacent to or in close proximity to the post-secondary institution, which coincides with the preferred area of habitation for the students. This leads to the formation of a student ghetto and, in many cases, a poorly maintained student ghetto, and section 126 of Bill 109 will aid in the formation of the student ghetto.

Does a student ghetto exist in Canada and does a ghetto have to exist? As one approaches Cornell University, one has to drive through a section of Ithaca, New York, known as College Town. This is a trendy little section of Ithaca, high on the hill overlooking the town.

When one approaches Queen's University via Division Street, one has to drive through an unholy halo of undermaintained buildings, known locally by generations of Queen's students as the Ghetto. This does nothing of any value for the city of Kingston. It is commonly known and accepted that Queen's aspires to be the Harvard of Canada. Perhaps Kingston should aspire to be the Cambridge, Massachusetts, of Canada. Cambridge, Massachusetts, is the city in which Harvard is located, and there is a strong set of bylaws to protect buildings of significant age. Most of the Ghetto in Kingston dates back well over 100 years.

How bad is the Ghetto? It is so bad that the Queen's student council, known as the AMS, the Alma Mater Society, has introduced an anti-award known as the Golden Cockroach. This award is described by a quote from the student newspaper: "'The Golden Cockroach Award was born of necessity, not desire, due to the deplorable conditions too many students are currently living in,' said AMS President Ethan Rabidoux, who made the presentation with Acting Municipal Affairs Commissioner (MAC) Ryan Quinlan Keech. 'The pictures and the stories we will tell you are deplorable—well, in fact, they are funny, screamingly funny until you realize people are living in these conditions.'"

That's from the Friday, February 10, issue of the Queen's Journal, and the full text is attached as appendix 1 to this.

It may be easy to say that the deterioration in properties is a recent phenomenon and can be corrected shortly. When my brother was a student at Queen's from 1973 to 1977, the area around Queen's was known as the Ghetto and had the same neglected look as it does today.

In addition to many of the buildings being undermaintained, there is another type of problem if the building is maintained at a satisfactory level. Some landlords have been placing very stringent rules for the properties. "It is also important to understand landlords' expectations. For example, landlord Daphne Dean is known for her stringent regulations, which include four cleaning inspections throughout the year and a limit on the number of houseguests after 9 p.m. Many current tenants ... were finding this situation difficult, stating 'We're just not Daphne Dean people,' while others found the regulations worth it because of the quality of Dean's houses."

That's the Queen's Journal, Friday, November 22. The full text is attached as appendix 2.

Many of the student rental houses in the Ghetto are three-bedroom houses that are turned into five-bedroom student flophouses by the elimination of the living room and dining room. A Victorian-era two-storey building is usually turned into three two-bedroom apartments with the basement being one of the apartments. The three-bedroom house is not very attractive in rental costs. Each of the five occupants for a house within a 10-minute walk to the university is priced about $460 a month, plus heating, water and electricity, and drops to $350 for a 15-minute walk. Landlords who rent to students charge a very significant premium for their properties. According to rental ads in the Kingston Whig-Standard, there are many rentals for non-student rentals of three-bedroom houses, and they are about $1,100 to $1,200 a month, as compared to student rentals of $1,750 to $2,300 a month for the same size of building and usually not as well maintained.

CMHC Rental Market Survey shows that the average rent for a three-bedroom apartment in Kingston is $750 with heat, water and electricity included. Try to find that in the student rental area, where most of the two-bedroom apartments are much more than $750. It's not just around Queen's that the over-$400-a-month student rent per room is found. A quick survey of the university housing website shows that the $400 level per room is common. The landlord bases this price on the cost of student residence on campus, roughly $5,000 a year, not including meals, which works out to about $400 a month, but includes heat, water, electricity, phone for local calls and high-speed Internet. Students doing their first rental do not understand that heat, water, electricity, phone and high-speed Internet add about $100 a month to the rental cost.

If you get a presentation from providers of student housing, keep the following in mind: These people usually try to present themselves as people who provide a valuable service to students and try to pass off their service as something like student travel. Student travel provides a service to students at a cost about 30% below market. In Kingston, student housing usually means three times market.

"With the landlords getting a very significant"—

**The Chair:** Excuse me. You have just over a minute left.

**Mr. Faseruk:** "With the landlords getting a very significant rent for their properties, they should have ample money to properly maintain their properties. Unfor-

tunately for students, most improvements have to be tenant-driven. Nobody is required to check property standards on a consistent basis"—Queen's Journal.

With Bill 109, if the residents of poorly maintained houses complain, they may be stuck with rent increases to cover the cost of bringing the rental housing up to the property standards of the community. To give you an idea of the magnitude of the problem, this year my daughter filed a 35-page property standards complaint about her Ghetto house. It was inspected by the city of Kingston, and the inspector found several further property standards violations that my daughter had not included in her complaint.

Why are property standards not enforced? In addition to the usual canard about the city staff being undermanned and overworked, there is the additional problem of the ownership of the rental properties, as many are owned by prominent members of the Kingston community. The current mayor, through a company called Rosen Corp., owns the following properties: 332 MacDonnell, 773 Montreal, 4, 6 and 12 Orchard, 305 Rideau, 863 Princess, 755 Gardiners and 1776 Joyceville.

The wife of the longest-serving mayor owns the following property: 192 Union, 382 Alfred, 130 Helen, 130 Calderwood, 12 Foster and, last but certainly not least, 31 Aberdeen.

If you're not familiar with Aberdeen—

**The Chair:** Thank you. I'm going to have to cut you off. You've two seconds left in your delegation. We appreciate your being here tonight and we do have your written submission.

**Mr. Marchese:** He's got two seconds—

**The Chair:** I understand. No, he's got a bit more than that.

We appreciate your being here tonight. Thank you very much.

Committee, this brings to a close our hearings for this evening. I'd like to thank all of our witnesses, members and committee staff for their participation in the hearings. This committee now stands adjourned until 4 p.m., Monday, June 5.

*The committee adjourned at 2059.*

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