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Lundi 5 juin 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
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Monday 5 June 2006

Lundi 5 juin 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.

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We are here today to continue public hearings on Bill 109, An Act to revise the law governing residential tenancies. I'd like to welcome all of our presenters, as well as the members of the audience.

I'd just like to remind our witnesses that the rules of the House apply in this committee. In other words, there is no cheering, no clapping and no form of demonstration allowed. I would ask that everybody respect those rules. As Chair, it's my role to ensure that these hearings run on schedule and that all of our presenters have an opportunity to make their deputations without interruption.

SOCIAL HOUSING SERVICES CORP.

The Chair: Our first presentation today is from the Social Housing Services Corp. Mr. Hughes, could you come forward, please? Welcome. We're glad you're here today. After you've introduced yourself and the group that you speak for, you'll have 10 minutes. If you leave some time in that 10 minutes, we'll be able to ask questions. You have the floor.

Mr. Merv Hughes: Thank you very much, Madam Chair and members of the standing committee on general government. Thank you for this opportunity to appear before you today. My name is Merv Hughes. I'm a member of the board of the Social Housing Services Corp., SHSC, and the social housing manager for Haldimand and Norfolk counties. I'm happy to bring the perspective of SHSC on the Residential Tenancies Act.

Bill 109 represents an opportunity for SHSC to assist the province of Ontario in achieving a balance between landlord and tenant rights and responsibilities and for the province to consider the social housing sector's particular role in meeting the housing needs of our most vulnerable citizens. I am tabling the full SHSC analysis of Bill 109, but will limit my remarks to 5 themes: (1) the precarious financial position of many social housing providers that reduces the capacity to deal with maintenance issues and energy conservation; (2) the need to tailor the Residential Tenancies Act to meet the special circumstances of social housing providers; (3) our desire to continue working with the Ministry of Energy and the Ministry of Municipal Affairs and Housing on smart meter and energy conservation issues; (4) the emerging problem of energy poverty; and (5) our support for key RTA provisions.

Background of SHSC: The Social Housing Services Corp. was established under the provisions of Ontario's Social Housing Reform Act, 2000, the SHRA. The SHRA provided the legislative authority to devolve social housing to municipal and district service managers in 2002, and it also established SHSC as an independent corporation providing common services to service managers, local housing corporations, non-profit and co-operative housing providers previously administered by the provincial government.

SHSC fulfills the need for a central body to serve as a business resource to 47 service managers and over 1,200 housing providers in 455 municipalities and districts across Ontario who collectively manage some 250,000 social housing units, with over 700,000 residents. We provide consistent quality services to housing providers, while taking advantage of economies of scale. SHSC's programs include insurance, pooling of capital reserves, joint purchasing for natural gas, and research for best practices.

The social housing sector in Ontario: Non-profit housing providers manage their operations within very restricted budgets. Overall, two thirds of the rent comes from residents with the lowest income levels and the remaining one third from fixed subsidies from local municipalities. Social housing providers face the problem of having insufficient capital reserves to address their infrastructure renewal needs, including replacing energy-inefficient equipment or engaging in energy-efficient projects which would also capture capital renewal requirements. They are prohibited by the Social Housing Reform Act from refinancing or encumbering their key asset, which is the property.

These restrictions distinguish social housing from our private sector counterparts, who have greater access to capital financing, tax treatments and a larger revenue stream in the form of rents paid by tenants. The RTA imposes a broad set of obligations upon landlords for

maintenance, energy conservation and legal process. SHSC recognizes the careful balancing act between landlords and tenants that governments must achieve. While there is much to commend in the RTA, the legislation also imposes additional open-ended liabilities and costs on housing providers without any identification of resources to meet them.

SHSC recommends that the provincial government should deal with the backlog of capital repairs and the projected requirements for energy retrofits by creating stable and sustainable funding for investment in social housing infrastructure over the next decade, building on partnerships such as the energy conservation program between the conservation bureau of the Ontario Power Authority and SHSC. That's recommendation 1.

Similarly, the Landlord and Tenant Board, LTB, which is to replace the ORHT, would gain many new powers and processes under the RTA. The LTB workload will increase significantly due to the increased number of hearings required, as well as the greater number of the circumstances and factors that adjudicators need to consider in arriving at their decisions. SHSC recommends that the LTB be resourced adequately to minimize impacts on non-profit providers and waiting list applicants, which will be our recommendation 2.

Determinations related to housing assistance, section 203: SHSC supports section 203, which limits the ability of adjudicators of the Landlord and Tenant Board to review decisions made about rent-geared-to-income eligibility—RGI—and benefit levels. This makes good public policy. First of all, RGI is governed by the Social Housing Reform Act and its regulations. If there are problems with the Social Housing Reform Act, it is not up to the RTA to fix them. Secondly, social housing providers receive intensive training on income verification and rent-geared-to-income determination. It makes little sense to have another body without the necessary background second-guess RGI calculations. Thirdly, the SHRA requires that tenants have the ability to have their decision reviewed. SHSC supports the clarification provided by section 203, which restricts the ability of the Landlord and Tenant Board to review RGI eligibility and level of assistance: recommendation 3.

Smart metering, sections 137 and 138: The SHSC supports the government's efforts to create a culture of conservation. SHSC wants to expand our efforts with the Ontario Power Authority to introduce efficient appliances and upgrade our energy conservation standards. We support smart metering because we know that tenants will reduce their electricity use whether they pay for it or not. But we think it is a mistake to require substantial investments in conservation just to install a smart meter. That means our members will have to wait for funds to become available just to smart-meter. It makes more sense to go easy on the installation of smart meters—just require efficient appliances—and save the tough requirements for retrofits and energy upgrades for when and if electricity costs are transferred to tenants.

1610

SHSC has three concerns about shifting electricity costs to low-income tenants. First, under clause 137(3)(b), RTA regulations will specify how the landlord is to reduce rents by the cost of electricity shifted and related costs. This suggests that any administrative or billing fees the tenant experiences are also included in the rent reduction. The non-profit provider has to cover this cost, which could be significant. If the fees are $10 per month, a provider with 100 units might be $12,000 out of pocket each and every year. This is a huge hit for us.

Remember that in order to cost-shift, the provider has to meet substantial energy conservation standards. It makes more sense that once a landlord has gone through all the steps ensuring that electricity costs are minimized, they are not penalized for doing so. If tenants assume the billing cost, landlords will have to reduce the rent for a cost that did not exist before. SHSC recommends that clause 137(3)(b) be amended by deleting the phrase "and related costs," which is our recommendation 7.

Our second concern is the different ways the RTA and the SHRA treating energy costs could create unintentional consequences, such as energy poverty. For example, the SHRA prescribes set amounts for utility charges and allowances on a regional basis for different-sized units. Any mismatch between the RTA rent reductions and the SHRA utility charges and allowances could create unintended financial problems for the housing provider or the low-income tenant. Just to complicate things even more, the SHRA also sets out cost benchmarks for non-profit providers.

The Chair: Mr. Hughes, you have just over one minute left. If you could summarize, please.

Mr. Hughes: In terms of maintenance, maintenance is another big one for social housing. We inherited a capital deficit when the province downloaded, and it's been growing ever since. By 2015, it's expected to reach $1 billion.

We know our buildings have problems and we know why. Let's not forget that a building with significant maintenance issues is also one with significant financial problems. We need to develop a strategy and a funding source that allow us to deal with our outstanding maintenance items. While we're at it, let's incorporate new energy conservation at the same time.

I've already spoken several times to the need for sustainable funding. I want to draw the committee's attention to recommendation 9, which states that subsection 7(1) be amended by the addition of section 195 to the list of RTA provisions which do not apply to social housing. Section 195 gives the Landlord and Tenant Board the power to order the tenant pay rent to the board in situations with severe maintenance problems.

If a non-profit housing provider has a severe maintenance problem, they are also facing a severe financial problem in dealing with a construction or major repair defect. They have no cushion to rely on, and a redirect of rents could easily lead to mortgage default and possible loss of the project from the social housing stock.

The Chair: Mr. Hughes, I'm sorry; you've expired your time. We have your presentation here.

Mr. Hughes: I thank the committee for its time.

The Chair: We appreciate your being here today. Thank you very much.

KINGSTON RENTAL PROPERTY OWNERS ASSOCIATION

The Chair: Our next delegation is Kingston Rental Property Owners Association. Mr. Manders, welcome. When you begin, if you could announce the group that you speak for and your name for Hansard.

Mr. Steven Manders: I'm Steven Manders, secretary of the Kingston Rental Property Owners Association. I own and manage a few mid-size apartment buildings with my wife. My tenants run the gamut from mothers on assistance with several children, to some tenants with disabilities, students, doctors and lots of cooks. I do all the maintenance except where licensed tradesmen are required.

The Kingston Rental Property Owners Association has been around since 1982, and I have been a member since 1987. We have a great website where we advertise our units. We've developed a great lease which we researched carefully and presented to the Ontario Rental Housing Tribunal to proofread before we distributed it to our members to use. We wanted to make sure it was a good, clean lease.

We get politicians of all stripes, municipal property inspectors and the fire department, to mention a few, attending our meetings. The thrust has always been on landlord education, professionalism and ethical management from all our members, and I'm proud of every one of them.

We have about 90 members. About 80 of them are mom-and-pop operations. We also have most of Kingston's major landlords as members. As such, we own or manage half of Kingston's rental units. So I do indeed speak on behalf of the landlords of Kingston and represent the views of the other 340,000 landlords in Ontario, and that's according to Canada Customs and Revenue Agency. Most of our members own a dozen rental units. They're merchants, dentists, tradesmen, engineers, teachers, civil servants, retired people and a handful of full-time landlords and property managers. They're all good, honest people who are the pillars of the community. They make Ontario grow. Bill 109 paints them like a bunch of thugs, thieves and slum landlords who can only be controlled with substantially higher fines, penalties and tough regulations. It's contemptible.

For tenants who deliberately stop paying the rent and eventually skip out owing as much as possible and those who deliberately or recklessly damage property, there are no penalties. They are just ordered to vacate. That's not a balance.

Most of our rental units are invisible from the street. They're houses, townhouses, condos, student rentals, duplexes, triplexes and basement apartments. They flow into and out of the rental market depending upon demand and changes to how they are being perceived by the various levels of government. If the market is soft and the tenant vacates, the units are often sold back to owner-occupancy.

In 1990, the NDP treated the landlords' assets with contempt. The vacancy rate crashed faster than anyone imagined possible because nothing was demolished, nothing was converted from residential, nothing was seen happening from the street. In 1997, the Tenant Protection Act treated landlords more fairly and the landlords flooded the rental market with new rentals, often without anything being built. Owner-occupied units flowed back into the rental market. These units flow into and out of the rental market just as the wind blows through the trees.

Landlords are upset with the way many levels of government have treated them and their investments. It's a difficult job keeping up with maintenance. Add to that many tenants who are just reckless, careless, plainly don't care, can't pay or won't pay. The tribunal figures, which I have distributed to everybody—that was downloaded off the Ontario Rental Housing Tribunal website—show that 65,000 landlords made an application to the tribunal. Tenant applications are only 7.5% of that, and only 1.3% of those were for maintenance issues, yet half of Bill 109 is for maintenance and punishing landlords. What more evidence do you need that landlords are, for the most part, not the problem? They're the ones with the problems, and they're also a solution.

I've been an active participant in the Social Planning Council of Kingston, which works with the homeless. They have also been invited to attend some meetings at KRPOA and I've attended with John Gerretsen at the Social Planning Council meetings. I've worked on the annual KRPOA food drive. It donates to the Partners in Mission Food Bank. We have collected tens of thousands of pounds of food for them.

In 2002, I was invited to speak at the head table of the newly formed Kingston association of tenants. They wanted more information about the multi-residential tax ratios, which is hard on poor tenants. John Gerretsen defends this tax inequity, which is clearly aimed at the most affordable of housing units. Anyway, John Gerretsen arrived late because he'd been attending another meeting. When he finally arrived, he was seated at the head table on the stage, directly beside me. I understand in Toronto you don't usually have landlords attend tenants' meetings and tenants attend landlords' meetings, but in Kingston it can happen. The reality is that we're in business with each other and we need to find mutually acceptable solutions to our common problems. What a novel idea.

After the presentations, the tenants were allowed to ask questions of John. There were a few good questions, and a bit of whimpering and whining, about many different topics. John was sympathetic to every problem regardless of its merit. He promised that everything they wanted would be granted by a Liberal government; we were heading into an election. He knew no limits about

what was reasonable or what would be fair with the landlords; it was of no concern to him.

One tenant said to John that a friend of his had an order made against him at the tribunal for $4,000 and that just was not fair. Nothing was said about whether it was rent arrears, damages or whatever. John said that would never be allowed to happen under a Liberal government. The facts behind the case were irrelevant to him. He had not even asked. The impact on all the fine landlords that had put so much into their rental units did not matter to him. This one sentence summarizes more than anything else what is driving John Gerretsen's politics: The tenants can do no wrong, the Liberals will protect them, and the landlords' problems are irrelevant. This clearly shows up through all of Bill 109.

1620

At the town hall meetings chaired by Brad Duguid two years ago—this was in Kingston—about a dozen tenants showed up. They had a few specific problems that they wanted addressed, but on the whole, they were satisfied with the TPA. They said so. Ditto for a dozen residents from a mobile home park. Half a dozen homeless people showed up. Their problem was that they could not find anything; their income was just too low. They needed more money. Rent controls won't fix that. They even said so.

About 50 angry landlords attended the meeting. They outnumbered everyone else combined. They were exceedingly upset with what John Gerretsen was proposing and they made it very clear. Brad Duguid can verify this summary of events; he chaired the meeting. John Gerretsen was also present.

John Gerretsen has not consulted with nine Nobel laureates who condemn such rent controls. He has not listened to the landlords he is attempting to regulate with a big hammer. It's a one-man show.

KRPOA had John Gerretsen speak at our meeting in January 1986, a few other times, and again in 2003. It was not consultative; it was, "Here is what we're going to do to you, and what are you going to do about it?"

Here is what we are going to do. First, John's ideas aren't very different from the NDP and David Cooke's rent controls brought in in 1990. Landlords felt they could not operate in such an environment and virtually all new apartment construction ceased. Vacancy rates crashed. Rental houses, townhouses and duplexes were just taken off the rental market. None were demolished, none were converted to other uses, but tenants could not find a place to rent at any price. The poor lost the most under strict rent controls, the very people they were intended to help. Renovations ceased too. This is all history; you saw it happen. Quality went down. There was no competition. Public housing soared, but it devastated the provincial budget. The 340,000 landlords of Ontario got angry and the Common Sense Revolution was born. That's what they can do, and they will do it again.

The Tenant Protection Act was born out of the ashes of the NDP's strict rent controls. Construction then soared; renovations resumed. Rents rose at first, but now they are falling, as was predicted would happen. So rents, on average, are not going through the roof, as Howard Hampton claims. It's simply not true. The market is working now for the landlords and the tenants.

The Chair: Mr. Manders, you have a minute left.

Mr. Manders: That's all I need.

Those landlords have their life savings on the line, and John Gerretsen is playing games with it. He just does not grasp the impact that has on investment or disinvestment. These people are the professionals and tradesmen of Ontario.

John Gerretsen's policies are not based on careful consulting, good research or successful examples from abroad. How many tenants have said they're just what they need?

I have deliberately avoided discussing the individual proposals in Bill 109. I've written letters to all of you on that. Others have also covered that. I want you to consider the political ramifications if a lot of these issues are brought in. I can't stop you from passing Bill 109. I believe it will pass despite any evidence of its detrimental effects. So get a comfortable chair, sit back and watch the history lessons from the 1990s repeat themselves again. Thank you.

The Chair: You left six seconds. Good timing. Thank you very much.

RENTERS EDUCATING AND NETWORKING TOGETHER

The Chair: Our next delegation is Renters Educating and Networking Together, Ms. Pappert. Is that right?

Ms. Mary Pappert: Yes.

The Chair: Welcome. If you could name your group and your name, and when you begin, you'll have 10 minutes. If you leave some time at the end, we'll be able to ask you questions.

Ms. Pappert: Thank you. My name is Mary Pappert and I am the president of Renters Educating and Networking Together. Thank you for this opportunity to be here today.

Renters Educating and Networking Together is a volunteer, proactive, non-partisan group of citizens who seek to improve the state of tenants in the region of Waterloo. We believe that every responsible tenant—and we say "responsible"—has a basic human right to shelter that is safe, secure and affordable, and we have several hundred members through the Waterloo region.

The repeal of the Tenant Protection Act, 1997, and the introduction of new Ontario tenant and landlord legislation has been a topic of discussion for our RENT members since November 16, 2003, when an Ontario Liberal news release said, "We will bring in real rent control legislation within one year." Our RENT group has submitted our comments and concerns to the members of the Ontario government on several occasions and waited with great anticipation for this new legislation.

On May 3, 2006, with little advance warning, the Honourable John Gerretsen introduced Bill 109, the Resi-

dential Tenancies Act, 2006, the RTA, in the Legislative Assembly of Ontario. Subsequently, on May 12, John Milloy, the MPP for Kitchener, provided our group with a copy of the legislation, and on May 17 he informed RENT that we could put our name forward to attend the public hearings scheduled for May 29, May 31 and June 5. All this is happening within 34 days.

Since that time, two members of our executive have endeavoured to read, digest and analyze this 130-page document, which constantly refers the reader to the prescribed 75 regulations which are mentioned in section 241. However, there are no details of the defining regulations available as yet. This greatly hampers our attempt to understand the fine points of this legislation.

RENT congratulates the government for presenting this new legislation, and some of the provisions are beneficial for tenants; however, for us to provide any detailed comments with regard to the beneficial and detrimental sections of this legislation is impossible and it's contrary to any reasonable expectation in 34 days.

I will make some brief comments, and I have submitted for your consideration a written summary of the issues in our attachment B. Subsequently, we will continue to study this document in anticipation of further opportunities for comment in the future.

For the tenant members of RENT, three of the most devastating sections and omissions of this protection for tenants in the RTA are the provisions for vacancy decontrol, which allows a landlord to charge a new tenant anything they wish; the exemptions allowed for new apartments—units not occupied before November 1991; and the above-guideline rent increases.

With regard to vacancy decontrol, after the TPA was proclaimed in 1998, landlords used this decontrol to raise rents by any amounts. Frequently, in our area, they went up 25% to 40%—and I have attachment A, that gives you those statistics. In many instances, landlords used these funds to gut empty apartments and refurbish them just to increase the rent. While this may have been a means to encourage the landlord to upgrade and maintain apartments, it contributed very significantly to an increase in market rents charged throughout the Kitchener–Waterloo region. The continuing of this decontrol is a driving force in the marketplace today. Yes, there are vacant apartments in almost every building, but affordable units for working families, for seniors and for single parents are fast moving out of the realm of possibility, and are one of the leading contributors to homelessness in our area.

The exemptions for new apartments: These exemptions allowed in the RTA declare that any unit not occupied before November 1991 would be exempt from the Ontario guideline rent increases, and also exempt from several provisions by which these tenants may apply to the Landlord and Tenant Board. This exemption allows the landlord to increase the annual rent charged for a sitting tenant by any amount they can get, and the tenant has no recourse but to move out. There is no logical justification for these exemptions from tenant protection, and they constitute an injustice to these tenants. These same exemptions were allowed in the TPA; however, the landlord and tenant legislation prior to the TPA did have a just solution for landlords and for tenants. New units were allowed exemption from the legislation for a period of five years, during which time the landlord could adjust rents and achieve a reasonable rent. After five years, the accompanying sections of the legislation were applied and these once-new units received equal treatment and a reasonable rent control was imposed.

With regard to the above-guideline increase, the increases above the Ontario guideline for sitting tenants may be critical for some landlords who are in hardship in some instances. But in most cases, the expenses for which landlords are applying should have been anticipated and planned for, and were provided for within the annual guideline increases that these landlords have been receiving and compounding over years.

1630

The RTA does provide one beneficial aspect to the AGI—it limits the maximum amount for the guideline to 3% annually, a reduction from 4%, and it limits it for three years. However, consider: If you get a 3% above-guideline increase compounded over three years, you'd have approximately a 10% increase. Then add to that the amount of the average guideline—and say we take just 2.3% annually. Compound that and you've got 8%. That means an 18% increase could be imposed over a three-year period for the landlord, and the tenant must absorb that amount. The rent compounds and adds above that to each guideline, year after year. This practice devastates the concept of affordable housing.

I have further comments about the AGI. We can't really make them, because we don't know what the regulations are. We don't know what "extraordinary" increases are, "eligible" increases. We have no wording or formulas for the regulations to define it.

While RENT has read, digested and analyzed only a portion of the 130-page RTA, we have provided a few specific comments in attachment B. However, RENT believes that to provide detailed comments with regard to the entire Residential Tenancies Act with such an insufficient time frame is contrary to any reasonable expectation. We expect that all interested parties will be provided the opportunity for input to the RTA and the wording for the rules and regulations before the Residential Tenancies Act receives third reading and royal assent.

Thank you for your attention. I'd be glad to answer any questions.

The Chair: You've left about 30 seconds for each party to ask questions, beginning with Mr. Hardeman. I would warn members, it really is 30 seconds—that's the question and the answer.

Mr. Ernie Hardeman (Oxford): Thank you very much for your presentation. It's a very good presentation. I concur with you that it's a very short time frame, but I would point out that this bill will be passed the first time it gets back for third reading, with only one day of debate.

Ms. Pappert: That's not reasonable. We've waited since 2003.

Mr. Hardeman: But that's the government's position.

Mr. Rosario Marchese (Trinity–Spadina): Mary, Mr. Manders said that the Tenant Protection Act worked well for the landlords and tenants. Is that true, in your view?

Ms. Pappert: No: 30-second answer.

The Chair: I love brevity. Mr. Duguid?

Mr. Brad Duguid (Scarborough Centre): I want to thank you for being here today, Ms. Pappert, and for participating in the consultations that we've had previously. They were the largest tenant consultations held probably in the history of the province. So we really appreciate your involvement there. I know Mr. Milloy has talked to you. I think he met with you when this legislation came out, because he did get back to us with some suggestions as well. I appreciate your input and I thank you for being here today.

Ms. Pappert: You're welcome. We appreciate the opportunity. However, the brevity is beyond reason.

The Chair: Thank you very much for being here.

MULTIPLE DWELLING STANDARDS ASSOCIATION

The Chair: Our next delegation is Multiple Dwelling Standards Association, Mr. Aaron. Welcome.

Mr. Bob Aaron: Thank you, Chair.

The Chair: As you get yourself settled, I think you know the standard here. If you could say your name and the organization you speak for; you'll have 10 minutes. I'll give you a one-minute warning if you get close to the end. If you leave time, we'll be able to ask questions.

Mr. Aaron: Madam Chair, members of the committee, members of the Legislature, thank you for inviting us here, "us" being the Multiple Dwelling Standards Association. My name is Bob Aaron. I'm a lawyer who happens to be a landlord and the chair of our landlord association, but I'm also a lawyer specializing in real estate for the last 30-some years.

Our organization has been around for 35 years and has worked hard to assist and support rental housing providers across Ontario. We provide a credible voice for this industry and aim to provide a forum for sharing of information and ideas. Our organization may not be as large as FRPO. We're comprised of mid-sized and small and some large landlords. Some people have classified us as sort of an organization for mom-and-pop landlords. Indeed, a lot of our members are first-generation Canadians or immigrants to the country. We represent about 400 members who hold somewhere between 40,000 and 50,000 units. Our goal is to ensure respect for tenants and to provide clean, safe, well-maintained rental housing and continuity and stability for the industry.

We want to ensure fairness in the legislation. Our treasurer, Chris Morgis, and I have had the opportunity to meet with ministry staff, and indeed the minister and member Duguid here; I'm very grateful for that opportunity. We applaud the government's decision and measures to keep vacancy decontrol intact. We are, in general, pleased with the legislation, although there are some problems that we have with it. I only want to address what I see are the problems. As a lawyer, I feel that the rule of law is very, very important. We want to make sure that the rule of law is maintained with the revisions to the legislation.

Section 82 is our most serious concern. This is the one which allows the tenant to raise any concerns he or she has at the time of the hearing, blindsiding landlords without notice. I'm very concerned about that.

I want to tell you something that happened to me a couple of weeks ago. I got a parking ticket, which I really didn't think I deserved, because the signs were ambiguous; you had two conflicting street signs. I decided, okay, it's not the 20 or 30 bucks, it's the fact that the signs were conflicting and I'm going to fight this. So I showed up at Metro Hall with my ticket in hand, ready to come next week to a trial, and they said, "Thank you very much. You'll hear from us in eight months, and your trial is going to be in 12 months." And I thought, "This is really a system that has collapsed on itself." That's what I'm worried about in the section 82 hearings. The latest statistics we have from the tribunal for 2003-04 show that there were 36,000 defaults and 30,000 hearings. So we have more than 50%—maybe 50%, 60% are defaults. I don't see any indication from the government that they are going to supply the necessary manpower and money to the tribunal so that we don't have a system collapse like we have in the city of Toronto parking legislation and parking bylaw enforcement.

I'm very, very concerned that the system is just going to collapse or implode on itself. Right now, it takes maybe 75 days to have a hearing and evict a tenant who is not paying; I'm concerned that we're going to be looking at a year. We're going to have landlords and tenants held in suspended animation while the system breaks down on itself. We're going to need night hearings. We're going to need maybe weekend hearings. I don't see any indication that the government is willing to spend the millions of dollars that are necessary to fund a system that's going to literally double in size overnight. I'm going to say that again: double in size overnight. Are we going to be equipped to have the Rental Housing Tribunal or whatever replaces it double in size? We're going to need double the members, double the staff, double the workspace, or we're going to have to be operating basically 24/7 to keep the backlog down. It concerns me.

I'm concerned that the rule of law will be displaced by people who want to take advantage of the system and the delays built into it. Landlords are going to be blindsided by tenants who show up with bogus disputes at the last minute, without the landlord getting any notice that there's been a complaint about a leaky faucet or whatever.

I'm also concerned that we're not going to be able to use private bailiffs for evictions. I've said this before,

that it takes the sheriff a month or two to carry out a legitimate court order, and it's just far too long. If we had private bailiffs who are licensed, bonded and insured, I don't think that would harm the system, and it might in fact take some pressure off government employees.

Those are not all our concerns; they're some of them. We endorse the submissions of the Greater Toronto Apartment Association and the fair rental policy association. I don't want to repeat their positions. We endorse them. We appreciate the time we've been given to appear before the committee. I thank you all for listening. If you have any questions, I'm here for the remainder of my 600 seconds.

The Chair: We have a whole minute for each party—you did really well—beginning with Mr. Marchese.

1640

Mr. Marchese: Mr. Aaron, how important was it that the government broke its promise to keep vacancy decontrol?

Mr. Aaron: Good question. First of all, it wasn't a complete promise; it was conditional on certain vacancy levels being obtained. Right now, we have huge vacancies, and we've got landlords dropping rents. I don't see it as a broken government promise.

Mr. Marchese: I see. But how important is that to you, that vacancy decontrol is maintained?

Mr. Aaron: I think that's critical in the current marketplace. I've got members literally with 20% to 30% vacancies.

Mr. Marchese: I understand. The fact that they maintain exemptions from rent control provisions for properties built after 1991, do you like that too?

Mr. Aaron: If the government was to have any integrity in its promises, that had to be maintained.

Mr. Marchese: Not from 1998, but go back to 1991: That was a good thing they did, wasn't it?

The Chair: Sorry, Mr. Marchese, you've exhausted your time. Mr. Duguid.

Mr. Duguid: I'll actually continue on the same lines, because I think Mr. Aaron has raised an interesting point that probably hasn't been talked about too much. Mr. Aaron will recall the original commitment that the government made, which was to get rid of vacancy decontrol, yes, but replace it with a system of regional decontrol that would have been based on a 3% vacancy rate, which in essence would have gotten rid of rent controls across the province. In your recollection—I know you were part of the consultation process—do you recall any tenants or any landlords supporting that proposal?

Mr. Aaron: I don't recall anybody supporting the proposal. We would have had one rent control law on the south side of Steeles and another one on the north side of Steeles. It would have just been a disaster.

The Chair: Thank you. Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. As we're talking about the government's promise and whether it was kept or wasn't kept, I would just point out, if you don't see a bit of a conflict or a problem here, that the reason we're having this bill put forward is that the tenants believed they were going to get complete rent control back, rent control that works. Does this bill, in your opinion, go anywhere near doing what the tenants were expecting from the Liberal promise?

Mr. Aaron: I think, Mr. Hardeman, that this bill will work. With the tinkering that I've suggested, I think this will work and vacancy decontrol—

Mr. Hardeman: My question wasn't whether the bill will work. My question was, do you believe that this fulfills the promise the Liberals made to the tenants in Ontario?

Mr. Aaron: In large measure, yes.

The Chair: Thank you very much. That's the end of our time.

Interjection.

The Chair: A good answer. Thank you for being here.

LONDON PROPERTY MANAGEMENT ASSOCIATION

The Chair: Our next delegation is the London Property Management Association. Mr. Cappa, welcome. We're glad you're here today. Thank you for coming. You did provide a handout?

Mr. Paul Cappa: Yes.

The Chair: You'll have 10 minutes, and if you could say your name and the organization you speak for. If you leave some time, we'll be able to ask some questions.

Mr. Cappa: Thank you. My name is Paul Cappa, and I'm serving a two-year elected term as president of the London Property Management Association. On behalf of the association, I'd like to take this opportunity to thank you for considering our request and allowing us to appear here today to address the standing committee.

Just by way of background, the LPMA is a non-profit association, much like what you heard from Mr. Aaron. We're an association of small and large residential property owners. Our association was formed approximately 35 years ago, and the basis for our organization is to assist and educate landlords.

The bulk of the LMPA's membership is really comprised of the mom-and-pop landlords. They're the ones who attend our regular monthly meetings and they're the ones we strive to assist, in terms of understanding what has become over the years a complex web of laws regulating our industry. Most of these mom-and-pops have full-time jobs. They've invested in rental property to either supplement their income or to provide for their eventual retirement. Many of our members rent out homes, duplexes, semis, townhouses and single condo units.

I can tell you that before appearing here today, we did have an opportunity to meet with our local MPPs to discuss our concerns or share our concerns with them. For the purposes of our paper, we've identified two primary issues; in fact, I think Mr. Aaron's just touched on them. One is removal of the default hearing process for non-payment of rent applications. Just touching on that for a minute, in our members' experience, in most cases,

tenants don't dispute non-payment applications. The reason for that is that they know they owe the money. Removing that process—it's a process that's worked well—comes with a considerable cost to working landlords, who have take a day off work to attend at the tribunal. It's going to affect their livelihood, and, ultimately, there's a trickle-down, and it may affect how they price their accommodation. Again, without belabouring it, in our submission the process has worked well. There are enough safeguards, we believe, built into the TPA that tenants have the opportunity to either bring a motion, if they feel that the order is inaccurate, or to pay and stay. In our view, the procedural safeguards are there, and no change is required.

The second issue, which I think Mr. Aaron touched on, was the nature of the dispute process that's contemplated under the RTA. There's a fundamental principle in law that a party have notice of any dispute. In canvassing our membership, there are concerns about the delays that will flow in allowing tenants to simply show up at a hearing and essentially state or raise any dispute that they would have been entitled to raise in their own application. Certainly, being well into the Tenant Protection Act—say, seven or eight years—tenants are well apprised of the tribunal at this point. For most of those who do find themselves before the tribunal in rent arrears situations, it's not their first time before the tribunal. With the location of duty counsel and access to duty counsel right at the hearings, there's no reason why landlords can't have advance notice, at a minimum, of issues that tenants tend to raise in response to arrears applications. So the right of disclosure, which is something that's provided for in other court proceedings, including small claims court, is something that, at a minimum, should be incorporated into the RTA.

We have provided a number of other issues that we've raised in our paper. Some of them are of a technical nature, and, time permitting, I won't go through all of them, but just touch on a few.

Orders prohibiting rent increases: What we're recommending there is that these orders be limited to serious work order deficiencies only.

With respect to section 62, speedy eviction for undue damage, we'd actually like to commend Mr. Duguid. I know we were part of the consultation process. That's an issue that I specifically raised with him, and we're happy to see that it has been addressed here. Our underlying concern is more of an administrative or interpretive issue, that if a landlord has proceeded under that section, perhaps incorrectly or in an incorrect manner, that rather than having to start over, there be an amendment to the RTA that would allow that notice and that proceeding to be tied to the section 63 process, so that the landlord doesn't have to start all over again.

With respect to rent arrears in section 74, again, there don't seem to be any consequences for a tenant who fails to be forthright in an affidavit, in a motion to set aside, so we're looking for some balance in that provision and that there be some consequences if the information filed is false. Certainly there are lots of sections in the act that penalize landlords for failing to carry out their statutory obligations. Again, just under that section where the tenant is required to reimburse for enforcement costs, there should be a specified time frame within the order.

1650

Just jumping on, one of the other concerns that we had relates to the mediation process. Right now, generally speaking, landlords have bought into that process. It's used quite extensively. It saves on the labour and costs associated with a tribunal because it streamlines a number of applications, but the way the new section 78 is written, there's going to be a disincentive for landlords to mediate. The way it works right now is if a tenant breaches any terms of the mediation agreement, the landlord knows with certainty that they can go back and get their order for that breach. Now, the way the new section is written, the board is going to be completely reopening these agreements, looking at whether there have been any other breaches of the statute. It takes away certainty where landlords, in good faith, negotiate with tenants and give them a second chance. We're asking that that be re-examined.

I'm going to just jump to the issue of submetering. I think, on balance, landlords are certainly in favour of having the ability to transfer responsibility of hydro to a user because, fundamentally, we believe that it leads to the promotion of energy conservation. Unfortunately, there are so many strings attached and so many economic consequences for building owners that the incentive for submetering has been watered down to the extent that virtually no one I've spoken to is willing to take that on or to even contemplate it.

The Chair: Mr. Cappa, you have one minute left.

Mr. Cappa: Okay. Certainly for the smaller property owners in three-storey walk-ups or duplexes to go in and install submetering in those situations, if the economic consequences are that they have to go in and entirely renovate the building to meet some as yet unspecified standard, the cost could be prohibitive and it could also eliminate or drive many of the smaller guys out of the business. Those are my comments.

The Chair: Thank you very much. We appreciate your being here today.

NORTH PEEL AND DUFFERIN COMMUNITY LEGAL SERVICES INC.

The Chair: Our next delegation is North Peel and Dufferin Community Legal Services. Mr. Fleming, welcome. As you get yourself settled, you could say your name and the organization you speak for, for Hansard. When you begin, you'll have 10 minutes. If you get close to the end, I'll give you the one-minute warning.

Mr. Jack Fleming: Thank you. My name is Jack Fleming. I'm here on behalf of North Peel and Dufferin Community Legal Services. I'm happy to appear in front of a committee chaired by our local MPP.

I am a lawyer practising residential tenancies law; I've been doing that for over 20 years. I've written a legal text on landlord and tenant law, and I'm director of a legal clinic where we deal with a lot of tenancy issues. About a thousand tenants a year contact us with their problems. There would be a lot of issues to cover, more than one could in 10 minutes, and you've been hearing them all day long and for other days. I'll touch on just a few.

I'll mention in passing that the lack of a set-aside process, I think, is a big mistake. For people who don't show up at the hearing, there should be a process to bring a motion for a set-aside, just like the courts. It's a very simple procedure to put in. It works better for everybody. Having people have to file reviews in those situations is definitely overkill.

I'll also comment in passing on the purpose section: That does need to be reworded. We have a long history, going way back to the introduction of part IV of the Landlord and Tenant Act in 1968, of this legislation, in its various incarnations, being interpreted as remedial legislation for the protection of tenants. We're threatened with losing that legal interpretation by the way the purpose section is currently worded, in particular with the change in the name. I'm afraid that with the way the law works and the way judges interpret the law, changing the name from the "Tenant Protection Act" will be treated as having significance. That, then, has to be overcome by being extremely clear in the purpose section. But that's all I'll say on those issues.

I'm going to address two issues here in more detail. One is the exemption for landlords who themselves rent the building, and the second is the exclusion of Social Housing Reform Act issues. Beyond that, I'll simply say that North Peel and Dufferin Community Legal Services, which serves tenants in Brampton, Caledon and up in Dufferin county, supports the brief which you received from the Advocacy Centre for Tenants Ontario. We adopt and support everything that's in ACTO's brief.

I wanted to look at two issues. One is landlords who rent the building. First of all, I just want to emphasize the importance of being covered by the legislation—the Tenant Protection Act now, the Residential Tenancies Act to come. If you're not covered by that, if you fit within one of the exemptions to the act, you have no protection. You can be turfed out very easily. If your landlord decides that he or she doesn't like you, you can be out on the street: no notice, no reason, no process—just like that. In fact, the police will assist the landlord in putting the tenant out on the street. So it makes a huge difference: You're either in the protection or you're out of the protection.

I think a lot of people are familiar with the "shared kitchen and bathroom" exemption. If you fit that, where you share kitchen or bathroom facilities with the owner, you're not protected; you're in the situation I just described and you can be turfed out very easily.

Let me posit this example for you: Picture a house, just an ordinary house. The landlord lives upstairs. Downstairs we have a self-contained apartment with a tenant in it, renting from the landlord who lives upstairs. There are no shared facilities: no shared kitchen, no bath, separate entrance, separate everything. Is it covered by the legislation? Maybe not. It depends on whether the landlord upstairs owns the house or not. If that landlord is renting the house from the owner, living upstairs and in turn renting out a self-contained apartment in the basement, then that tenant is not covered by the legislation. That situation is carried forward in the new legislation. It comes from the definition of "landlord" in section 2 of Bill 109.

Something was brought in—actually, it wasn't in the original Tenant Protection Act; it was brought in in a later amendment by the government of the time. In the definition of "landlord," you'll see a clause (c). It says:

'"landlord' includes ...

"(c) a person"—here's the tricky part—"other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord"—and so on and so forth.

It's that part right there: "other than a tenant occupying a rental unit in a residential complex...." In other words, if the landlord who has possession of the whole building also lives in it, is not the owner and is in fact a tenant him- or herself, then you're exempted from the legislation.

The tenant in the example of the basement apartment I gave you, which is a common one, probably doesn't even know that the landlord upstairs doesn't own the house. How could you find out? Tenants can't protect themselves from this exemption. It's easy to look out for the "shared kitchen and bathroom" one—we can warn people about that—but they can't protect themselves from this one, they can't avoid it. It's only when there's trouble that they suddenly discover that they have no protection. It's a big problem for low-income tenants because those are the sort of tenancies that they're looking for: They're looking for the cheaper tenancies that are in a house, that sort of thing.

This provision does a great deal of harm. It doesn't do any good; it doesn't appear to have any purpose. Our submission is that that exemption in clause (c), the part that reads, "a tenant occupying a rental unit in a residential complex," should be removed so that the definition of "landlord" does not exclude someone simply because they happen to live in the building as well and are not the owner of the building. That's the first point I wanted to make.

By the way, I suspect that it was accidental. While I was talking one time, in the course of this process, to folks at the ministry, they seemed a little surprised as well. I don't know what they were intending in the first place, but this is what has actually happened. It's a very clear law and it's very harmful for tenants.

1700

The other issue I want to address is the Social Housing Reform Act. This is the act that governs rent subsidies. It's tremendously important, a very important benefit to

have. It protects a lot of low-income tenants. In my experience, it protects a lot of single mothers and their kids. They seem to be a lot of the people who are receiving rent subsidies. The waiting list can be very long. In the region of Peel, for example, where we're located, it's 10 years or more to get a rent subsidy and sometimes subsidies are revoked. They're taken away, sometimes for good reasons and sometimes not. What happens is that a decision is made to take away the rent subsidy. It's done without providing details to the tenant and without any sort of a hearing or even sitting down with the tenant to talk with them about what the issue is. You just get a letter, you're given a chance to respond to the letter, they don't like your response, and your subsidy is cut off. Then you can ask for what's called an internal review, which means it goes to somebody down the hall to have a look at it and you have another chance there. What there isn't is any appeal to any outside body. There's no independent right of appeal to some third party.

With the best will in the world, we know that mistakes will happen. We know that some people will have their rent subsidies cut off when it shouldn't happen. A good comparator is Ontario Works, a similar sort of situation: You get people who are cut off for failure to provide information or there are overpayment issues and they're cut off. They have an internal review process where, just like on rent subsidies, usually what happens is that the initial decision is upheld. The difference with Ontario Works decisions is that from there it can go to the Social Benefits Tribunal, an independent right of appeal. At the Social Benefits Tribunal, about half of those Ontario Works appeals are successful. That means that wrong decisions are being made. It's not an unfair guess to say that maybe there's a similar percentage of wrong decisions being made on rent subsidies, but you don't have a right of appeal anywhere.

What has this got to do with Bill 109? What it has to do with it is section 203. Section 203 says that the new board is not to make any "determinations or review decisions concerning" rent geared to income, and specifically issues dealing with the Social Housing Reform Act. So here's what happens: Your rent subsidy gets cut off. So then your rent goes up to market rent. You can't pay the market rent because you're a single mom living on Ontario Works. Then the landlord gives you a notice of termination for not paying the rent.

The Chair: You have one minute left.

Mr. Fleming: Then it goes to the board, and the real issue is never examined. So our submission is that section 203 should be removed or, at the very least, not proclaimed until some other right of appeal is put in place. Thank you.

The Chair: You can have one or two more sentences, if you want.

Mr. Fleming: It's okay.

The Chair: Thank you very much for your submission. We appreciate your being here today.

NOOR NIZAM

The Chair: Our next delegation is Noor Nizam. Welcome, Mr. Nizam. You have 10 minutes. If you get close to the one-minute mark, I'll give you a warning that you're near the end. If you leave some time, there'll be an opportunity for us to ask questions.

Mr. Noor Nizam: Honourable Chair, committee members and officials, thank you very much for giving me this opportunity to appear before your committee today and to place before you certain focused suggestions and proposals that I feel should be given due consideration and be co-opted as amendments to the legislative enactment that will become a statute once the bill is carried through in the Ontario Legislature soon.

My name is Noor Nizam. I am a new Canadian and I have lived in Ontario—Hamilton—for the last five and a half years. Before that, I lived in Montreal for about a year.

I am here not to support this bill or to oppose it, but to present my views and opinions, to place before you and this committee my real-life experience as a newcomer tenant with a marginal income level—the constraints I will not discuss here—and reflections of this bill on such issues, which are vital for consideration as amendments. These amendments are vital if Bill 109 really and truthfully means:

"Part I

"Introduction

"Purposes of Act...."

I will not indulge in all the clauses of the bill. It is a very detailed legal document, full of legal jargon that does not serve the purpose of the objective of part I, the introduction of the bill.

This document of 144 pages in reality is something an average Canadian with eighth-level or secondary-level education cannot understand. Let's face facts: How many poverty-level or below-poverty-level, low-income clients living within social assistance and housing, rent-geared-to-income housing, and new immigrants who need ESL support, can cope with this document when the necessity arises for their own interpretation and understanding? So it is a document for the legal profession and jargon for the administrators.

I am happy that I was able to understand this document and analyze it through legal thoughts. I have found that certain remedies are needed to make it comply with the opening statement of the bill.

I will only concentrate on the issues or clauses that concern my thoughts. I therefore place before this committee the following:

Under "Interpretation

"2(1) In this act," the word "rent" is specified very broadly:

"'rent' includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the land-

lord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing, but 'rent' does not include, ..."

The words "other things" are not specific in legal terms. They have no limitation. This is harmful to the tenant and advantageous to the landlords. It violates the Human Rights Code.

Suggested amendment by me: "rent for the right to occupy a rental unit and for the mandatory amenities provided."

I'm going on to "Interpretation," page 5:

"'vital service' means hot or cold water, fuel, electricity" etc.

Essential services have to be specified, because some essential services such as exhaust fans over the cookers in the kitchen and washrooms in certain apartments are a necessity. But due to this clause, it is limited when issues or conflicts arise and legal interpretation is required.

Suggested amendments: "Exhaust fans over the cooking appliances, in the kitchen and washrooms" to be included.

"Interpretation," page 6.

"For the purposes of this act, a tenant has not abandoned a rental unit if the tenant is not in arrears of rent."

There is a Catch-22 in this clause. Does this mean that the tenant has abandoned a rental unit if the tenant is in rent arrears? Eighty per cent of tenants who will fall within Bill 109 are the average income earners, the marginal, borderline income earners, low-income earners and sometimes those within social housing assistance programs. There may be many instances where there are delays in the settlement of due-date rents. This interpretation is not reasonable and does not fall within the social justice legal requirements.

Note: Refer to "Restriction on recovery of possession," 39(a). The above has bearing on this clause. You can go back to the bill and refer to that.

Suggested amendment: "'Arrears of rent' does not mean the tenant has abandoned the rental unit."

"Conflict with other acts," page 6:

"If a provision of this act conflicts with a provision of another act, other than the Human Rights Code, the provision of this act applies." This is not helpful to those who are governed by the Social Housing Reform Act but who live in rent-geared-to-income assistance, where a private landlord's house has been contracted for this service. It's very important. This also has a bearing and an impact on page 9 of your act.

1710

Suggested amendments: Due thought has to be given to this need and appropriate amendments should be included. I am not a competent authority or competent to suggest any.

"Part II

"Tenancy Agreements

"Selecting prospective tenants"—this is what your proposed act says:

"10. 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."

My document gives what the Human Rights Code says, but I think the practice of credit checks, credit references, guarantees and other similar practices adopted by landlords has made it difficult for new immigrants, low-income earners and vulnerable groups like refugees—especially students, because I am teaching in a university—and minority communities to fulfill such demands.

The first and last months' rent to be paid and included as a condition of the tenant agreement, also called the lease agreement, has to be given much thought. Landlords are in a much stronger position to discriminate against these citizens, these potential tenants.

Suggested amendments, page 11:

Due to the fact that there is no direct indication in the Human Rights Code regarding income information etc., section 10 should be removed or deleted.

I have touched on the responsibilities of landlords. I have also gone on to the suggested amendments and inclusions, and I have given my comments on that. When I come to receipts, I feel that in section 109(1), "on request" is a very tricky question. Rather than being on request, it should be mandatory. "On request" should be removed from that section or that clause.

Regulations: "The Lieutenant Governor in Council may make regulations...."— if this committee cannot accept these recommendations or amendments I am presenting, it's better to present them to the Lieutenant Governor.

The Chair: You have just a minute left.

Mr. Nizam: I can open it up to questions.

The Chair: You probably should finish. That isn't sufficient time to ask enough questions. Do you have a wrap-up statement that you'd like to finish with?

Mr. Nizam: My wrap-up statement is that the fiscal allocations that have been reduced to cities when it comes to downloading have also made a problem for cities. In other words, the housing authorities in cities do not have enough funds to recruit human resources to look into all the complications that may arise from this bill. It's also important that when the bill says "vital services," the vital services have to be made available.

Let me thank Judy Marsales, MPP Hamilton West, for giving me the support to enable me to come here. I had to find my way here through great barriers. Thank you very much.

The Chair: Thank you for being here today. We appreciate you being here.

ROBERT LEVITT
DALE RITCH

The Chair: Our next delegation is Mr. Robert Levitt and Mr. Dale Ritch. Welcome, gentlemen. Are you both going to be speaking today?

Mr. Robert Levitt: Myself, then Dale. My name is Robert Levitt. I run the Ontario Tenants Rights website: http://www.ontariotenants.ca. I'm not a professional lobbyist, a member of any political party or group, nor am I funded by government, so I have no reason to water down my message. I am a citizen and a tenant, and I'm concerned with what these hearings demonstrate about our weakening democracy. I am sharing my very limited time with Mr. Dale Ritch to afford him the opportunity to discuss the specifics of Bill 109, a right the government is making available to few. My recommendation to this committee is to postpone third reading of the act and, in the meantime, to immediately, by order in council, change existing regulations to put a stop to default eviction orders.

The government needs to stop their time allocations in the Legislature on this act that are meant to stifle debate and due consideration of the impacts of this law, and hold full, proper and recorded committee hearings throughout Ontario in August and/or September. It took the government two years to write this legislation; now, give citizens and this committee an extra three months to analyze its impact on Ontario's four million tenants.

Two years ago, the government held town hall meetings, but those were mostly about the previous government's law and its flaws. None of this is on the public record. It was not done through this committee, and so never recorded in Hansard.

The government also did an online consultation in 2004, but they set all the parameters. The government selected the background information people should read before they answered the questionnaire. The government selected the questions, and the government selected the answers people had to choose between. The most egregious example of the government's biased survey was question 6: "In your opinion, how high should a region's vacancy rate be before the government looks at removing rent controls?" The only choices provided were: "(a) 3% (b) higher than 3% (c) no opinion/don't know." They never provided the choice that tenants might never want rent controls removed, ever.

The government's online consultation was merely a manipulative public relations scheme. It is clear that since they could not eliminate what little rent controls remain using the excuse of vacancy rates, they have chosen to continue vacancy decontrol as a means to eliminate what few affordable apartments remain.

Now I will get to the crux of my concerns about the process and the lack of adequate, fair public hearings into the new Residential Tenancies Act. The problems with this government's process can best be summed up by quoting a complaint already submitted to this committee 10 years ago, from page 4 of the Liberal dissenting report on rent control consultations, September 21, 1996: "Liberal members of the committee and many presenters were frustrated that the very limited time (20 minutes) allowed to each group permitted very little opportunity for dialogue or discussion. It was also unfortunate that of the over 400 groups that applied to appear before the committee, there was only time to allow for 260 presentations." You can find this report in its entirety on my website. I am sure the over 1,700 average daily visitors to the site will find it interesting.

In 1996, the Harris government held Hansard-recorded meetings of this committee on their tenant discussion paper, hearing 260 deputants over more than 80 hours. These were the hearings the Liberal report castigated them for, because they only gave each deputant 20 minutes. In 2004, the McGuinty government held town hall meetings outside of this committee, giving each deputant only five minutes, with no public record of what was ever said.

In 1997, the Harris government held hearings on Bill 96 in seven cities over 49 hours, hearing some 140 deputations, giving each organization 20 minutes and each individual 15 minutes. This compares with now: In 2006, the Liberal government is holding hearings on their Bill 109 in only one city, listening to 49 deputants for only eight hours, giving each only 10 minutes. It appears that the McGuinty government is far more guilty of the very accusations they made against their predecessors.

Why the sudden rush to get this law passed after all this time? What is the government afraid of? And why the lack of proper recorded consultations with sufficient deputation time based upon the government's own publicly demanded criteria?

Page 7 of the Liberal 1996 report states, "Vacancy decontrol hits some of the most vulnerable tenants—seniors, the poor, the disabled, students and the unemployed seeking new work." Now they support vacancy decontrol. Does this mean the McGuinty caucus no longer cares for seniors, the poor, the disabled, students and the unemployed? In 1996, the Liberal Party in opposition argued that vacancy decontrol would not create new rental housing, but now that the Honourable John Gerretsen is the Minister of Housing, they say it will. The Liberal Party complained that the previous regime failed to "thoroughly research the impact of their proposed policies," but what such research has the present government commissioned to support their policies?

Reconsider this legislation, particularly in the areas of vacancy decontrol, landlord entry into apartments and the forced installation of smart meters. Tenants want real rent controls, but most of all we want honesty in government, not spin.

1720

Mr. Dale Ritch: Thanks, Bob.

Ladies and gentlemen of the committee, my name is Dale Ritch. I am a paralegal, and I consider myself to be an expert on rent review. I've done more than 400 rent review applications, known as above-guideline applications, under the existing legislation, and I'm continuing to represent tenants in the city with regard to rent review.

I'm very disappointed in this legislation. I think tenants have come to expect a lot more from the Liberals. Tenants played a big role in the defeat of the Conservatives in the city of Toronto in the last provincial elec-

tion, and if this bill is on the books, I think they'll play a big role in making sure the Liberals don't get re-elected.

I want to specifically deal with just three issues here today. First of all, we're talking about a $40-million transfer in the first year of this legislation in the city of Toronto alone from multi-residential tenants, out of the pockets of tenants into the hands of landlords, first of all, by the reduction of the deposit from 6% a year to approximately 3%. If we go with the cost of living at about 1%, that's about $7.5 million right there. I don't think too many tenants are aware of what the Liberals are planning in this area. Secondly, with regard to the guideline, going with the cost of living would take up the annual guideline from about 2.1% to 3%. That would be another $35 million right there out of the pockets of tenants into the hands of the landlords. That's $40 million in the first year alone. I don't know if too many Liberals are aware of that, but you should be. Tenants aren't going to appreciate that.

I want to spend most of my remarks talking about rent review. This is the potential disaster for the Liberal Party. First of all, you made a big mistake by continuing the most—and Bob used this word; I'll use it as well—egregious feature of the current legislation, which is the carry-forward. That is, if an increase for capital expenditures in the application is greater than 4%, it gets carried forward in future years. Tenants simply do not understand carry-forward. They do not and they will not.

Under the old legislation, before the Tory legislation, you got all the increase up front in the application. Whether it was 3%, 10% or 50%, tenants knew what they were dealing with. They knew how big the increase was. Now they're told, "Oh, it's only 4%." Tenants cannot deal with that. That's not fair. That's sneaky. That's the kind of sneakiness we had in the Tenant Protection Act. That's the kind of sneakiness the Liberals are bringing forward. So get rid of that carry-forward, put it all up front so the tenants know what they're dealing with when they go to the tribunal. If you insist on bringing forward rent review, get rid of carry-forwards.

Secondly, costs no longer borne: This is supposed to be some big deal for tenants? Well, let me tell you, most capital expenditures are 15 or 20 years, so 15 years after they go to the tribunal, the landlord's going to reduce the rents appropriately. Big deal. How many tenants are still going to be living in their unit 15 years from now? Not very many, folks. So that's not going to do anything for tenants.

The other costs no longer borne are on utility increases, and this is the time bomb all Liberals should be concerned with. Under the current draft, rents would be rolled back the year after the year of an increase due to utility costs, but only if the actual decrease in all the utilities together is greater than the increase in the application. Well, that ain't going to happen, folks, because every year you're going to get a hydro increase and you're going to get a water increase, because we know the city of Toronto's jacking up the rates every year.

I would suggest that there aren't going to be any decreases under costs no longer borne for utility applications, but what could very well happen is if we get a big jump in gas costs this winter—

The Chair: Mr. Ritch, you have one minute. Okay?

Mr. Ritch: —next spring, guys, look at hundreds of applications flooding the tribunal for utility increases; 100% pass-through in the first year. That alone could blow the Liberals out of office next fall, when you plan to go to the polls. So, please, do something about that loophole in the act under utility applications.

Now I just have to wrap up my remarks here. Smart meters are not a smart idea, guys. What you're doing here is you're transferring the hydro cost from the landlord—who owns the building, who owns the stove, who owns the fridge, who owns everything—to the tenant. Well, a tenant isn't going to buy a new fridge and a new stove. He'd be crazy to. It's the landlord's building. You're expecting a tenant to invest money to reduce consumption? This is a stupid, stupid idea, smart meters and passing on hydro costs to tenants. So don't do it. Don't do it.

The Chair: Thank you, Mr. Ritch and Mr. Levitt. We appreciate your being here and your passion.

DUNDURN COMMUNITY LEGAL SERVICES

The Chair: Our next delegation is Dundurn Community Legal Services, Mr. Jain. Is that right?

Mr. Vinay Jain: That's correct.

The Chair: Welcome. You have 10 minutes. If you get close to the one-minute mark, I'll give you a warning. If you leave time, there will be an opportunity for us to ask questions. We have your paperwork here.

Mr. Jain: Sure. Thank you for the invitation to come. My name is Vinay Jain. I'm a staff lawyer at Dundurn Community Legal Services. We're a legal clinic funded by Legal Aid Ontario. We're one of many legal clinics throughout Ontario, some of whom you've already heard from. We're administered by a volunteer board of directors who provide us with policy and guidance based upon their experience in the community. We provide legal advice and services to the most vulnerable citizens in our community.

Our community itself is the downtown Hamilton area, including west Hamilton, and that also includes Ancaster and Dundas. We also provide public legal education services and undertake law reform initiatives in areas that have an impact on our clients. We practise in a variety of areas of law, including landlord and tenant, social assistance, human rights and income maintenance.

I would also point out to you that we provide tenant duty counsel services to the Ontario Rental Housing Tribunal in Hamilton as well as in St. Catharines. Additionally, we did it for one year in Burlington, and that covered the entire Halton region. Prior to this time, I would also note that the legal clinics in Hamilton provided tenant duty counsel services under the Landlord and Tenant Act.

The point of that is that I think it puts us in a good position to observe some trends that have been occurring in residential tenancies.

We're here today of course to provide our input into some of the changes being proposed to the law governing residential tenancies under Bill 109.

Now, from our reading of Bill 109, we would first like to congratulate the government on a few things. We felt there were some changes which had been sorely needed under the Tenant Protection Act. For example, the change to eliminate the five-day dispute requirement was a long-needed change. There were countless tenants who were affected by this in a detrimental way. Another example is the elimination of the ability of landlords to apply for above-guideline increases where the work was done simply as a result of required ongoing maintenance.

In the same vein, the provision in section 82 of the Residential Tenancies Act which allows tenants to raise repair and maintenance issues when an arrears application is brought we feel is a welcome addition. In fact, we feel that this is a very important inclusion. Our experience in dealing with tenants on a day-to-day basis, as well as attending at the Ontario Rental Housing Tribunal as duty counsel, has been that in the vast majority of arrears applications tenants inevitably mention some degree of failure to repair and maintain by landlords. Often what I'm told at the tribunal or at the clinic when tenants call is that it's precisely this, i.e., the repairs issues, that's one of their big disputes. We hear that on a daily basis.

This is captured by TPA section 11, which talks about the interdependence of covenants, but in our experience the tribunal, aside from extreme cases, has not recognized this argument. What we have seen at the housing tribunal is that sometimes when we intervene, on occasion adjudicators, at least in the Hamilton and St. Catharines area, are willing to give adjournments so that a tenant would have time to file a tenant's application for repairs and maintenance.

Prior to this—and for the most part even now—what tenants were told was simply, "We can only hear what's before us today, and that's an arrears application. If you want to file something about repairs and maintenance, you're free to do so." We hear that on a daily basis. So what we usually have as a result is a tenant getting an eviction order despite the fact that there may be serious repairs and maintenance issues, and then another application is required to deal with this. That application would only be heard, at least in the Hamilton area, about three to four weeks later, since the tribunal usually schedules tenant applications later than landlord applications. Quite often the tenant's possibly already been evicted.

I would point out to you that under the old Landlord and Tenant Act, the predecessor to the TPA, tenants were allowed to raise repair and maintenance issues when arrears were being claimed if the money disputed was paid to the registrar. In Hamilton, the docket or case list was often as long as 120 to 150 cases in a single day. What we have at the housing tribunal—in Hamilton again; that's my experience—is that at most you're looking at 30 applications in a single hearing block. This is four or five times longer. Even with that length of a docket, the vast majority of matters were dealt with in that same day.

Obviously, this system worked well. It was an efficient system and avoided second hearings. It wasn't as though these hearings, even when these issues were raised, went on into second and third hearings. As I have mentioned, this is also allowed under the TPA, although not explicitly. By explicitly including this section, we can have a section which will not only protect tenants, but at the same time it can be fair to landlords. For a tribunal apparently dedicated to efficiency, it makes sense, and there's absolutely no reason to suggest that it can't work or that it will bog down the system. History has shown that it does not. We applaud the government for including this section and would strongly urge that it be maintained as is.

1730

Another topic I want to touch on is vacancy decontrol. I've congratulated the government, but there's always a "but." The Residential Tenancies Act fails to correct at least one of the key problems, in our view, of its predecessor, the TPA: It does not do away with vacancy decontrol. This is a very serious concern for the low-income tenants of Hamilton. Even though the vacancy rate has recently gone up in the last year, our experience has been that rental units at the low end of the scale—we're not talking about thousand-dollar units—have had their rents remain, at best, the same. But the fact that rents have remained level has only really occurred in the past year. According to the Social Planning and Research Council of Hamilton, rents in the last 10 years have increased at least an average of approximately 20%. For most of those years, there's been no rent control. Apart from last year, when social assistance rates went up 3%, during roughly the same period of time that rents have gone up 20%, social assistance rates have remained pretty much static. Similarly, the minimum wage was only recently increased to the present wage of $7.75 an hour from the previous rate of $6.85 an hour. This is an increase of about 13%, according to my math. While this is an improvement, it is still not enough.

How does this affect tenants? I think it's fair to say that for low-end rental units, at best, when vacancy rates are high, vacancy decontrol works only to roughly maintain rents at a static level, but when vacancy rates are low, vacancy decontrol serves to increase rents. That's been our experience in Hamilton, and that's what the statistics have shown. As a result, it is the most vulnerable citizens in our community—that is, those on social assistance and the working poor—who continue to suffer from this lack of rent control.

In Hamilton, a report was commissioned in 2005 by the city entitled On Any Given Night; I've attached a copy of that to our presentation. It provides a snapshot on key factors impacting on homelessness. I hope that all of

you have a chance to at least flip through it, as it gives a very stark and, at the same time, a very real picture of the reality faced by low-income renters in the city of Hamilton.

Some of the stats, for example, very briefly:

—399 men, women and children stay in emergency shelters on any given night;

—The social housing wait list has over 4,200 applications;

—The wait time for a one-bedroom subsidized unit ranges from about two to three years for an undesirable area to seven to eight years for the desirable ones. Previously, you heard that it's about a 10-year wait in Peel;

—Homelessness, at the same time, has increased over 100% in the past eight years.

The Chair: You have one minute left.

Mr. Jain: Okay, thank you.

The issues I've mentioned clearly require some needed reform; elsewhere, I've talked about social assistance rates. How it impacts these hearings is that it is clear that the poor and the working poor in Hamilton need some type of rent control.

Very briefly, I'd say that it would be very helpful if there was some mechanism for set-aside hearings. If you ask tenants to do a review process, it's prohibitively expensive for them to do so, especially at the very low end of the scale.

I've talked a little bit about other topics in my presentation. Obviously, it was a bit too long for an oral hearing, but I thank you for this time.

The Chair: Thank you for your presentation here today.

GWL REALTY ADVISORS

The Chair: Our next delegation is GWL Realty Advisors. Are they here today? Great. Welcome. As you get yourself settled, if you could say your name and the organization you speak for. You will have 10 minutes. If you leave time at the end, we'll be able to ask you questions. I'll give you a one-minute warning.

Mr. Stephen Price: Thank you. My name is Stephen Price. I'm the senior vice-president at GWLRA responsible for multi-residential properties. I personally have 16 years' experience in the real estate business, primarily focused on residential and multi-residential. I also currently serve as the vice-chair of FRHPO, the Federation of Rental Housing Providers of Ontario. I should say that I completely support the submission that FRHPO has put in, so I'm not going to get into a great deal of detail on all the different points that FRHPO has already made. I'd also like to thank you for allowing me the opportunity to make this presentation.

GWLRA, for those who don't know, is a full-service real estate investment advisor for institutional investors. Our services include acquisitions and dispositions, development, asset management, property management and related services. We have about $8 billion worth of real estate in Canada today and a further $2.1 billion invested in the UK, a total of 300 properties. Assets under management are in four asset classes, not just multi-residential: We're in the office, industrial, retail and multi-residential sectors. We have properties across the country, but in Nova Scotia, Quebec, Ontario, Alberta and BC in particular. We employ about 600 people in eight regional offices.

On the multi-residential front, our residential portfolio is valued at approximately $2 billion, about 25% of our asset base. We have approximately 15,400 units in 61 properties. I'm telling all of this detail to you to give you some context for how seriously we consider ourselves in this business, particularly in the multi-residential sector.

The majority of our residential portfolio is in Ontario. We have about 10,500 units, and it represents 70% of our total portfolio.

In the apartment sector, GWLRA has focused on investment, development and asset management activities; that is, growing and setting the strategic direction for our apartment portfolio. We retain third-party property management companies to manage the day-to-day operating activities. However, we are not hands-off. GWLRA has been highly involved in leading the investment of over $200 million in capital improvements to our national residential portfolio since 2001. I couldn't find the statistics preceding that—it wasn't compiled in the same fashion—but that's only over the last six years, including this year.

We also believe in managing our buildings to a higher standard. For example, in 2005, we retained J.D. Power and Associates to survey the level of customer satisfaction of our residents. The results of that survey are factoring into our delivery of customer service at the property level and helping us to focus our future capital expenditures on areas of concern to our residents, like windows, amenities and suite improvements.

The majority of our portfolio is property managed by large, professional companies like Realstar and Minto. I understand that these companies will be making deputations concerning various elements of the proposed Bill 109 that are unworkable from an operating perspective. I hope that you will take their concerns into consideration. They and other large professional operators represent the cream of the crop in property management in Ontario. To the extent they are advising you that certain provisions of the proposed bill create significant problems in effectively operating apartment properties, for the betterment of residents and owners, I believe these concerns are legitimate and should be taken into account before you finalize the legislation and regulations.

In my comments today, I intend to first say a few words about the institutional investor perspective as it relates to investment in Ontario apartment assets, and then I'll highlight a few areas within the proposed legislation of particular concern.

First of all, the institutional perspective: From October 2003, investors have been nervous about changes to legislation, given the open-ended nature of election promises made to introduce real rent controls. Over the

last three years, there have been transactions not approved at our investment committee, which I sit on, in part because of the risk of more restrictive rent controls.

Our clients like apartments as a real estate asset class because it presents an opportunity for modest but stable returns. They do not expect to earn higher returns equivalent to office buildings or alternative investments like private equity, where the risks are also higher. Changing the legislative framework in a marketplace that is largely working, to the detriment of institutional owners, increases the risk of earning a fair return and reduces interest in continuing to invest in this asset class. That's bad for residents of apartment buildings and I believe it's bad for Ontario. I ask that you measure the extent and specifics of the changes contained within the final bill against the impact they will have on institutional investors' desire to invest, and continue to invest, in apartment buildings in this province.

Thankfully, vacancy decontrol has been retained, and the market will, as it does, set fair rents for vacant units, a concept that continues to favour the residents in today's marketplace and, in the longer run, reward owners who invest in their properties. We are not in the business of providing social housing. We provide rental accommodation for a fair return—quality housing and customer service for a fair price.

1740

However, there are other changes in the proposed legislation which inhibit our ability to effectively operate our properties. I'll focus on sections 192 and 82, section 30 and section 137, if I have time.

Sections 192 and 82, with respect to default orders and tenant issues in non-payment applications: I consider this an administrative logjam, and I'm sure you've heard this before. The landlord and tenant board is going to face a very significant, likely unmanageable increase in the number and length of hearings. The removal of default orders will force all applications to a hearing, even when the resident doesn't dispute the application.

Also, as residents are given the right to raise any matter in response to a landlord application at the hearing and have it heard as though they had made an application, hearing times will increase dramatically. This will result in significant increases in the amount of financial and human resources owners will be required to dedicate to the hearing process and longer periods of unpaid rent. Smaller owners with limited resources will face the most difficulty in managing this increased burden; bad residents will be rewarded.

Proposed changes: We believe that the default order process generally works, in that it focuses the tribunal on those cases where the resident has a valid case to contest an application. We would propose looking at the process and engineering any required improvements, but not eliminating default orders on a wholesale basis. Perhaps we could simply ask the resident in advance of the hearing if they dispute the application and if they want a hearing. If they answer no to each of these questions, the owner should be entitled to an order from the board allowing them to proceed.

In respect of section 82, we believe that separate applications relating to resident issues is the best fix. This allows owners to be aware of the issues in advance of a hearing and to respond to those issues. Often, the owner might agree with the resident and move forward with a resolution, averting a hearing. That's our perspective. Failing that, some other type of advance warning by the resident of issues to be raised in a hearing should be a minimum standard.

The second issue I'd like to raise has to do with section 30 as it relates to OPRIs, orders preventing rent increases. The board is going to be asked to make determinations at hearings that are likely impossible to make on a fair and informed basis. That is, the board will be asked to determine when a property is in a serious breach of property standards or maintenance obligations, and consider issuing orders prohibiting rent increases and other measures based on information provided by residents at hearings. Board members may not have the benefit of physical inspections and specific training in technical matters.

We propose, as FRHPO has in their submission, that rent-related remedies in section 30 should be restricted to work orders that relate to a serious breach of obligations. Using the well-developed work order system will eliminate any duplication with municipal property standards and ensure serious breaches are determined by experts in the field, reducing the workload of board members.

Lastly, I would like to speak about submetering, what I describe as not-so-smart submetering. We want to install submeters, smart meters in all of our properties—we have said that publicly—but we are concerned about the potential costs and future liabilities that may fall out of section 137. Submetering should be promoted to ensure take-up with owners who are incented to move in that direction. Unknown and potentially expensive liabilities relating to prescribed energy conservation requirements will deter submetering. Putting the burden of paying the administrative costs on owners versus the resident, as homeowners face, will not encourage owners to submeter. Monitoring for 12 months creates an unnecessary delay and can create conflicts of interests with bad residents.

We recommend that you consider withdrawing this legislation or significantly modifying it to address the issues previously stated. On the matter of the 12-month delay—

The Chair: Mr. Price, you have one minute.

Mr. Price: I'm almost finished—we suggest that you take a true-up approach and look back after the first 12 months and make any adjustments as required.

The Chair: Thank you very much for being here. Unfortunately, you've left insufficient time for us to ask questions.

CITY OF TORONTO

The Chair: Our next delegation is Mr. Michael Walker. Welcome, Councillor. We have your handout here; if you could introduce yourself. Are you speaking for yourself or for the city of Toronto?

Mr. Michael Walker: I will be speaking on behalf of the city of Toronto as chair of the tenant defence subcommittee.

The Chair: Okay. Once you have introduced yourself and your group, you'll have 10 minutes.

Mr. Walker: Thank you, Chair and members, ladies and gentlemen, for the opportunity to address you today concerning Bill 109, the Residential Tenancies Act. I address you today as a Toronto city councillor for St. Paul's. I am also chair of the city's tenant defence subcommittee—a committee devoted to helping, protecting and defending tenants in times of need and crisis.

Almost half of Toronto's residents and 70% of St. Paul's residents are tenants. City council places a great priority on tenant issues and has a range of programs and services to assist them.

It has been over two years since the provincial government released its consultation on residential tenancy reform. City council took the 2004 consultation very seriously and made 50 recommendations in a 60-page report. A copy of that report has been forwarded to your committee by Mayor David Miller in a written submission to the clerk on behalf of Toronto city council.

I'm also pleased and proud to submit for your committee's consideration proceedings of the second tenant forum, held in the city of Toronto on March 9, 2006, which I chaired as head of the tenant defence subcommittee. Over 450 tenants and tenant organizations came and spoke. Many complained about the current legislation, injustices by landlords, and made recommendations for improvements.

Please consider the voice of over 1.2 million tenants in Toronto as you finalize your legislation. We all have a duty to respond to their concerns and issues. Please read the personal notes in the proceedings, which document their real-life experiences and are part of that submission.

Bill 109 addresses several of the issues of most concern to tenants. In particular, I note that Bill 109 sets out a more balanced approach to the determination of rent increases for utilities and capital expenditures. The bill would limit the types of expenditures and amounts allowed as capital expenditures, reduce rents when capital expenditures are paid for and reduce rents when utility rates are reduced.

City council's recommendations went further. Our council recommended that rent increases should not be permitted for capital expenditures necessary because of ongoing neglect, that amortization schedules for capital items should be lengthened to reduce the impact of the expenditures on the above-guideline rent increases charged to tenants, and that landlords should be required to provide evidence of an arm's-length competitive bidding process for capital work to ensure the best price so that tenants are not charged unnecessarily high above-guideline rent increases. I request the standing committee to consider amending Bill 109 consistent with council's 2004 recommendations respecting the determination of capital expenditure allowances.

Toronto city council also recommended permanently removing the 2% base amount in the current annual guideline increase. This provision is included in Bill 109. Council also requested that interest on the rent deposit equal the annual rent increase charged to a tenant, and Bill 109 includes this provision. In addition, council recommended that the maximum penalty be increased for landlords charging illegal rents or deposits. Bill 109 includes a provision that would increase maximum fines in a number of situations.

Bill 109 introduces a number of provisions intended to ensure the quality and maintenance of rental buildings, including that tenants may apply for an order prohibiting the landlord from taking any rent increases. However, Toronto city council went one step further in recommending that where the landlord has not complied with a municipal work order, all rent increases would be frozen, and that the tribunal or board and city set up an automated system for direct access to municipal work orders and notices to improve efficiency in implementing rent freezes due to non-compliance.

Put simply, city council was recommending a return to the process in effect under the Rent Control Act known as OPRIs, orders prohibiting rent increases, whereby rents would automatically be frozen for all units affected by the outstanding work order rather than requiring each tenant to make an application, as proposed under Bill 109. OPRIs were effective in bringing about landlord compliance with outstanding work orders, nearly 100% each year. I request that the standing committee consider amending Bill 109 consistent with Toronto city council's 2004 recommendations respecting the maintenance of buildings and rents.

Now I'd like to turn to a major omission in the government's proposed tenant legislation. While Bill 109 proposes significant improvements in how rents would be determined for sitting tenants, the impact of these improvements is lost when units turn over because Bill 109 permits vacancy decontrol to continue. The vacancy decontrol provisions of the Tenant Protection Act have significantly eroded the supply of affordable rental housing in Toronto since 1998, with no noticeable impact on the new supply of purpose-built rental housing. As almost one half of Toronto's population lives in rental housing, this is a significant issue.

1750

City council has repeatedly requested the provincial government to get rid of vacancy decontrol in any new tenant legislation—in other words, restore real rent control. In 2004, city council made a number of recommendations about the rents charged to new tenants, including that "a landlord be permitted to charge a new tenant up to the same rent as the amount paid by the

previous tenant." What this meant was that vacancy decontrol be eliminated.

Let me repeat what I heard from our recent tenant forum. What did tenants, our constituents, say about the matter? Bring back real rent control; rent control is needed to protect tenants; remove vacancy decontrol.

This proposed legislation, Bill 109, the Residential Tenancies Act, 2006, I believe breaks faith with tenants to whom Dalton McGuinty made clear promises prior to the 2003 provincial election. The now Premier, Dalton McGuinty, then made this clear, unequivocal promise to tenants:

"I want to be clear about our plan for rent control. We will repeal the Harris-Eves government's Tenant Protection Act and we will bring back 'real rent control' that protects tenants from excessive rent increases. We will get rid of vacancy decontrol which allows unlimited rent increases on a unit when a tenant leaves." That was August 2003, three months before the election.

It's been over two and a half years since that promise and momentous election. And what do we get after a protracted consultation, most particularly with tenants? Broken promises to tenants and tinkering with legislation, leaving the image of real change, but in reality it's only a phantom of the old legislation.

Did we get rid of vacancy decontrol as promised by Premier McGuinty in August 2003? No, we did not. Did we get back "real rent control" as promised by Premier McGuinty in August 2003? No, we did not.

There is no "real rent control" with vacancy decontrol. Why can't politicians keep their promises to tenants? Is it because politicians think that tenants don't count and don't have the power and influence of special-interest groups? Well, it appears that the tenants did, for a fleeting few months before the last provincial election. And they will in future elections, because tenants are losing their homes, due to affordability issues, to evictions and to demolitions, and they won't put up with it.

You, the members of this committee, can help Premier Dalton McGuinty keep his promise to tenants of this city and of this province to get rid of vacancy decontrol and to bring back real rent control. Otherwise, there will be no peace. Thank you.

The Chair: You've left about a minute and a half, which means you can have 30 seconds with each party. I'm going to begin with Mr. Hardeman.

Mr. Hardeman: We haven't had much opportunity to ask questions today. I asked the last presenter a simple question: Do you believe, with vacancy decontrol in the bill, that the government is not keeping the promise they made to tenants in Ontario?

Mr. Walker: Unequivocally, yes.

Mr. Marchese: Michael, I congratulate you for being such a strong advocate for tenants, and you've done that for many years. Mr. Duguid said that tenants simply didn't talk about vacancy decontrol, so I presume that in his mind it wasn't an issue. Is that possible?

Mr. Walker: Well, no. I was at the one in Scarborough, and it was certainly heated and passionate. In my opinion, they have talked about it. Sometimes they may not understand the exact wording of the legislation but they sure as heck spoke about it. In the two forums that we've held, most specifically, that was one of the three most important issues.

Mr. Duguid: I want to repeat this as well, Councillor Walker: Thank you for your many, many years. I know, from the dozen years I've known you, that this isn't a fleeting issue for you, this is a passion, and you've been involved with tenants for all that time. So I thank you for providing that voice for tenants.

I appreciate the commitment that you outlined in your report, but that commitment also came with a replacement. We talked about getting rid of vacancy decontrol, but we were going to replace it with regional decontrol, which would have, in this particular climate, with vacancy rates above 3%, gotten rid of rent control pretty near right across the province. Tenants did not support that, nor did you.

The Chair: Thank you, Mr. Duguid.

Mr. Duguid: Is that correct?

The Chair: I'm going to let you answer the question.

Mr. Walker: That's exactly right, but you broke your promise, which is that you want to get rid of vacancy decontrol. Your regional system never made sense. I do not think you should have rent control or no rent control based on the vacancy rates. That's not a real reflection of the affordability and the hardship that tenants face.

The Chair: Thank you very much for being here today.

FEDERATION OF METRO TENANTS' ASSOCIATIONS

The Chair: Our next delegation is the Federation of Metro Tenants' Associations. I have three names here but I only see two individuals. Are both of you going to be speaking?

Interjection.

The Chair: Oh, is he? Okay. He can join you if he wants. I have a Marcia Barry, a Dan McIntyre and an Emmy Pantin.

Ms. Marcia Barry: Emmy is in the other room, so I think it will be just us two.

The Chair: Welcome. If you can identify the individuals who will be speaking today, the group that you are speaking for, you'll have 10 minutes. If you leave us some time, we'll be able to ask questions. I'll give you a one-minute warning.

Ms. Barry: Okay. Good afternoon. My name is Marcia Barry. I'm a member of the board at the Federation of Metro Tenants' Associations. I have also served this past year as chair of the tenant action committee. I'll introduce Dan McIntyre, who is with me. He is the coordinator of the federation's outreach and organizing program.

The federation, or the FMTA, is a membership-based organization that has been working with tenants in Toronto for better tenant rights since 1974. Our outreach

and organizing team has helped tens of thousands of tenants in hundreds of buildings who have had to cope with above-guideline rent increases. Every year our tenant hotline has offered information and referrals to thousands of tenants trying to cope with a bad law.

We must begin by saying how devastating the Tenant Protection Act has been on tenants. Its demise is long overdue.

We were pleased when Dalton McGuinty, in his pre-election letter, agreed with us that, "Eight years of the Harris-Eves government has had a devastating effect on tenants," and we were thrilled when he promised that, "We will bring back real rent control.... We will get rid of vacancy decontrol which allows unlimited rent increases."

With that in mind, I'll now turn it over to Mr. McIntyre, who will talk about some of our specific concerns with the new bill.

Mr. Dan McIntyre: Good afternoon, and good afternoon to all the tenants in the overflow room, especially.

We're deeply disappointed that the government hasn't addressed the issue of vacancy decontrol. You're running the risk with us that this bill will turn out to be as devastating as the previous one. Why take that gamble?

You have some information from CMHC suggesting that things will be okay for about three years. That's not much of a guarantee. We don't know what will happen after that. We have a quote in our brief—I won't read it all—from Frank Clayton, who has worked for years as a landlord researcher, indicating that in the very near future things are going to change and it's going to be very easy for landlords to pass on rent increases.

If the market does work, there's no harm in having vacancy decontrol eliminated, because it's just there as a safety valve in case the market doesn't work. If the market doesn't work, and we're afraid that's the prediction we're seeing, you're leaving every tenant vulnerable—some more than others—and you don't need to take that risk. You simply write in a provision that the lawful rent is what the previous tenant paid, and we've offered you specific wording for amendments on that.

The annual guideline—you had it right: 55% of the rate of inflation is what you've allowed the last two years; it's something we can live with. We'd rather prefer rent decreases. Buildings are not subject to inflation; they were built 30, 40, 50 years ago. The maintenance is, the operating cost is, but not the building itself. You don't pay more for a used car than a new car. Above-guideline increases: It's what I've been doing for a living for the last few years and I'd just as soon give it up. They are patently unfair.

We do recognize that you've addressed some of the issues that we've brought to you and have improved the above-guideline-increase system substantially; in fact, we think you've improved it well enough that we want to suggest that you bring those improvements in as a transitional measure and that the above-guideline-increase rules be brought in, effective June 1, 2006. There's a tenant in this room who just got a 20.5% rent increase five weeks ago from the previous bill. There's no reason for having extra increases for utilities or taxes; these are caught in the guideline. And taxes go up when rents go up, so it's a circular effect. We're suggesting that you take that out, but if you don't, make the word "extraordinary" mean what everybody on the street thinks it means and what it meant under the Rent Control Act, which is that it has to meet a threshold of at least 50% above average before it's considered.

1800

We're glad that you're tightening up the definitions of capital expenditures, and we very much applaud allowing tenants to raise maintenance issues. This has come up time and time again at the hundreds of meetings that Marcia and I have been at, that tenants can't raise those issues. A landlord has nothing to worry about if they maintain their building, so if you're going to come to rent review, come with clean hands or don't come at all. That's a good idea too: Just don't come at all.

Costs no longer borne: You've done it right, if you start history on May 3, 2006. You've got something in there. You've put in an adequate provision, but you completely abandoned us on anything that happened May 2, 2006, or the 30 years before, where thing after thing was put into rents and never taken out. Most astonishing is that despite the words of the Ombudsman in 2002, you've done nothing to address the $40-million increase in rents that Toronto tenants took because of a one-time blip in gas prices that since came down. We're very disappointed that you didn't address that. We do suggest an amendment in our series of 19 amendments that we're proposing.

You came close on orders prohibiting rent increases. All you need to do to fix it is to make it automatic where there's a work order. When you put the onus on tenants to make an application, you're putting an unfair onus on people who are out making a living, trying to pay the rent, the senior citizens on pensions—they're people who don't understand the legal system. Make it automatic, leave all the rest, and then you've got that one right.

You've got a one-year limitation period for tenants to make applications. That's far too short. Basically, what you are saying is that if a landlord gets away with something for a year and a day, they get away with it forever. That's not consistent with other limitation periods. It was one of the unfairnesses that we pointed out in the Tenant Protection Act. We recommend that the limitation period be extended to three years.

I was glad that Mary Pappert talked about exemptions earlier. This is the sleeper issue. Basically, anything that does get built, and it's not much, since 1991—you're abandoning all of those tenants. That's what Mr. Joseph pointed out last week. There really are big loopholes for condominium tenants that we would urge you to address in amending the bill. You've got a lot of work to do on Wednesday and Thursday. I think you should take as much time as you need to get it right.

On evictions: It's astonishing that 64,000 households faced evictions last year. We applaud the elimination of

default evictions, but we do share concerns that have been expressed to you very well by the legal clinic community about a need for set-aside provisions.

We're also very concerned about section 203, which I label "the landlord is always right" section. I think you now know that the landlord is not always right. When they're not right, you've got to have an ability to challenge their evidence and challenge their facts. I think this is a mistake that you've made. Again, you have an opportunity to fix that. We would urge you to do that.

I want to talk about good tenants and bad tenants. That's a dangerous phrase that we're concerned about the use of: good tenants and good landlords. Good tenants run into problems: health problems, job losses, spousal problems; you name it. Those folks should not be left at risk by a government in dealing with evictions. The fact that there's going to be a hearing is a plus and they have to consider that, but do keep that in mind in working with a new board.

Maintenance provisions are better. We're glad, again, that you can raise maintenance as an issue under section 82. Again, if landlords look after the buildings, as many have come here and said they do, they have nothing to worry about. So that's good.

Interest on last month's rent: I want to do you a favour on this one. Your constituency assistants will appreciate this because next year, when tenants don't get the 6%, they're going to call your offices. That's been in there for 35 years; even the Harris government didn't touch that. This is the price that landlords pay in order to have a cushion against those tenants who don't pay. It's something they haven't mentioned in their cost-of-eviction figures, that they have a one-month advance cushion. We urge you to reconsider that one for your own sake and also for the sake of tenants.

Those are all the comments I'm going to make for now. I hope I've left enough time for questions. We've offered you 19 specific amendments. You've got a lot of work to do on Wednesday and Thursday to keep the promise you made for tenants and prevent this act from being devastating in the future.

The Chair: Barely. So we need people to be as short as they were the last time. Mr. Marchese, you have 30 seconds.

Mr. Marchese: Thank you.

The Chair: I like brevity. Thank you. Mr. Duguid.

Mr. Duguid: In 20 seconds or less, I don't see tenants raising maintenance issues being the problem that some are suggesting it is. In your experience, and you've had a lot of experience at the boards, how do you see that shaking down?

Mr. McIntyre: There's no excuse for a landlord not to do maintenance with the high rents they're charging, and the board must take that into account. Currently, the tribunal turns a deaf ear, and that's been extremely frustrating to the people we've talked to over the last eight years of the Tenant Protection Act.

The Chair: Thank you. Ms. MacLeod.

Ms. Lisa MacLeod (Nepean–Carleton): Thank you very much for your presentation.

On the last page, your conclusion says, "But falls short of Premier McGuinty's promise of 'real protection for tenants at all times.'" As this piece of legislation currently sits, is this a broken promise from the 2003 election campaign?

Mr. McIntyre: It's a promise not yet fulfilled. They have through the rest of the week to fulfill it. I'm offering them the opportunity to do that because I think that's always fair to do.

Ms. MacLeod: Okay. You've got three days, Brad.

The Chair: No pressure.

Thank you very much for being here today.

REXDALE COMMUNITY LEGAL CLINIC

NORTH ETOBICOKE REVITALIZATION PROJECT

The Chair: Our last delegation of the day is the Rexdale Community Legal Clinic and the North Etobicoke Revitalization Project.

I'm just going to wait until the noise behind you subsides a little bit so that we can hear your delegation. If I could ask everybody to quietly exit the room so we can get started on our last delegation.

Welcome. I have only two names here, so if you're all going to speak, if you could say your name and the group you speak for. You will have 10 minutes, and I will give you a one-minute warning.

Ms. Karen Andrews: My name is Karen Andrews. I work at the Rexdale Community Legal Clinic. This is John Bagnall, who works at the Albion information centre and is a member of the North Etobicoke Revitalization Project. This is Rev. Kerri Hagerman, who's going to speak about a landlord who liked to inspect a lot, notwithstanding that he did not have the right he will have after the new legislation. A number of points have already been canvassed very well, and we're not going to reinvent the wheel because we want to go home and watch hockey.

The missed hearing: What happens when landlords and tenants do not make the hearing? The date that is fixed is a short one and it's decided by one of the disputing parties. Mr. Aaron spoke about his traffic ticket and I'm going to speak about my rolling stop violation; lawyers are very bad drivers, I guess. I got cited by an officer and got a notice in the mail that said, "You've been convicted. You didn't make your hearing date." I went downtown and said, "I didn't get notice of that hearing." I got another shot in front of a JP last week, and he accepted my argument. I was only disputing the three points of my driver's record; I was not disputing my housing or my child's housing. So a set-aside is very common in law when hearings are fixed, particularly when it's only one party that fixes the date.

Section 203: You've heard about the problems for public housing tenants. The issue of rent and the non-payment of rent is critical to every tenancy. Yet these tenants can't dispute when a landlord alleges that they owe $2,000 or $4,000. Mr. Fleming did a very good job talking about that problem.

Here's the problem for other people: Your mortgage company says, "We're bringing foreclosure proceedings on you because you owe $15,000." So you trot down to the courthouse and you say, "But what is my mortgage payment? What did I not pay?" If a mortgage company had what the public housing landlords are going to have under 203, your mortgage company gets to say, "We're not going to tell you and"—worse—"we're not going to tell the judge." This is a problem, because fundamental to adjudication is knowing the case you're meeting, knowing what the facts are and challenging their case, and this is a case that the public housing landlords will not have to meet.

The third issue of very serious importance to the low-income tenants of Etobicoke is vacancy decontrol. Councillor Walker has said that the evidence is not in that what was promised with vacancy decontrol would happen. We all knew what was promised: better units, more units, cheaper units. CMHC's stats do not support this.

1810

Vacancy decontrol endorses the free market approach to rent, yet you are also by this legislation going to give statutory increases for utilities and capital expenses. These are called the vagaries of the free market. This is the landlord getting with one hand and the landlord getting with the other hand. It's the free market and contract or it is not. It's a bit of a boon for landlords because they get to set the rents and then they get little perks if they run into problems. Every homeowner, every property owner knows the roof needs to be fixed, the furnace needs to be fixed, utilities are going to go up. You guys, businesspeople: Figure it out and set the rent. But they want insurance and a hedge against that, and they're being given that under this legislation and the last legislation.

I would like to turn it over to Rev. Hagerman. There's a new right that landlords are going to have, the right of inspection on simply 24 hours' notice. We would ask you to add one word, and that would be "annual." Certainly, I see a lot of sexual harassment and a lot of racial harassment, and I worry about the landlords who keep coming in. Over to Rev. Hagerman.

Rev. Kerri Hagerman: I'm here to put a human face on this last point. My story is about a Brampton homeowner—a businessman, a director in a well-known Mississauga company, a family man—who found himself in the uncomfortable position of having to rent his house. His well-appointed four-bedroom house, which he himself in many instances had renovated and redecorated, after being up for sale for many months, had just not sold. The larger house that he had purchased would soon be his, and he was facing the prospect of three mortgages, summer house included.

My story is also about a family of four, with two young children aged three and six, who became tenants of that Brampton home after relocating back to Ontario from Manitoba, settling in Brampton because it was close to work. I am one of those tenants, and the work that called me to Brampton was an appointment to serve at Emmanuel United Church, a congregation that was in the midst of a difficult transition.

As homeowner-landlord and tenant, our lives intersected in a good way at just the right time to meet both our needs, and we enjoyed a good year of friendly, cordial relations with this homeowner—I should say, newly-minted landlord—who was respectful and responsive, so good that when the lease expired a year later, neither landlord nor tenants felt a need to renew a lease, but discussed their various plans for the upcoming year and negotiated an agreement.

Homeowner-landlord decided he didn't like his new house and would put both his new houses up for sale in January 2006. He wanted to prepare it for that sale by replacing the carpet, which involved dismantling my study on which I was dependent for my work, replacing all of the upstairs front windows and repainting the hallways upstairs and down.

Tenants decided they would move to Toronto and asked if they could stay in the house until July 2006, when the appointment at Emmanuel United Church would end. The homeowner said yes, and in an e-mail wrote that they would put an August 1 closing date when the house went up for sale. Tenants were co-operative, packed away most of their children's toys and removed furniture as requested, and as the house was being prepared to sell, all the renovations took place, but so did a collision between tenants and landlord.

In a six-week period between January and February 2006, the landlord was in the rental unit—his house, but the tenant's home—more than 20 times. In January and February, the landlord was in the unit on six different Saturdays and six different Sundays for periods of time that could last up to three hours. Needless to say, as tenants, we felt that this seriously interfered with our quiet enjoyment of the rental unit.

On occasion, notice was given in writing, but more than often, it was just a casual indication that he'd be coming in for minor touch-ups or minor repairs or, as he would say, "Spend $50 to make $5,000," by replacing his common light fixture with a fancy one. On two occasions, the tenants just didn't know he was coming when he showed up. Then on February 17, the landlord informed the tenants that he had an offer to purchase the house, with a closing date of mid-May. We learned he had put the house up for sale without putting any closing date, failing to inform us that he had changed his plans.

From this point on, things went from bad to worse. We insisted that his entries be put in writing. We requested that he not come in the house anymore since we had to pack up and move by the end of March, and we wanted some quiet enjoyment that was so lacking and for him to just give us some peace as we packed up.

This seemed to infuriate him. He had served us notice, and he'd be coming in the house three more times in March for the purpose of inspection. This, after having been in the house more than 20 times in the last six weeks.

His behaviour degenerated from intrusiveness to harassment as we received an e-mail that falsely accused us of damaging his property. He was twisting facts, criticizing the behaviour of our children and calling our parenting skills and our judgment into question.

Feeling harassed, we took a rental unit in mid-March here in Toronto in order to be out of the house as soon as possible. We enlisted the help of good people to put a barrier between us and this landlord, so that when he came into the house we were not there but someone else was, to see exactly what he was doing and to be witnesses to the condition of his property.

When we left, I prepared an exit inspection report and had a real estate agent come to fill it in and be witness to the fact that we had left this property, that had sold within three weeks, in excellent condition. In that report, we insisted that any further communication or correspondence between us and the landlord would be carried out through this real estate agent.

I learned a lot about the Tenant Protection Act through this, and about the tribunal, as you can imagine. Apparently landlords can enter a house on 24 hours' notice. Please set limits to how often entry can take place.

Apparently, landlords can enter any time between 8 a.m. and 8 p.m. Please demand that landlords specify the time that they will be entering, at least giving a one- to two-hour range, because when things degenerate, they do degenerate.

The Chair: You have one minute left. You can keep going if you have more to say.

Mr. John Bagnall: Just briefly, I'm the co-chair of the North Etobicoke Revitalization Project housing committee. I just want to emphasize that the concerns and recommendations that Karen and Rev. Hagerman have put forward have been shared by a large number of other agencies working with low-income tenants in North Etobicoke.

We've been meeting regularly as a group, working on tenant issues, and we include Albion Neighbourhood Services, the agency I work for. We have extensive programs in terms of housing help, rent bank and other eviction prevention activities; as well, Rexdale Women's Centre and Dejinta Beesha.

I just want to emphasize that these concerns are broadly shared by other agencies in North Etobicoke working on issues of low-income tenants.

The Chair: Thank you all very much for being here today. I'd like to thank our witnesses, members of committee and staff for their participation in the hearings.

I just remind the committee that the summary of recommendations in the big package you received today is about second from the last in the package. I'd also remind committee members that your amendments need to be in by 12 noon on Wednesday, June 7, 2006.

The committee now stands adjourned until 3:30 p.m., Wednesday, June 7, 2006, when we begin clause-by-clause consideration of this bill.

The committee adjourned at 1817.

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