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Federation of Rental-housing Providers of Ontario (FRPO)

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Federation of Rental-housing Providers of Ontario

FRPO Submission to the Standing Committee on General Government

~ Bill 124 ~

INTRODUCTION

It has been well documented that Ontario is facing a growing crisis of housing affordability and that families are facing barriers to find housing that they can afford. This crisis is not limited to the skyrocketing costs of home ownership—families who rely on rental housing are facing impediments to finding the rental housing they can afford in locations connected to their work, schools, and other community supports.

The creation of more affordable housing can only be achieved by encouraging more supply and the development of new housing. Building more rental housing in Ontario will create more affordable housing in Ontario. More supply means lower rents and more choices for Ontario tenants. Less supply means less choice and less housing options.

The rental housing industry has the specialized knowledge and financial capital available to invest in the creation of new rental housing in Ontario—what is needed is a stable and positive business environment to encourage the investment here in Ontario.

RESPONSE TO BILL 124 PROPOSALS

Rent Control – 1991 Exemption

Supply

The construction of more units to the rental market delivers a critical boost to our economy and is much needed by Ontario's renters. Renters require more choice not less. Most of Ontario's rental housing was built before rental controls were introduced in 1975, meaning that today most tenant residences are older than 40 years old, with increased costs of maintenance and repair. According to the government, 82% of renters in Ontario are covered by rent control.

The 1991 Exemption was originally created by the NDP government of Bob Rae, and it has been followed by successive governments of different political stripes. Its purpose was to encourage new supply by providing market certainty with regard to regulation that would affect new rental housing.

In our view, the Exemption has fulfilled its purpose and contributed to new construction. Recent reports showed a large increase in new purpose built rental, a 50% increase in 2016 starts alone over 2015 levels. Further, an *Urbanation* report shows over 28,000 new purpose built rentals in various stages of planning approval for the Toronto area.

Changes to the 1991 exemption policy could put these significant investments at risk. A recent FRPO survey says 20,000 units, valued at $6.5 billion are now under review.

Economists overwhelmingly agree that rent control is bad public policy that ultimately hurts everyone, and especially tenants, by making it uneconomic to maintain existing supply, and to create new supply. Increased supply benefits tenants the most by providing additional housing choice. We therefore urge you to not remove the 1991 Exemption. To do so would expand rent control to post 1991 buildings in a way that may ultimately be to the detriment of tenants and residents of the province of Ontario. The complexity of rent control would also be extended to many individual landlords.

No one supports the doubling of rents which were reported in media coverage, but those are unique cases and not normal practice within the industry. Taking a blanket approach and applying the current rent control model to all rental units will significantly damage the new rental housing supply that is just about to enter the market. The goal should be to find a solution that prevents the dramatic rent increases that were claimed in those unique situations, while not negatively impacting new rental development.

FRPO is disappointed that the government did not give consideration to proposed alternatives that would meet political needs but allow for purpose built rental to continue:

- Replace a permanent exemption for post 1991 buildings with a "rolling" 20 year exemption. Twenty years is the typical lifecycle for a pro forma for rental projects. Creating a rolling 20 year exemption would at least ensure that buildings which relied on this exemption would have one full life financing cycle before being subject to rent control.

or

- Rather than repealing the exemption, and subjecting post 1991 buildings to full rent control, instead place a 10% maximum allowable annual increase on post 1991 buildings. This would strike a balance between the current state "no control" on post 1991 buildings, and excessive control, which would result from the simple repeal of the exemption. This would address the concern of your government about excessive rent increases.

Generally, we are opposed to interference in the market. Nevertheless, we understand that pressure in the current market has created the potential for high rent increases. Ultimately, the only cure for this is the creation of new supply, and new supply can only be encouraged by an investment climate with strong fundamentals and certainty.

These alternatives could provide relief in the current market condition, without so damaging the fundamentals of the investment climate as to cut off the new supply needed to solve the problem.

FRPO recommends Bill 124 be amended to establish a permanent committee to monitor the effect of rent control on rental housing development and to report quarterly on supply.

Small Landlords & Condo Rental Units

The condominium rental market provides a significant supply of rental units. It is estimated that close to 30% of new condominiums are rented. Applying rent control to condo rental units will be a disincentive to condominium owners choosing to rent their units. If those units are removed from the rental market that will impact the vacancy rate reducing supply, reducing choice for tenants, and as a result likely resulting in increased rents.

Once rent control is applied, the only way to increase rent to cover extraordinary costs is through above guideline increase applications (AGIs). An additional challenge for small landlords, specifically condo rentals, will be navigating the AGI process.

Many small landlords will not have the resources or expertise to undertake this Landlord and Tenant Board (LTB) process. As well they will not likely have access to the extensive information, including

financial records (e.g. invoices, proof of payment, etc.), required to complete the AGI process (e.g. a condo special assessment for a capital expenditure such as a roof repair).

To the extent that small landlords do apply to the LTB, they will add to the workload of the LTB and exacerbate the delays at the LTB, which are already a problem.

Above Guideline Increases (AGIs)

Utilities

In Ontario's Climate Change Action Plan the government committed to consult on options to mitigate the impact of carbon costs on tenants. In May 2016, the government committed to banning carbon costs from rent increases and also announced a new $400 million energy retrofit program for private residential apartment buildings.

In line with its commitment, in late March 2017, the government posted a regulation for consultation that would "remove carbon costs from the calculations for above guideline rent increases for extraordinary increases in utility costs, specifically for heat provided by natural gas".

The rental housing sector invests approximately $2.8 billion a year on energy retrofits, maintenance and capital repairs that improve the energy efficiency of multi-residential buildings. This is a significant investment and demonstrates the importance that the private rental housing sector places on quality and on energy efficiency.

FRPO believes that all tenants in Ontario should have the opportunity to achieve savings from lowering their energy consumption and improving the environment by reducing greenhouse gas emissions. We know that if you give tenants the tools, and the information, to monitor their individual energy usage, consumption rates can decrease up to 40%. If this were applied province-wide, the province could reduce millions of kilowatts of energy, resulting in lower utility costs for property-owners and lower rents for tenants.

FRPO believes that a significant reduction in carbon emissions can be achieved through fully enabling electrical sub-metering for existing tenants in Ontario. ***FRPO recommends Bill 124 be amended to fully enable electrical sub-metering for existing tenants in Ontario. FRPO recommends Bill 124 be amended to allow AGI applications for water utilities.***

The new Energy Retrofit Incentive Program was to provide up to $400 million over four years to private rental housing through rebates and grants for capital investment in energy efficient retrofits. The announced $400 million over four years is a small amount compared to the $2.8 billion per year already being invested by the sector, but the program could assist small to mid-size rental housing and/or older buildings where energy retrofits are more expensive.

The new Energy Retrofit Incentive Program was announced at the same time as the intention to solely protect tenants from increasing carbon costs. It is disappointing that no progress has been made on the development or implementation of this program since its announcement. FRPO would be pleased to provide input into the program's design and FRPO's members are keen to see this program implemented to offset the increased costs they will incur.

The government commitment was to solely protect tenants from carbon costs. This is what the government announced and was the basis of their consultation. However, the proposed amendments in Bill 124 will ban all utility costs from AGI applications. Why are tenants provided protection from rising energy costs resulting from this government's actions, but homeowners are not?

Banning AGIs for utilities is unfair. Ontario recently witnessed significant increases in hydro costs. Rising hydro or gas prices may return two, three, or four years from now but rental providers will be forced to absorb those extraordinary cost increases.

Water costs have risen significantly in many municipalities. How is it fair that these annual 5-8% increases cannot be passed on to the consumers who use the water?

The AGI application process is a fair process that can only be used for extraordinary costs calculated using a transparent formula. The applications are adjudicated by the LTB and the process includes the participation of tenants. With the rising energy costs in Ontario, how is it fair to expect landlords, both small and large, to absorb these rising costs alone?

Elevator Work Orders

The LTB already considers maintenance obligations and work orders when adjudicating AGI applications and may dismiss the application or delay any rent increases until proof of resolution of the issue is provided by the landlord.

Elevator repairs take time. There are many challenges to servicing elevators. The majority of the delays are not the fault of the landlord; the delays are often out of the control of the landlord (e.g. worker shortages, ordering parts). Yet this amendment places the full burden on the landlord alone without acknowledging any of the challenges that cause the delays.

An additional concern is that there is no appeal process for Technical Standards and Safety Authority (TSSA) orders, as well there is no process for seeking an extension of time. ***FRPO recommends Bill 124 be amended to allow an appeal process for TSSA orders and a process for seeking timeline extensions.***

New Regulation-Making Authority regarding Capital Expenditure AGIs

With the application of rent control to all rental units, AGIs for capital expenditures become even more important to ensure safe and properly maintained rental housing.

Currently, capital expenditure AGI applications are limited to expenditures for extraordinary or significant renovation, repair, replacement or new addition with an expected benefit that extends for at least five years.

A capital AGI application cannot include routine or ordinary work to maintain a capital asset in its operating state, such as cleaning, elevator servicing, general building maintenance, grounds-keeping and appliance repairs, or work that is cosmetic in nature or is designed to enhance the level of prestige or luxury offered by a unit or residential complex.

Eligible capital expenditures are defined as:

- necessary to protect or restore the physical integrity of the complex or part of it
- maintain the provision of plumbing, heating, mechanical, electrical, ventilation or air conditioning
- access for persons with disabilities
- promotes energy or water conservation
- maintains or improves the security of the complex or part of it

All of these expenditures are fundamental to providing a safe, properly maintained home for tenants. It is also important for maintaining existing rental housing stock. The landlord has a duty to maintain the building but these expenditures are also important for the continuance of a healthy housing stock.

Capital expenditures provide a clear benefit to tenants; it is unreasonable to think that tenants should not contribute to the cost of significant renovations or repairs that improve their homes.

In many cases, the landlord may not be able to afford the necessary capital expenditures under current rent control limits.

It is very important to note that the AGI application process is adjudicated by the Landlord and Tenant Board, requires substantial proof and evidence from the landlord, and includes input and participation by the tenants. A thorough examination process is already in place.

Also, regardless of the actual cost or the length of the benefit from the capital investment – the rent increase allowed is already capped at 3% per year for 3 years.

Standard Lease

FRPO does not support the development of a standard or template lease. If the government proceeds with this amendment, it must allow for building specific clauses that may vary from property to property (e.g. insurance).

Large, professionally managed multi-residential rental buildings have spent significant financial resources in the development of legally compliant leases that are consistent with current case law. FRPO does not believe that a government-created standard lease will provide the flexibility and adaptability to respond to a changing environment, such as new technology.

FRPO does not support the withholding of rent. The tenant has an existing lease and is occupying the unit. There will be great difficult for landlords to prove that a tenant did receive the standard lease within the 21 days. Registered mail may be the only way and that requires at least 5 days to ensure delivery, making the timelines an even greater challenge.

Given that an existing tenancy agreement of some form is in place, even an oral tenancy agreement, there is no reason to allow a tenant to terminate their lease. The recognized adjudicative body for disputes is the Landlord and Tenant Board.

If the standard lease will be mandatory, then if the tenant does not accept the standard lease, the landlord should be able to terminate the lease with 60 days' notice.

Own Use Eviction

This will impact small landlords the most and will discourage them from entering or remaining in the rental market. Many individual condominium owners register their units under a corporation name. These condominiums are essentially owned by individuals who will no longer be able to move into their own unit. The proposed reform does not respect their property rights and will create difficult situations.

It needs to be recognized there is a difference between the beneficial owner and the title owner. The title owner may be a corporate entity, but the beneficial owner may be an individual or family. This difference has already been determined in case law. ***FRPO recommends Bill 124 be amended to recognize that situations exist where an individual is the beneficial owner even where the property is registered in the name of a corporation***.

Providing compensation for following a legally allowable process is also biased against the property owner who should have a right to live in their own unit.

Providing stability for tenants must be balanced with the rights of property owners who invest in housing.

Transitional Housing

This amendment appears to reflect the needs of the sector and continues to allow rental housing providers to partner with service providers, such as Interval House which is FRPO's charity of choice, to support community programs that help tenants in need of assistance.

The amendment appears to meet the needs of both the rental housing sector and transitional housing program providers.

Pay and Stay

Under the current practice, tenants who have received an eviction order have the option of filing a motion to notify the board (and by extension the Sheriff) indicating they have paid the amount owed. However, in some cases the amount of the payment is for less that the total amount owed, which is not sufficient to vacate the eviction order. Unfortunately, there are times when the mere existence of the tenant motion is interpreted by the Sheriff or other officials as a trigger for the stay, regardless of the amount that has been paid.

When this motion is eventually heard at the LTB, it is summarily dismissed, and the original order is reconfirmed. However, this can result in significant unnecessary delays, and is unfair to the housing provider.

This amendment does not go far enough. It currently addresses the content of the statement that is to be provided pursuant to subsection 74(11). That subsection does not require proof of payment through bank statements, cancelled cheques or even copies of money orders. Only an affidavit stating that the tenant paid all that was owing is required. Documentary proof of full payment should be required for a stay of an eviction order. ***FRPO recommends Bill 124 be amended to require***

documentary proof accompany the affidavit in order for a stay of an eviction order to be granted.

Second Breach Eviction

This amendment clarifies the process and will eliminate cases where eviction applications based on a second breach fail because it is not clear whether the first notice had become void. This will improve the process and remove unnecessary confusion and unjustified delays.

Affidavit Requirements

Affidavits are an important tool in ensuring truthfulness in the information provided to the LTB. The LTB is a tribunal constituted under the RTA whose proceedings are governed by the Statutory Powers Procedure Act.

Both applicants and respondents need to understand and respect the tribunal as a legal administrative body and providing sworn affidavits underscores the legal implications of their actions. The enforcement of unsworn statements will not be provided with the same weight as sworn affidavits. An important deterrent to providing false or misleading information is ensuring consistent enforcement as well as ensuring penalties are sufficient to be effective.

Combine Orders and Mediated Agreements

For small landlords, the recovery of damage costs can sometimes mean the difference of being able to re-offer the unit for rent, or not, following the eviction due to the capital cost burden.

The ultimate power of the LTB must be aligned throughout the mediation and hearings process – if the LTB has the power to reach a mediated settlement between the parties, it must also have the necessary authority to carry out the original intent of the mediated settlement, and enforce the necessary consequences on the parties so that the original resolution objective can be carried out.

The Small Landlord Consultation paper also proposed to allow the LTB to combine a conditional order with a subsequent eviction order to simplify enforcement.

Providing the Board with the ability to combine a conditional order and mediated agreements with a subsequent order is an appropriate approach that promotes efficiency, reduces costs, and reflects the intention of the justice system to bring about a swift remedy once a finding has been made. This administrative fix would be of significant value to small rental housing providers who may not have the legal capacity to know how to best navigate enforcing multiple orders for the same matter. It would also help to reduce the costs associated with seeking the remedy awarded to the housing provider.

Unauthorized Charges

Current and former tenants should have the same protections from unauthorized fees and charges as outlined in s. 134 (1) (a). However, there are many costs that a landlord should be able to pursue after a tenancy has ended.

The Small Landlord Consultation paper issued by the government proposed to allow landlords to pursue certain issues (e.g. rental arrears, utility arrears, damage) at the LTB for up to 12 months after a tenancy has ended.

Currently, the RTA provides for a tenant to be able to make an application to the LTB for up to a year after the tenancy has ended (RTA sections 29, 57, 98, 130). In addition, section 122 of the RTA provides a tenant the ability to make an application to the LTB for up to 2 years after a tenancy has ended. No such ability currently exists under the RTA for a housing provider to bring an application after the end of a tenancy, creating an imbalance between the parties in the role of the LTB in resolving disputes. The current provisions place a greater burden on the housing provider regarding access to fair and efficient justice.

One of the most prominent reasons for a housing provider to need to pursue a tenant for restitution following the end of a tenancy is to recover the cost of damage made to the unit following an eviction order issued by the LTB. Expecting the landlord to incur the higher cost of seeking a remedy at Small Claims Court only increases the burden on the housing provider even further, as they are already having to bear the cost of repairing the unit so it can be re-rented to a new tenant. Where an LTB order has already been issued providing for the payment of outstanding rent by the tenant, allowing the housing provider to pursue damages or outstanding utility costs at the LTB will expedite having the matter heard. It will also allow the LTB to combine the orders for simpler enforcement by the Sheriff.

The RTA should be amended so that housing providers are afforded the same rights as tenants. Such an amendment would provide a similar one-year period following the end of a tenancy for a housing provider to apply to the LTB to seek an appropriate remedy. This would help to balance the options available to both parties at the LTB.

As outlined in the Small Landlord Consultation paper, **FRPO recommends amending Bill 124 to allow a landlord to apply to the LTB for up to 12 months after a tenancy has ended for rental arrears, utility arrears, and damage caused by the tenant.**

CONCLUSION

Current rental housing levels are not meeting the needs of Ontarians across all income levels, not just those who are deemed low-income households.

FRPO and its members recognize that action may be needed, however the amendments contained in Bill 124 will not be successful in providing housing supply that families can afford. Rather it will have the opposite effect by negatively impacting rental housing supply.

Building more rental housing in Ontario will create more affordable housing. It is simple, if more supply comes into the market, rents will be lower.

The cost of building rental housing today is higher than in decades past—the cost of land, rising development charges and property taxes, energy, and the cost of materials to comply with new

building standards. Adding more disincentives to build will put at risk purpose built rental housing development.

It continues to be unrealistic to expect that government policies such as rent control and inclusionary zoning that keep rents artificially low will also then incent developers to make further investments in a market that offers insufficient investment returns.

FRPO remains committed to engaging with the provincial government on ways to achieve our shared goal of increasing the amount of affordable rental housing in Ontario, and to find approaches that are fair and will achieve housing affordability.