PROPOSALS TO ENCOURAGE SMALL LANDLORDS TO PROVIDE RENTAL HOUSING

INDUSTRY CONSULTATION RESPONSE

JUNE 30, 2016

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Federation of Rental-housing Providers of Ontario

Greater Toronto Apartment Association

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Eastern Ontario Landlord Organization

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OTTAWA - 1987

frpo
Federation of Rental-housing Providers of Ontario

20 Upjohn Rd., Suite 105
Toronto ON M3B 2V9
416-385-1100
1-877-688-1960
www.frpo.org

Scott Andison
President & CEO

t: (416) 385-1100 ext. 20
e: sandison@frpo.org

June 29, 2016

Residential and Commercial Tenancies Unit
Housing Policy Branch
Ministry of Housing
777 Bay Street, 14th Floor
Toronto ON M5G 2E5

Re Long-Term Affordable Housing Strategy Update
Response to Proposals to Encourage Small Landlords to Provide Rental Housing

On behalf of the coalition of industry associations representing the private sector rental housing sector in Ontario, we are pleased to provide our response to the government's consultation on ways to encourage the creation of new rental units in Ontario.

There is mounting evidence that additional rental housing supply is needed in Ontario. Changing household patterns, such as smaller household sizes and increased demand to live in urban areas are among them. The relative cost of purchasing a home compared to renting is now at an all-time high, further contributing to long-term growth in rental housing demand in Ontario. After declining and stagnating rates of net immigration levels for the past decade, the number of new Canadians settling in Ontario is forecast to rise, bringing with it an additional wave of rental housing demand.

Housing affordability cannot be ultimately achieved by any one stakeholder—it has to be the industry, the community, and government working together. That is why we welcome this latest approach by the provincial government to explore new ways to encourage the development of new rental supply from a variety of providers such as small landlords and homeowners.

We hope the practical perspective we have provided in our response will assist the government in being able to move quickly in implementing these much needed changes that will provide more choice and opportunity for Ontarians looking for rental housing. As always, we are available to provide any additional information or clarification you might require as you finalize your review process.

Sincerely,

Scott Andison
President & CEO

Coalition of industry associations:
Federation of Rental-housing Providers of Ontario (FRPO)
Greater Toronto Apartment Association (GTAA)
London Property Management Association (LPMA)
Hamilton and District Apartment Association (HDAA)
Eastern Ontario Landlords Association (EOLO)
Ottawa Regional Landlord Association

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INTRODUCTION

The private sector rental housing industry through our industry associations welcomes the opportunity to comment on the Province of Ontario's consultation paper targeted at small providers.

On March 14, 2016, the Province of Ontario announced the details of the update to the Long-Term Affordable Housing Strategy (LTAHS). As part of these initiatives, changes to the *Residential Tenancies Act, 2006* (RTA) are being considered to encourage small rental housing providers and private homeowners to participate in the rental housing market.

CMHC data confirms that over the last 15 years, there has been a downward trend in new rental housing supply being added to the market. In fact, current CMHC data reveals that the average demand for new rental housing exceeds 18,000 units annually, while there are less than 5,000 units being added to the inventory during that same time period. This deficit continues to compound every year, leaving tenants with fewer choices, and unable to find the rental housing they need.

Single-person households are growing. Home ownership costs are increasing. Both these trends are increasing demand, while vacancy rates are declining. Ontario's aging rental stock is not adequate to meet this increased demand. While private-sector construction of apartment buildings is at its highest level since 1993, the need for additional supply is necessary to meet the needs of Ontario residents in the future.

ONTARIO
37% of Canadian households
39% of Canadian population
30% of Ontario households rent
2.6% avg provincial vacancy rate
$1,200 avg monthly rent (2 bdrm)

While this will require additional construction as an ultimate long-term solution, there are things that can be done now to begin to close this gap between growing demand and stagnant supply. That is why as an industry we are encouraged that this latest initiative by the government to identify and implement changes to encourage home owners to enter the market by offering rental apartments in their home, or to encourage small investors to expand their portfolios to include more units for rent.

The proposed changes we have outlined in our response will help to bring needed balance and fairness to the current process, and encourage a more positive environment that will support the creation of more rental units. We firmly believe that more rental housing creates affordable housing, thereby increasing choice, quality, and availability of housing to meet the needs of Ontarians.

We do caution however that as long as current annual rent increases are held artificially below the costs faced by rental housing providers, these changes will have limited positive impact to encourage broader participation in the market and providing more rental units.

The remainder of this document contains our response and advice on the policy options set out in the government's consultation paper.

SUMMARY OF PROPOSALS SET OUT IN LTAHS CONSULTATION PAPER TARGETED AT SMALL LANDLORDS

PART 1: Encourage Small Landlords to Provide Rental Housing

Section 1 – Increasing access to Landlord and Tenant Board remedies

1.1 PROPOSAL—Allow landlords to pursue unpaid utility arrears at the Landlord and Tenant Board (LTB) during tenancy	
ISSUE DESCRIPTION Section 138 of the *RTA* states that where a tenant is obligated to pay a portion of the cost of utilities each month, the cost of the utilities does not fall within the definition of "rent". The LTB has sole jurisdiction to hear matters concerning the non-payment of "rent", and the Act states that the matter of non-payment of utilities must be dealt with by the courts. This creates an unnecessary onus for a housing provider to seek to recover the outstanding amounts through another administrative process, namely Small Claims Court. Additionally, Section 398 of the *Municipal Act* allows a municipality to add the cost of any outstanding utility bills owed by the tenant to the tax account of the property owner, namely the housing provider. This is further exacerbated by the housing provider also being charged for any disconnect and subsequent connect fees for the utility. Where the rental arrangement between the housing provider and the tenant involves the tenant paying directly for the cost of utilities, it would only be reasonable that any dispute involving any element of the cost of housing (which would include utility costs) that it be dealt with by a single adjudicative body, namely the LTB. Allowing the housing provider to seek the appropriate remedy with the LTB would provide a fair and consistent legal forum for all parties involved and be the most expeditious and cost effective manner to resolve the issue.	
Position On Proposal SUPPORT	Both the *Residential Tenancies Act* and the *Municipal Act* should be amended to allow housing providers to recover outstanding utility costs, including any related fees and charges such as disconnection/re-connection fees and interest charges from tenants at the Landlord and Tenant Board (LTB), and the LTB should retain jurisdiction for recovery of rent and utility charges (and related fees) for up to one year after the tenancy ends. Section 168 of the RTA should also be amended so that the cost of utilities would fall within the definition of rent where a tenant pays a portion of the utilities.
1. Should landlords be allowed to seek remedies for unpaid utility arrears at the LTB?	Yes. Requiring landlords to seek remedies at Small Claims Court duplicates and delays the process.
2. If yes, what remedies should be available to landlords (e.g. repayment of utility arrears, termination of tenancy?	Remedies should include repayment of utility arrears and termination of tenancy.

3. In seeking repayment of utility arrears, should the landlord be compensated for other utility charges (e.g. service fees, connection fees, late payment?	The landlord should be compensated for any costs that the landlord has incurred as a result of the non-payment of utilities. In addition to the repayment of the utility arrears, these costs should include: service fees, disconnection and reconnection fees, and late payment fees.

1.2 PROPOSAL—Explore whether 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

ISSUE DESCRIPTION

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 on the role of the LTB in resolving disputes. The current provisions establish 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 damage costs or outstanding utility costs at the LTB may help expedite having the matter heard so as to combine the Orders for enforcement with the Sheriff or an alternative service provider.

Position On Proposal	The RTA should be amended so that housing providers are afforded the same rights as tenants. This amendment will 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. Where a housing provider has already received an Order from the LTB for the payment of outstanding rent by the tenant, any subsequent application to the LTB following the end of that same tenancy should be expedited so that a housing provider is able to combine the enforcement of the multiple Orders in a single application with the Sheriff or alternative service provider (if available). This would help to balance the options available to both parties at the LTB. With the implementation of Bill 132 which allows a shorter notice period in certain cases, it is important to allow housing providers to pursue issues after a tenancy has ended.
SUPPORT	

4. Should landlords be allowed to apply to the LTB after a tenancy has ended? If yes, for what issues should landlords be allowed to apply?	Yes. A landlord should be able to apply to the LTB after a tenancy has ended for rental arrears, utility arrears, and damage caused by the tenant (not wear and tear). Damage may be caused after the final inspection, for example while the tenant is moving out. This change would mirror the current rules for tenants who may seek remedy from the LTB for up to one year following a tenancy.
5. There may be barriers that limit the effectiveness of post-tenancy applications (e.g. serving a notice to a former tenant who has not left any contact information, ensuring former tenant participation at hearings, enforcing orders). How can these obstacles be addressed?	The requirements should mirror the current requirements of Small Claims Court. If new contact information has not been provided, then application notices should be sent to the last known address. The *Courts of Justice Act*, R.S.O. 1990, c. C.43, *O. Reg. 258/98 Rules of the Small Claims Court,* Section 8.07(1) stipulates that a document served by mail shall be sent to the last address of the person or the person's representative this is (a) on file with the court or (b) known to the sender. Tenants may not provide their former landlord with new contact information, however, they most often forward their mail through Canada Post. The process should not be stalled or delayed as a result of the landlord not having a new mailing address.

1.3 PROPOSAL—Allow landlords to apply to the LTB to resolve landlord-tenant disputes without seeking to terminate the tenancy

ISSUE DESCRIPTION

Currently, the only remedy available to housing providers under the RTA (sections 59-67) is terminating the tenancy. Many housing providers, especially smaller housing providers, do not want to evict a tenant from their home they simply want the issue/conflict resolved or the behaviour to change. In many cases, it is a dispute between tenants for complaints such as interfering with reasonable enjoyment. If an option were available, such as mediation or a consent order, many housing providers would likely choose this process.

Position On Proposal	The use of an application process with seeking to terminate a tenancy cannot be mandatory. Choosing this approach should be an option available in addition to the current remedies available in the RTA.
SUPPORT	Providing landlords with an opportunity to apply to the LTB to resolve disputes with tenants, or between tenants, without having to give a notice of termination could be beneficial. For instance, if neighbouring tenants are each complaining to their landlord about the others' bad behaviour, the landlord will often need to give notices of termination to both tenants even if they do not want either tenant to lose their housing. It would be beneficial to bring such a case to the LTB without the threat of either tenant losing their housing. For housing providers to be willing to resolve issues using this approach, if the order does not change the behavior and the issue persists, the housing

	provider cannot be forced back to the beginning of the process. Participating in the application with no notice or termination approach should be recognized and considered at a following LTB hearing if it related to the same unresolved issue (similar in principle to filing an N5). In order to be successful, the resolution reached would need to have an enforcement mechanism. For instance, if a tenant agrees or is ordered to cease offensive behaviour in an application to resolve disputes without seeking to terminate the tenancy, and subsequently continues the offensive behaviour, the landlord ought to be able to proceed with an eviction application due to that breach. That could be accomplished by making provisions similar to section 68 of the Act.
6. What types of conflicts/issues could be addressed without serving a termination notice?	The opportunity for the landlord to seek the assistance of the LTB to resolve disputes between the landlord and a tenant, or different tenants, should be an available alternative. Types of conflicts include questions as to whether specific behaviour of a tenant ought to be considered a substantial interference or not. For more serious issues with significant financial implications or safety concerns the housing provide would likely choose the existing remedies in the Act.
7. Many of these applications could likely be resolved by mediation or consent orders. Do you think this would be an effective process to resolve landlord and tenant disputes?	The option of an application process without a termination notice could be an effective process as long as it is in addition to applications after N5s and N6s (and not a replacement).

Section 2 – Making processes more fair

2.1 PROPOSAL – Require tenants to disclose any issues that they intend to raise at rental arrears eviction hearings to the landlord prior to the hearing

ISSUE DESCRIPTION

Section 82 of the RTA allows a tenant to raise any issue at a rent arrears hearing that they might otherwise have been able to raise had they filed a paper application and paid the required fee.

The LTB adjudicator is then required to hear the "application" as if it had been filed. This provision treats housing providers differently than participants in any other Ontario legal proceedings: in all other legal proceedings that we are aware of, those facing accusations in the justice system are allowed to know the case they are to face. The section also treats housing providers differently from tenants.

Tenants should have the right to raise their own issues at a hearing, however the problem lies with the current practice of being able to do so without having given the landlord any notice and without providing disclosure and without advising the Board of their intention. The result is often an adjournment with both the rent matter and the tenant's un-written claim returning at a later date. Advanced disclosure by tenants would in no way prejudice their case.

The adjournment is caused either by the landlord not being prepared to respond to these newly disclosed allegations, or by the adjudicator presiding over the hearing docket not having enough time to hear the tenant claims which take considerably more time.

But in order to schedule time for a tenant application tied to the original L1, the Board needs to schedule an hour minimum, if not more, resulting in a significant delay since the return date is often 2 months away.

This routine practice plays havoc with Board scheduling practices and causes significant delay in due process. As well, the need for a second hearing increases legal costs and substantial amount in lost rent due to the delay, none of these additional costs are borne by the tenant. Even if the tenant's claims are frivolous or are done as a delay tactic, the tenant faces no costs or consequences.

Position On Proposal SUPPORT	Housing providers must provide 10 days' notice of the hearing to the tenant, including notice of the issues they intend to raise. The housing provider then limited at the hearing to only those issues identified in their application. To ensure fairness and balance, tenants should also be required to provide notice to the LTB and housing provider of any issues they wish to raise at the LTB hearing 5 days before the LTB hearing date. This will allow all parties to be aware of the issues to be raised and give them an opportunity to be prepared to respond to the issues at the hearing. Amending the RTA to require this notification will ensure fairness and will significantly reduce delays. Instead of being surprised by an issue on the date of the hearing and needing an adjournment to gather the necessary evidence to respond, all issues can be heard and addressed at the one hearing.
8. Do you think this proposal will make hearing processes more fair, equitable	This proposal will definitely make the process more fair, equitable and productive. Enabling housing providers to have time to prepare, just as tenants currently do, in advance of the hearing to respond to any tenant issues on the date of the hearing rather than needing to request an adjournment.

and productive?	This will significantly reduce unnecessary delays and costs (legal costs and lost rent) borne by the housing provider. For small landlords these costs have an even more significant negative financial implications.
9. How long before a hearing should a tenant be required to disclose issues they plan to raise at the hearing?	Currently, the housing provider files an N4 for non-payment of rent and is then required to wait an additional 14 days until they can issue an L1 and apply to the LTB. Requiring tenants to disclose issues they plan to raise 5 days (minimum) in advance of the hearing date would provide at least limited time for housing providers to prepare. Tenants should respond by completing a new tenant dispute form that would indicate they intend to dispute the application as well as the issues they wish to raise at the hearing. This proposal should also allow for default judgment applications where the tenant does not dispute the application. To ensure fairness, the tenant should have the opportunity to file a motion to have the judgment set aside and a hearing date set. There should be no test for this motion, it would immediately set aside the judgment and automatically require a hearing date be scheduled.
10. With respect to this proposal, are there any other considerations to ensure that tenants continue to have fair access to justice?	We recommend that the LTB review and identify appropriate opportunities to enhance the information and instructional materials provided to all applicants and defendants with respect to minimum timelines for submission of all materials and motions. With appropriate disclosure and explanation, tenants would be aware of the opportunity and requirement to submit motions by the minimal time requirements and assist in making the hearings process efficient and effective for all parties. Any issues that the tenant wishes to raise at the hearing should be known by the tenant in advance of the hearing date. Therefore it would not be any added burden to provide 5 days notice of the details of the issue.

2.2 PROPOSAL – Clarify that only motions that indicate the full amount was paid will be accepted and treated as a "stay" of the eviction order

ISSUE DESCRIPTION

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 is not the intended outcome of the current legislation and related Board rules.

Position On Proposal	
SUPPORT	To ensure stays are only granted where appropriate, clarification should be provided to all parties, including the Sheriff, that the only trigger that would stay the original eviction order is a notice from the LTB confirming that the full amount has been paid. The LTB process and related forms should be updated to clarify that only after full payment of outstanding rental arrears are paid to the tribunal would a motion to stay the original eviction order proceed.

2.3 PROPOSAL – Explore whether any changes should be made to the process for appealing decisions of the Landlord and Tenant Board to the Divisional Court

ISSUE DESCRIPTION

Rental housing providers support the existence of a legitimate appeal mechanism to ensure that justice is properly determined and administered. However, in some cases the current system enables some tenants to use the appeal process to remain in the rental unit and continue to not pay rent to the housing provider.

In recent Divisional Court decisions (including *D'Amico v. Hitti, 2012 ONSC 4467*, and *Eldebron Holdings Limited v. Mason, 2016 ONSC 2544*) judges have called on the Provincial government to change the process for appealing LTB decisions to the Divisional Court to address the practice of using the appeals process as a method of delay. These judges have suggested that leave to appeal be obtained before appeals can be brought and stays of eviction imposed.

To illustrate, here is one example that began in April of 2013 in a hearing at the Landlord and Tenant Board for failure to pay rent, and was not resolved until June 10, 2014 after the Divisional Court dismissed the matter for lack of merit, a total of 421 days. The initial application to the LTB was for $2,217 in outstanding rent, plus $25,000 in legal costs to the rental housing provider. The total amount of costs awarded to the housing provider by the court was a mere $2,500.

Unfortunately this is not a unique or isolated case – these situations happen quite often, and the vast majority of cases are dismissed by the Court when the tenant attempts to retry the original case.

CASE STUDY *SAIDA SABRIE v. STARLIGHT APARTMENTS*	
Failure to pay rent. Amount of rent owed to landlord	$2,127
First hearing scheduled April 8, 2013	ADJOURNED
Rescheduled hearing set for June 7, 2013	ADJOURNED
Rescheduled again and heard on August 14, 2013. No further adjournments granted	**ORDER ISSUED**
Tribunal issued order to pay arrears or move out	AUGUST 26, 2013
Tenant ignored order, appealed to Divisional Court *(Judicial Review)*	LTB ORDER STAYED
Divisional Court hearing scheduled and heard	JUNE 10, 2014
Court found no error of law, applicant's case had no merit	**LTB ORDER CONFIRMED**
Total landlord costs incurred: $25,000. Total amount awarded	$2,500

129 days

292 days

421 days

Position On Proposal SUPPORT	It is our recommendation that leave to appeal any LTB decision ought to be required. In addition, when the LTB issues an eviction order due to non-payment of rent, that where a tenant appeals the LTB decision, the payment of rental arrears must be paid to the court upon filing the appeal and ongoing rent must be paid and held by the court for the duration of the appeal, failing which the stay of the eviction order ought to be lifted. This would ensure that the appeal process is not seen as a method to delay payment of amounts owed. Where an appeal is argued successfully by the tenant and the court overturns the LTB order, the matter should be re-heard by the LTB on a priority basis, or immediately implement any other binding direction from the court on the parties. The rental housing provider would be expected to immediately comply with any finding or direction issued by the court.
11. What information do you have available or are you aware of with respect to the scope of the concern that has been raised, including the number of tenants involved and the number of landlords impacted annually?	The information we have is anecdotal, provided by rental housing providers who express their frustration when tenants file an appeal which allows them to remain in the unit for a year or more after an LTB order has been issued for eviction. The process is costly for rental housing providers, and compounds the problem of rent not being paid, or a continuation of the behaviour that is detrimental to the enjoyment of the rental community by other tenants who call that community home. According to the LTB's most recent published statistics, 90% of the applications that are filed with the LTB are from rental housing providers seeking resolution to a tenant issue, and 90% of those applications have to deal with failure to pay rent, or failure of the tenant to comply with some other requirement including failure to comply with a mediated settlement, or failure to move out after the tenant giving notice. The statistics support that the vast majority of applications are due to the failure of the tenant to comply with the terms of the original lease such as paying rent. Given this evidence, it is unreasonable to ask the rental housing provider to endure further financial hardships in cases where the appeal process may be used to delay payment of rent and extend the amount of time the tenant can remain in the unit without paying rent. It is also unreasonable to ask other tenants, the housing provider, or third parties to continue to endure problematic behaviour. For a small housing provider, or someone who is renting out an apartment in their home the costs of responding to an appeal, and the loss of income waiting for an appeal to be heard could be the difference between the property owner being able to pay the bills, or risk losing the property altogether for not being able to pay the monthly mortgage amount. The statistics from the Attorney General on appeals to the Divisional Court by tenants for LTB orders should reveal the vast majority of the cases are dismissed for lack of merit. Our members tell us that in almost all cases, the tenant or their agent attempts to "retry" the original case that was heard by the LTB. This is not the intention of the appeals process for LTB orders – an appeal is to be based solely on a matter of law, and not intended to introduce additional facts not originally argued at the LTB hearing.

12. What changes could be made to the appeal process to address the concern raised?	The option to appeal an LTB order should be preserved for all parties. However, rather than allowing an automatic stay of the eviction order upon filing a Notice of Appeal, leave to appeal ought to be required. A stay of an eviction order should only be granted if if the grounds of appeal appear to have merit. In the case of an appeal being filed, when there is a situation of rental arrears, the outstanding arrears should be paid to the court at the time the appeal is filed and held by the court for the duration of the appeal. If the final outcome of the appeals process results in the original LTB order being overturned, then the LTB should scheduled the re-hearing on a priority basis, and all parties need to be prepared to proceed forthwith. Legislative changes would likely be required to the *Statutory Powers Procedure Act*, the *Rules of Civil Procedures*, as well as the *Residential Tenancies Act*.
13. Are there any changes, other than changes to the appeal process, which could be made to address the issue in a targeted or more proactive way?	Any party to an LTB order should have to seek leave to appeal the matter to the Divisional Court before the appeal can be filed. A merits hearing would help to reduce the number of appeals that proceed that lack sufficient merit.

Section 3 – New protections for landlords and tenants

3.1 PROPOSAL – Explore whether to allow landlords to terminate a tenancy based on violation of no-smoking provisions in tenancy agreements

ISSUE DESCRIPTION

The current legislation is unclear about allowing rental housing providers to evict tenants for a breach of a no-smoking provision in a lease agreement. Where other tenants in the building complain about the negative effects of second-hand cigarette smoke, the housing provider has a duty to undertake all available steps to mitigate the effects of the smoking on other tenants.

For small housing providers, this can involve a substantial capital cost where it involves replacing doors, installing alternate duct work or filters, or even attempting to relocate one or more tenants to another unit where possible.

There are two issues that require examination regarding smoking:

1. Where an existing tenant has lived in the rental unit for some time, and the original lease agreement did not stipulate that smoking was not permitted, where possible the housing provider could attempt to accommodate the need to protect all tenants, provided the effort and related cost is reasonable. This could include providing an alternate location for the tenant to smoke, similar to the policies enacted in all commercial locations where smoking is not allowed. However, in the case where other tenants, including a live-in owner of the building, is negatively affected or suffers harm due to allergies, the housing provider must be able to take steps to either have the tenant who smokes cease smoking in the unit or common areas of the property, or require the tenant to vacate the unit through an eviction order.

2. In keeping with municipal, provincial, and federal government actions, the move to provide smoke-free facilities should also be extended to multi-family communities where it is advertised that the building is smoke free. For many families with allergies or other health issues related to cigarette smoke, seeking out a non-smoking rental unit could be critical to their well-being. In the case where a building is clearly presented to prospective tenants as being smoke free, and the lease agreement clearly stipulates that smoking, cigarettes or otherwise, is not permitted, should any tenant or their guests violate this provision, then this should be deemed grounds for immediate sanctions or eviction.

In either circumstance, if smoking causes damage to the unit, the tenant should be responsible for any damage that is caused by smoking.

Position On Proposal	
SUPPORT	Housing providers, particularly smaller operators, require additional support to deal with smoking and how it can negatively impact on the enjoyment of rental communities by its residents. All levels of governments have committed publicly and have made substantial investments in smoking cessation strategies and actions. Rental housing providers have been taking similar steps in alignment with this social objective. The current rules and directives for the LTB present various barriers for housing providers to respect the wishes of resident majorities for smoke-free living environments. In addition, where rental properties are advertised as offering smoke free environments for prospective tenants, and lease agreements stipulate as such, then those tenants to elect to violate the terms of the lease agreement should be held to account and not be permitted to

	infringe on the rights of others. Where sitting tenants who have been smoking in their units for some time are not infringing on the quality of life of other residents, the housing provider may not need to take any action. However should residents complain about the harmful effects of smoking later on, and where the best efforts of the housing provider cannot adequately resolve the matter, the LTB must be encouraged to support the eviction of the smoking tenant on the basis that the needs of the many outweigh those of the few.
14. Should landlords be able to terminate a tenancy and evict a tenant based on violation of a no-smoking provision in a tenancy agreement?	Yes. If the tenant accepted the stipulation of no smoking (or allowing guests to smoke) in the unit or in the common areas of the building, and then violates this provision, this should be treated in a similar manner to seeking an eviction for non-payment of rent, but requiring the tenant to immediately cease and desist the smoking activity pending eviction. This should be treated as a violation of a provision in the lease agreement, and there must be consequences for the tenant for violating this provision, in a similar manner as there are consequences for a housing provider if they breach a condition or duty of care owed to the tenant.
15. Should no-smoking provisions apply to all types of smoking (e.g. tobacco, e-cigarettes)? What, if any, exceptions should apply?	Absolutely yes. It would not be reasonable to attempt to distinguish between more or less harmful results related to smoking. This would include the smoking of marijuana, either under the current legislation which deems it an illegal act, or under any future legislative environment where it may be decriminalized in some or all cases. It might be possible in some cases, depending on the particular building, to accommodate a tenant who has a legal medical prescription to administer marijuana for medical purposes. The LTB must however recognize that this may not be possible in all cases, such as a basement apartment in someone's home. And in no circumstance regarding marijuana should a tenant ever be granted the ability to grow marijuana for their own use in a rental unit—this would represent a significant risk to the owner and other tenants that could not be mitigated under any circumstances.
16. Should the RTA specify where no-smoking provisions can apply (e.g. indoor spaces, balconies, within certain distance from residential complex)?	If a lease agreement contains a "no smoking" provision while on the property to respect a "smoke free" community, there should be no reason for the RTA to define allowable spaces. If the property owner is inclined to allow smoking in certain locations on the property, then the lease agreement itself should be deemed the single authority on permissive smoking. It is our view that attempting to define circumstances in legislation or regulation may lead to unnecessary confusion, and potentially restricts the rights of tenants who seek out non-smoking communities either by choice or for medial reasons such as allergies. There are many examples of existing municipal by-laws that stipulate smoking is not permitted within 9 meters of the entrance to a building – this appears to be one of the most standard provisions posted on building entrances.

	Embedding similar language in a lease agreement and related reminders posted on the building would be sufficient for the LTB to adjudicate any applications that contend a tenant or their guest has violated a condition of the tenancy agreement.

3.2 PROPOSAL – Explore whether to allow landlords to prohibit pets in tenancy agreements in small buildings where the landlord also resides

ISSUE DESCRIPTION

Currently, section 14 of the RTA voids any provision in a lease that prohibits pets in a rental unit. A housing provider can only terminate a tenancy if a pet causes damage to the property, impairs safety, or interferes with reasonable enjoyment of another tenant.

Many advocate that owning a pet is central to reasonable enjoyment, however there are many tenants who say that living in a pet-free environment would be central to their reasonable enjoyment for reasons of allergic reactions, noise, and a fear of certain types of animals.

Position On Proposal	Housing providers should be able to create pet-free environments by prohibiting the keeping of pets. Many tenants would also prefer to choose a home that is a pet-free.
SUPPORT	Allergies, pet odours, and noise are serious concerns for both tenants and housing providers. Damage and the resulting costs are of additional concern to housing providers. Enabling the prohibition of pets and creating pet-free rental housing choices would reduce a number of the challenges both housing providers and tenants face. When issues of allergies or noise are raised with a housing provider they are required to mitigate the issue at a cost to the housing provider. Also, if issues cannot be resolved the lengthy and costly LTB process is the only option. Allowing pet-free environments provides everyone an ability to choose the type of home they would prefer. Housing providers recognize that service animals could not be restricted. Regulations under the *Accessibility for Ontarians with Disabilities Act* (AODA) defines how service animals are defined.
17. Should landlords be able to prohibit the keeping of pets in small buildings where the landlord also resides?	Yes. It is very important for small housing providers to require pet-free environments, especially when the landlord also resides on the premises. When renting a unit within a smaller building or home issues about allergies, pet odours, noise, and damage/resulting costs would negatively impact a small housing provider's decision to enter the rental housing market. Although this consultation is specific to small landlords, the industry feels strongly that allowing all housing providers the ability to provide pet-free rental accommodation is required. Many tenants, with allergies, fear of certain

	animals, or noise sensitivities, would prefer a pet-free environment and would like the ability to choose.
18. Some tenants may feel that the current right to keep a pet is central to their reasonable enjoyment. Do you have any comments on this?	Whereas some tenants feel keeping a pet is central to their reasonable enjoyment, other tenants feel it is central to their reasonable enjoyment to live in a pet-free environment. Providing tenants the ability to choose a pet-welcome or pet-free environment would allow everyone reasonable enjoyment.

3.3 PROPOSAL – Explore opportunities to protect Ontario tenants from the potential health-related impacts of radon

ISSUE DESCRIPTION

Radon is a growing concern for homeowners. Health Canada has issued a voluntary guideline for radon in indoor air. As governments contemplate regulatory changes regarding radon as a result of growing concern and new scientific evidence, both homeowners and small landlords (those who rent homes or units within their home) should face the same requirements. Currently radon testing kits are relatively inexpensive, however remediation can be expensive. Health Canada estimates remediation costs can be from $1,500-$3,000 but sometimes significantly more than that depending on the building. Depending on the extent of remediation required, it may be cost prohibitive for those considering entering the rental housing market as a small landlord.

Position On Proposal UNCLEAR	Any regulatory requirements specifically related to radon should be the same for privately owned/occupied homes and rental property units. If action is required to address health related concerns it should not matter if you are a home owner or tenant. In considering approaches to radon measurement and mediation, the costs associated should be considered. Implementing an approach with significant financial implications would deter home owners from entering the rental housing market.
19. What approaches could be considered regarding radon in rental housing, particularly in basement apartments?	In developing an approach to radon, it is recommended that the same requirements that are developed for private home owners be applied to rental housing, such as basement apartment units. Radon testing kits are relatively inexpensive, however Health Canada notes that radon remediation costs vary from $1500-$3000. Understanding the requirements, and the costs, would be a deciding factor for small landlords considering renovations to their home or property to create rental units.

Section 4 – Business and operational efficiencies

4.1 PROPOSAL – Allow emailing of certain landlord and tenant notices, upon consent of both

ISSUE DESCRIPTION

Section 191 of the RTA sets out the means by which a notice may be provided, such as hand delivery, sending it by mail, placing it in a mail slot. All methods listed require a paper form of communication.

Electronic communication, specifically emailing and texting, is the primary method of communication for most people in both professional and personal environments today.

If a notice is provided by mail, 5 days must be added to all notice periods to allow for delivery time. This adds time and delay to the process and makes some notices very challenging, such as a 24 hour advance notice of entry, especially where the landlord is not located in a nearby location.

Position On Proposal SUPPORT	Electronic communication of notices under the RTA, upon consent of both parties should be allowed. Rather than taking a prescriptive approach and specifying the types of electronic communication allowed, it is recommended that any form of electronic communication be allowed as long as both parties agree. The agreement between parties to electronic communication, and the type of electronic communication, must be recognized by the the LTB. Neither party should be allowed to use the method of communication as a basis for argument at an LTB hearing. Evidence that the communication was provided and when should still be required.
20. What notices should landlords and tenants be allowed to deliver by email?	If both parties agree to communicate by email, then all notices should be allowed to be delivered by email.
21. Should other forms of electronic communication be considered for the delivery of notices (e.g. texting)?	If both parties agree to communicate using an alternate form of electronic communication, then all notices should be allowed to to be delivered using the agreed format. 24 hour notice of entry is a specific example where text messaging should be allowed.

4.2 PROPOSAL – Further clarify provisions for substantial compliance with the RTA with respect to the content of certain forms, notices and other documents

ISSUE DESCRIPTION

There should be no disagreement amongst the parties that it is in everyone's best interest for the board to be able to resolve matters in the most expeditious manner possible. However, there are some limitations in the current legislation (RTA) that ties the hands of Board Members in meeting that objective.

Once such limitation is section 212 of the Act, which states: "Substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient." Limiting the Board's scope only to forms, notices and documents may not provide sufficient discretion to confirm compliance with the Act, and may require inconsistent interpretation of the scope. What is required is the ability for broader interpretation of what was expected by the Act, not simply what may be stipulated in a form.

Position On Proposal SUPPORT	Section 212 of the RTA should be amended to read: "Substantial compliance with this Act respecting the requirements of the Act". Further, this section should have inserted a new subsection (2) to read: "A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the board may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute." This wording is taken from section 2.01 of Regulation 194 - Rules of Civil Procedure under the *Courts of Justice Act*.
22. In what instances can non-compliance with RTA-related documentation requirements cause potential delays? Provide specific examples, if possible.	The real question a board member should be concerned with was "Did the parties understand what they were giving to each other" with respect to documentation. Where there are often problems is how individual Board members may interpret their powers to determine if there was substantial compliance. Broadening the scope of section 212 to refer to substantial compliance with the requirements of the Act, rather that particular forms or documents would go a long way in providing additional needed discretion by the board member to ensure the efficient dispensing of justice in a timely manner.
23. What approaches could be considered to address these concerns?	Amending section 212 of the RTA as follows: 212. (1) Substantial compliance with this Act respecting the requirement of the Act. (2) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the board may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute.

4.3 PROPOSAL – Allow landlords and tenants to file unsworn statements in support of applications and motions, rather than affidavits

ISSUE DESCRIPTION

Under the RTA, several documents required as part of an LTB hearing must be accompanied by an affidavit. The need for affidavits is important to demonstrate the importance and legal responsibility of both parties to provide truthful information to the LTB.

Many other court proceedings require an affidavit on evidence under consideration.

It is important to ensure that those appearing at the LTB understand that it is an offence to provide false or misleading information and the penalties associated with the offence. Consistent enforcement of the offence provisions of the RTA is also an important deterrent.

Position On Proposal DO NOT SUPPORT	Do not allow unsworn statements in the place of affidavits. 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. It is our position that the enforcement of unsworn statements will not be regarded 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.
24. Do you have any concerns with a change to the LTB process that would allow unsworn statements to be filed in support of applications and motions, rather than affidavits?	Unsworn statements do not undergo the same scrutiny of affidavits. Swearing an affidavit is a formal process that requires a sworn statement of truth. Unsworn statements are not enforceable under the offence and penalty provisions of the RTA. Even if the offence provisions were amended statements would not be considered with the same weight as an affidavit. Applications and forms need to more clearly state upfront the offences and penalties under the RTA. Ensuring allegations are investigated and consistently enforced are key to demonstrating the importance of this requirement.
25. Is there another method of supporting the truth of the information filed?	Requiring that all parties and witnesses appearing at an LTB hearing are sworn/affirmed would demonstrate to participants the importance of providing truthful information. Investigation of allegations and consistent enforcement of penalties would act as a deterrent. A review of the penalties is recommended to ensure the penalties adequately reflect the seriousness of the significant financial implications that result from the provision of false information. Regarding motions to void an eviction order where the tenant has paid the amount owing to the landlord if the outstanding arrears are paid to directly to the tribunal then the requirement for an affidavit would be moot (see response to proposal 2.2 which recommends that a tenant be required to provide

	payment directly to the LTB in order to stay an eviction order).

4.4 PROPOSAL – Allow the LTB to combine a conditional order with a subsequent eviction order to simplify enforcement

ISSUE DESCRIPTION

Where a tenant fails to comply with a conditional order issued by the LTB, and the housing provider is able to file a new application on the basis of this non-compliance, there can be an unintended burden of having two separate orders to enforce on the tenant. This adds to the cost and complexity of enforcing the orders and seeking the remedies awarded to the housing provider.

Position On Proposal	Providing the Board with the ability to combine a conditional order 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.
SUPPORT	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.

4.5 PROPOSAL – Allow the LTB to include payments owing for damage from prior mediated agreements in eviction orders

ISSUE DESCRIPTION

This proposal would bring needed alignment in the ultimate enforcement of the terms of a mediated settlement which includes the tenant paying the cost of damage they have caused, and where the tenant fails to abide by the terms of the original mediated settlement.

The fact that the terms of a mediated settlement which includes payment for damages caused by the tenant cannot be enforced in a subsequent LTB order underscores a disconnect within the system itself. If a tenant agrees to a condition to bring about resolution of a matter, and then subsequently fails to comply with that mediated settlement condition, then the LTB must have the ability to enforce the original terms and require the tenant to comply.

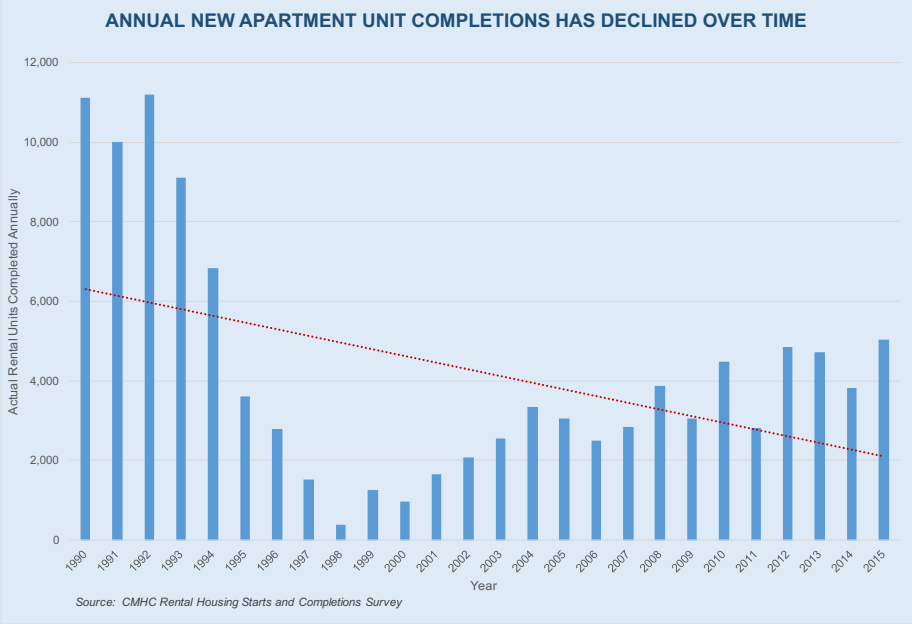
Position On Proposal	For small landlords, the recovery of damage costs can sometimes mean the difference of being able to re-offer the unit for rent, or not, following the eviction due to the capital cost burden.
SUPPORT	The ultimate power of the LTB must be aligned throughout the mediation and hearings 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 mediate settlement, and enforce the necessary consequences on the parties so that the original resolution objective can be carried out.
26. Do you have any comments on this proposal?	Section 78 (1) 2 (i) should be reviewed to ensure the LTB has the authority to include in an eviction order any past mediated agreement amounts owed to the housing provider.

PART 2: RENT INCREASE GUIDELINE REVIEW

PROPOSAL – Review the annual rent increase guideline formula as required by the *Residential Tenancies Amendment Act, 2012*, every four years

ISSUE DESCRIPTION

Rent control was first introduced in Ontario in 1975. Since that time, the development of new purpose-built rental housing in the province has dropped off significantly. The maintenance of this public policy for the last 41 years has been the primary contributor to the lack of available rental stock to meet the growing provincial demand. This situation has not changed in the last 15 years, despite government initiatives and policies intended to encourage the building of new rental housing.



What little new development is being done, including the introduction of rental units in existing buildings (such as an apartment in an existing owner-occupied home) is primarily being encouraged by the existence of two policies:

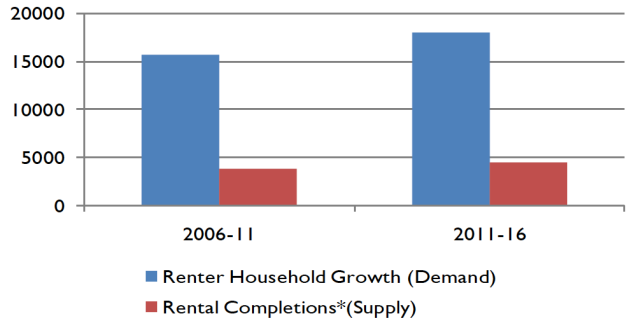
1. *Vacancy decontrol*—this policy provides rental housing providers with the assurance that upon turnover, the rent being charged can reflect current market conditions and actual costs being incurred by the rental housing provider to ensure they are able to comply with all existing laws and standards to ensure they can provide quality rental housing. The absence of this policy would severely limit the comfort level of any rental housing provider/owner that they will be able to cover their costs and maintain the asset in an acceptable state of repair.

2. *Post-1991 exemption*—this provision provides assurance to the builders of new rental housing that their development pro formas are not negatively affected by artificial caps placed on their revenues without similar caps placed on their costs to maintain and service the asset and provide quality rental housing.

It is essential that both of these provisions be maintained, otherwise it would trigger an immediate contraction in the completion of any new purpose-built rental properties in the province, and would dis-incent property owners from entering the residential rental property business.

Canada Mortgage and Housing Corporation (CMHC) reports that for the last decade, the demand for rental housing continues to outstrip supply. The gap only continues to grow, and results in tens of thousands of families in search of rental housing that has not yet been built. Current CMHC data reveals there is an annual supply gap in Ontario of over 13,000 rental units, and it is growing.

Rental demand continuing to outstrip supply in Ontario…*and it's getting worse*



Source: CMHC Forecast 2011-16, Statistics Canada
*Does not include condominiums completed and available for rent

While the government may not be willing to entertain eliminating the current rent control policies, there are currently two components of the current policy environment that are crippling the potential of new purpose-built rental housing being built, or convincing current property owners from making a portion of an existing building available for residential rental.

1. *The current CPI-only calculation on the annual rent increase guideline*

   The RTA current determines annual guideline increase rates (for buildings built before 1991) based solely on the Consumer Price Index (CPI) for all goods. The broad-based CPI, however, is a poor proxy for rental housing operating and maintenance costs. In fact, the CPI only covers approximately 9% of the costs related to the rental housing business.

   Between 2000 and 2015, the prescribed annual rent increase guideline has varied from a low of 0.7% to a high of 3.1%, with an overall base increase of 35.4% over the 15-year period. During the same period direct costs associated with rental housing operations went up substantially more: Energy costs—68.7%; Gasoline—69.7%; Services—40.7%.

   The highest guideline increase in Ontario in the last 15 years was in 2011 where the allowable increase was 3.1%. However in that same year, StatsCan reported that the change in energy costs was 11.3%; the change in gasoline costs was 21.8%; and the change in general goods was 3.5%. As long as this differential continues, there will be a disincentive for new rental units from coming online.

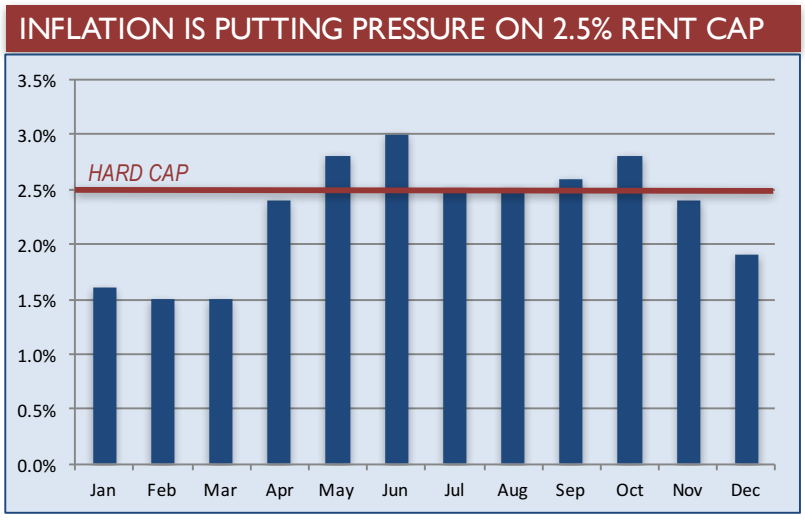
   The gap that exists between the real costs being incurred by rental housing providers, and the artificial cap that governs the rents they can charge, is a significant barrier to carry out maintenance and repairs, invest in quality improvements, or cover the cost of lost revenues incurred as a result of some tenants who fail to pay their rent.

In an effort to reflect the reality that the costs of rental housing are higher than those reported in the "All-items" CPI calculation, British Columbia implemented a "2% plus CPI" calculation to promote better quality rental housing operations and encourage new development in the province. While not perfect, it is a significant improvement to the Ontario calculation.

2. *The 2.5% rent cap introduced in 2012*

In 2012, the Ontario government introduced a 2.5% cap on annual increases in rent, despite the results of the prescribed annual rent increase guideline in any given year. This policy only further disconnects the operation of rental housing units from the reality of the economic environment in the province where costs to the rental housing provider rise at an unrestricted rate. The province has not provided any policy rationale or calculation as to how the 2.5% cap was determined.

In 2014 we were well on our way to a crisis in the market where even monthly changes in the CPI for all goods were exceeding the hard cap of 2.5%.



2014 AVERAGE CPI RATE
2.4%

The existence of the 2.5% hard cap, enshrined in legislation, sends a very negative message to the industry on the viability of operating rental housing in the province of Ontario. In particular, it acts as a significant economic disincentive to any potential small housing provider of making investments to offer rental housing units to families.

For small rental housing operators who are not able to invest in utility sub-metering equipment, either due to lack of available capital investment, or regulatory restrictions such as electrically-heated units, the rising costs of energy alone could dissuade property owners from entering the rental housing market for fear of losing the property due to sustained economic losses due to rent control.

Position On Proposal	The current annual rent increase guideline is an economic disincentive for attracting new entrants to the rental housing market, and is a significant barrier for existing rental housing providers to continue to maintain quality rental housing to Ontarians and comply with growing legislative requirements and building standards. We recommend adopting the same model as is currently in place in British Columbia which is "2% plus CPI" for the annual guideline increase. While not perfect, this would be a closer representation of the true nature of cost increases in the industry than the current "All goods" CPI calculation. This would reflect the significant investment that housing providers need to make in capital maintenance and repair each year, and will provide a means to keep buildings in an appropriate state of repair to reflect the rental housing quality that tenants expect. Furthermore, it is essential that the current 2.5% hard cap be removed from the RTA. The continued existence of this artificial hard cap will continue to act as one of the strongest economic disincentives for the development of new rental housing stock in the province, and will significantly hamper the ability of existing housing providers to maintain buildings in a good state of repair and comply with current legislation and building standards. The rental housing industry in Ontario represents $23.4 billion in annual GDP, and supports more than 162,000 good paying jobs across the province. It is essential that government policy affecting rent increases be structured to promote the building of much needed new rental housing in the province, and continue to support the economic conditions necessary to maintain a vibrant rental housing industry.
SIGNIFICANT CHANGE TO CURRENT POLICY REQUIRED	
29. Is the rent increase guideline formula fair and effective?	No. The current rent increase guideline does not reflect the true cost of rental housing operations. In fact, the Consumer Price Index (CPI) represents just 9% of the actual costs associated with rental housing. Added to that is the highly problematic 2.5% hard cap on annual rent increases regardless of the rate of cost increases in the economy. There remains no available policy rationale for the 2.5% hard cap to justify its implementation in 2012, that was done without consultation with the industry, or without apparent evidence to support its introduction. The current rent increase guideline must be retooled to better reflect the real cost changes that take place in the industry. It is recommended that Ontario adopt a similar formula used in British Columbia for their annual guideline increase calculation, which is 2% plus annual CPI.

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