

**Presentation to the Lorman Education Services
Landlord and Tenant Law Forum
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by

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Introduction

In May 1999 I was asked to take over the reigns at the Greater Toronto Apartment Association, a business association for owners and operators of privately-owned rental housing and those firms that supply goods and services to the sector. Our association has more than 230 companies that own and operate in excess of 160,000 apartment units across the greater-Toronto area. Our mission is to be "rental housing's voice" on mainly municipal government issues that affect the effective operation of affordable, decent rental housing.

Over the past number of years, the influence of the municipal government on rental housing has grown. Through both legislative and moral interference, cities are becoming more active on the landlord-tenant file even if they do not have specific powers conferred upon them by the provincial government.

Today I will try and review a number of the areas where municipal governments - and more specifically the City of Toronto - are attempting or being successful in regulating the landlord-tenant relationship.

Strong Toronto for a Strong Ontario Act

On January 1, 2007, this new piece of legislation was proclaimed into law giving the newly elected City of Toronto government many more powers than ever before. In fact the real impact of the Act is that it totally changed around the relationship between the Province and the City. Previously the legislation basically told a City only what it could do - now it simply prohibits the City from doing a short list of things and allows them to govern or regulate in just about every other area.

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The Province has only ruled out specific taxing powers - like an income tax - that the City of Toronto could impose. There are five main areas of taxation the City may not implement however; the door is wide open to an array of taxes, charges, licenses and fines that the City could impose.

Further it is yet to be determined how much of the new *Residential Tenancies Act* the City could decide to regulate. There is no provision in the Bill that specifically states that the City may not "frustrate" other provincial statutes, meaning that if the City believed it had a specific issue surrounding the landlord and tenant relationship it felt it needed to regulate, it is possible that the powers under this new Act may allow the City to do it. I do not want to speculate or hypothesize but given the very pro-tenant nature of the City of Toronto Council, I would suggest that everything is on the table.

With respect to the political reality of the new Council, voters in Toronto decided to move left on November 13, 2006 including the re-election of Mayor David Miller. Many years ago, Council established a Tenant Defense Sub-committee made up of 8 Councillors and staff whose mandate is to "protect tenants" against what they believe is very poor provincial legislation.

In the past we have seen this Committee fund tenants and tenant associations thousands of dollars to fight landlords at the Ontario Rental Housing Tribunal (soon to be the Landlord and Tenant Board), the Ontario Municipal Board and Divisional Court. With the advent of the new *Residential Tenancies Act* in a couple of days, there is already talk about challenging aspects of the new law through "test cases" to ascertain whether it provides greater protection to tenants than the previous Act.

I suspect that Council will significantly increase funding to the Tenant Defense Fund in 2007 and beyond and staff are already working on a new model and mandate for what the Fund will support.

So my outlook for the next four years on the landlord-tenant front in Toronto is very bleak not just with what they can do today but what Council is likely to do in interpreting and stretching its powers under the new *City of Toronto Act*.

Apartment Licensing

One area of specific concern to apartment building owners and operators is the area of licensing. City Council has been on record for about five years of supporting a "licensing regime" for private rental apartments. There has been a staff report on the books since 2003 that developed a hypothetical model of what a license regime would entail. Depending on who you talk to, apartment licensing means different things to different people.

Some argue it is basic "consumer protection" while others feel that it is a way of paying for more property standards officers to inspect apartments and conduct "pro-active common area re-inspections" that will result in a rating system about the maintenance and upkeep of apartment buildings in Toronto. Ballpark numbers on license fees range from flat operating license fee to fees that are as high as \$50 per unit per year.

On December 11, 2006, City staff began the first in a series of stakeholder consultations on "apartment licensing" and will be developing a comprehensive staff report that will make its way through the system and to Toronto City Council this year. The Greater Toronto Apartment Association will be front and centre on this issue trying to stop Council from moving forward.

Garbage and Recycling

Nearly a day goes by when we do not hear about the garbage crisis facing the greater-Toronto area and more specifically the City of Toronto.

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Although it appears as if the City has guaranteed landfill capacity for another decade outside of London, the pressure is on to address the volume of garbage that is generated from highrise apartment buildings. Many studies cite the poor rate of recycling in highrise apartments versus the rate among those living in single family homes and townhomes. Because close to 50% of the population in the City of Toronto lives in highrise buildings, this situation has become a major issue in the City of Toronto's overall waste management plans.

Those of us who manage highrise buildings know the physical and logistical problems that lead to poor rates of recycling coupled with resident attitude. Apartment buildings simply will not get to the single family home diversion rate and even City staff acknowledges that.

Unfortunately, rather than funding and looking at innovative ways of improving recycling in apartments, City Council embraced a so-called "apartment waste diversion levy" in 2005. Working with a stakeholder group, the levy was bantered around, amended and changed and eventually proposed to Council. In its infinite wisdom, Council has delayed the implementation due to the extra costs involved in enacting the levy. It is still technically on the books and could rear its ugly head in this year's budget discussions.

The levy essentially will be charged to apartment buildings where residual garage pick-up is determined to be more than what it should be for a typical apartment property with an effective rate of recycling. Therefore should the City deem your building to have weekly pick-up of three 6 cubic yard bins and you put out 9 bins, you would be charged for the extra three. Depending on your residents' attitude toward recycling, this could cost tens of thousands of dollars per year.

We expect the stakeholder group to be reconvened as this issue gets re-debated again. In the meantime our association is working with a consultant to examine ways in which apartment recycling can improve without the imposition of extra charges or fines from the City including the closing of garbage chutes. It is our intention to share our findings with City staff and work toward a more reasonable range of options.

Property Standards/Apartment Standards Website

In December 2005, the City of Toronto launched its Apartment Standards Website that lists all private rental apartment properties with work orders listed against them. After a year of review and despite some of our greatest fears, the site appears to be a minor irritant to our members and something not widely used by the general public. Much like the *DineSafe* site for restaurants, there was a lot of hoopla initially, but interest has died down.

However, there is resurgence among the tenant movement to push for greater property inspections and more orders issued against properties that can be publicly listed on the site. The main factor appears to be the sections of the new *Residential Tenancies Act* that provide for healthy rent abatements and rent freezes where there are "serious outstanding maintenance issues" at apartment properties. Because the orders are listed on a website and very easily accessible in a timely fashion, owners and operators should be very concerned about orders being listed for one, and getting them cleared for two.

The site is updated once orders have been cleared but they stay on the site for two years after and are then dropped off. Properties with no current orders or where the two year date has passed are not listed at all on the site.

On property standards issues in general, beware of increased vigilance among inspectors and the move toward issuing more work orders rather than simple notices of violation that are not listed on the Apartment Standards site.

New Licensing Committee

Toronto City Council has adopted a new structure for its Standing Committees that include a committee dedicated to just licensing matters. It is likely that this Committee will be looking for any and all powers possible in licensing and regulating rental housing and any way of regulating the landlord and tenant relationship. We will be watching.

Housing Allowances/Rent Supplements

Last year, the Governments of Canada and Ontario committed to and funded the *Canada-Ontario Affordable Housing Program* that provided five year funding for up to 1,800 housing allowances in the City of Toronto. While there are some administrative requirements that make the program unworkable in certain circumstances and the allowances on average are low, it is an opportunity in 2007 to move people into private sector rental housing and demonstrate that housing allowances - rather than the building of thousands of social housing units - works.

Again, we will be monitoring the success or failure of this program but are hoping that all three orders of government will recognize the importance of these types of programs in the overall affordable housing mix.

Conclusion

The new City of Toronto Act is the main piece of legislation that gravely concerns the apartment industry, is unproven and unfortunately is far too broad in what it may or may not allow the city to do.

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It will most certainly be a wait and see view as Councillors bring forward their pet projects and areas of interest to test the bounds of the new legislation. I unfortunately foresee court battles when warranted and fights to determine which provincial statute prevails.

Apartment building owners and managers are likely in for an onslaught generally, and regulations and by-laws from time to time, when reacting to local news (like the grow-op bust last November) that drive a specific Councillor to want new laws.

As an association we will do our best to protect the industry's interest and try to continue to make this industry viable. Unfortunately the regulatory regime looks worse despite favourable market conditions.

I thank you for your time today and would be pleased to take your questions.