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**For Information**

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**REPORT TITLE:** **Update on the Passage of *Bill 184, Protecting Tenants and Strengthening Community Housing Act, 2020* and Implications for the Region of Peel**

**FROM:** Janice Sheehy, Commissioner of Human Services  
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**OBJECTIVE**

To update Regional Council of the passage of *Bill 184 Protecting Tenants and Strengthening Community Housing Act, 2020*, and its potential implications on Region of Peel Housing Services.

**REPORT HIGHLIGHTS**

- This report is being provided to Regional Council with a summary of the changes created by *Bill 184 Protecting Tenants and Strengthening Community Housing Act, 2020*.
  - *Bill 184* amended the *Residential Tenancies Act, 2006*, the *Housing Services Act, 2011*, the *Ontario Mortgage and Housing Corporation Act* and the *Building Code Act, 1992*.
  - Although there are some amendments to legislation impacting the rental housing market that may offer benefits to tenants, landlords, community housing providers, and service managers, they also impact tenant rights as they relate to evictions and costs owed to landlords.
  - *Residential Tenancies Act* amendments that ease the evictions process, and the resumption of evictions in Ontario, may create increased risk to clients of Region of Peel Housing Services, and additional concerns arise when these changes are considered in the context of the ongoing COVID-19 pandemic.
  - Region of Peel Housing Services assists clients in keeping housing through evictions prevention related programs such as the housing stability fund.
  - The City of Toronto has directed its City Solicitor to commence a challenge to some of the legislation as well as to take action to seek a suspension of the effect of those provisions (the specific provisions to be challenged remain the subject of confidential report subject to solicitor client privilege and will not be known publicly until the pleadings in the challenge are filed).
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**DISCUSSION**

**1. Background**

*Bill 184 Protecting Tenants and Strengthening Community Housing Act* amended the *Residential Tenancies Act, 2006*, the *Housing Services Act, 2011*, the *Ontario Mortgage and Housing Corporation Act* and the *Building Code Act, 1992*.

## **Update on the Passage of *Bill 184, Protecting Tenants and Strengthening Community Housing Act, 2020* and Implications for the Region of Peel**

This report focuses on changes made by *Bill 184* to the *Residential Tenancies Act* (Section 2), in the context of a backlog of evictions and of the ongoing COVID-19 pandemic (Section 3).

The Government of Ontario has described the changes resulting from *Bill 184* as building on its Housing Supply Action Plan and its Community Housing Renewal Strategy. These wide-ranging amendments change the rental housing environment in Ontario and impact tenants, landlords, community housing providers, and service managers.

Nearly one in four households in Peel, numbering more than 100,000, are tenant households.

Examples of changes to the *Housing Services Act* include:

- Simplifying rent geared to income calculations and moving towards a needs-based system, and;
- Delisting community housing projects that have expired, and, keeping providers in the system at end of mortgage.

More information on changes to the *Housing Services Act*, including regulations related to the new provisions and still to be filed, will be brought to Regional Council in 2021.

Changes to the *Residential Tenancies Act* (RTA) impact both landlords and tenants. Changes that simplify Landlord and Tenant Board (LTB) processes could enhance operations of all landlords, including community housing providers. Many of these changes are intended to alleviate challenges encountered by small landlords. Examples of these changes include:

### **Changes Enhancing Certainty for Landlords**

- Improved ability to seek compensation through the LTB, including from previous tenants, with respect to such things as utility costs and damages to a rental unit within one year of a tenant vacating a unit;
- Clarity around the appropriate forum in which to recover utility arrears (now being the Landlord and Tenant Board); and,
- Certainty around rent collected, as tenants will have a maximum of one year to challenge an illegal rent increase, e.g. increase given without 90 days' notice.

Further, some changes could be beneficial for tenants such as:

### **Changes to the Requirements for Filing for Personal Use/Renovation Evictions**

- Increased penalties on landlords for wrongfully terminating a tenancy by improperly asserting reasons of (1) personal use, (2) a purchaser's personal use, or (3) demolition, conversion or substantial renovation ("Personal Use/Renovation Evictions");
- Requiring the filing of an affidavit by a Landlord in Personal Use/Renovation Evictions which identifies the reason for the termination as well as whether the Landlord has a history of filing for termination of tenancies (evictions) within the past two years for a unit under its ownership based on grounds of Personal Use/Renovation.

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### **Increased Penalties for Offences set out in the *Residential Tenancies Act***

- The maximum penalties for an offence have increased from \$100,000 maximum to \$250,000 maximum.

### **Consideration of Repayments Related to COVID Arrears**

- If an application to evict a tenant due to rentals arrears includes arrears which accrued from March 17, 2020 to a prescribed date (to be determined) then in determining whether to exercise its powers to delay or refuse to grant an eviction, the Board must consider whether the landlord has attempted to negotiate an agreement with the tenant including terms of payment for the tenant's arrears.

However, concern exists respecting some amendments that impact security of tenure. Some of these changes are intended to streamline evictions, and the collection of arrears from tenants, but also appear to have been enacted to lessen the demand on the Landlord and Tenant Board and reduce delays in eviction proceedings. In some cases, these provisions may benefit landlords, including community housing providers but in doing so may impact marginalized and vulnerable tenants by facilitating their eviction. As a result, there could be greater demand on Region of Peel Housing Services. These changes include:

### **Funds Collected Illegally Deemed Lawful**

- Allowing an unlawful rent increase to become legally enforceable if is not challenged by the tenant within a year (*RTA* s.136);

### **Payment Agreements with *ex parte* (without notice) Enforcement Provisions**

- Permitting payment agreements for the collection of rent arrears entered prior to the parties attending for a hearing to be enforceable upon default by means of an application made by the landlord to the Landlord and Tenant Board without notice to the Tenant (*RTA* s. 206)
- Of note, previously the *RTA* allowed parties to consent to repayment agreements without a hearing, but these could not contain a term which allowed a hearing without notice to seek an order to evict a tenant who defaulted on such an agreement.
- This provision may accordingly result in tenants being more frequently evicted under a process where notice to the tenant is not required following a default by the tenant on an agreement to pay arrears, and may result in tenants more frequently entering into payment agreements for the collection of rent arrears without first having had an opportunity to seek advice from Duty Counsel or the assistance of a Board mediator to understand their rights and capacity to pay arrears.

Prior to *Bill 184* the *RTA* already allowed for hearings without notice (*ex parte*) which could result in an eviction order where a tenant defaulted on a mediated agreement which was achieved through a Board mediator and became a consent agreement. In those cases, however, a tenant by that very fact had access to the assistance of the Board mediator and more readily had access to Duty Counsel.

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### Advance Notice of Tenant Issues to Be Raised on Arrears Eviction Applications

- Requiring that tenants provide advance notice if they intend to raise their own issues, in an eviction hearing at the Landlord and Tenant Board (LTB) resulting from rental arrears – the new provision (*RTA* s.82) applies where a Landlord brings an application to evict for non-payment of rent and requires tenants to give notice in writing of the issues they intend to raise, within the timeline as set out in the Board's Rules.
- If tenants fail to give notice, they may still raise the issue if they provide a satisfactory explanation as to why they were unable to comply requirement to give advance written notice.

## 2. Evictions Backlog and COVID-19

In the early days of the COVID-19 pandemic response in Ontario, the Government of Ontario effectively halted most evictions proceedings. Maintaining stable housing was understood to be an important tool in managing the pandemic. This moratorium expired on July 31<sup>st</sup> 2020 as a result of a Superior Court of Ontario decision that made the effective moratorium conditional upon continuation of the Provincial state of emergency that ended on or about July 27, 2020. Households that were unable to keep up with rent are now in payment arrears.

With the resumption of evictions, the *Bill 184* amended evictions process could coincide with a potential second wave of COVID-19. Data from the LTB indicates that at least 590 evictions applications were filed between March 17 and June 30 in Peel. Applications for evictions in Brampton and Caledon are higher than their proportionate share of Peel's renter households.

Filed Applications for Evictions March 16, 2020 to June 30 2020		
Community	Count	%
Mississauga	308	52%
Brampton	267	45%
Caledon	23	4%
Total	598	100%

Count of Renter Households (Census, 2016)		
Community	Count	%
Mississauga	66,785	65%
Brampton	33,610	33%
Caledon	1,955	2%
Total	102,350	100%

The COVID-19 pandemic has disproportionately impacted racialized and low-income communities and accordingly evictions may have more significant impacts on these communities during the pandemic. This circumstance gives rise to issues of equity respecting these communities.

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**3. Broader community response to legislative amendments brought about through *Bill 184 Protecting Tenants and Strengthening Community Housing Act***

While changes have been generally welcomed by landlords, the Ontario Non-Profit Housing Providers Association (ONPHA) has highlighted the need for further work on regulations for service managers and community housing providers, and others still have been more directly critical about the impact on tenants, including notably, the City of Toronto.

On July 29, 2020, the City of Toronto Council directed its legal staff to initiate legal action against the Province on the ground that changes from *Bill 184* that can speed up evictions are opposed to the principles of fairness and natural justice. The issue is of significant concern in Toronto as nearly 1 in 2 households in Toronto are renters, or about half a million households. By comparison, only about 1 in 4 households are tenants in the Region of Peel, or about 100,000 households. In other regional municipalities in the Greater Toronto Area (GTA), tenant households comprise fewer than 1 in 5 households. As such, while the relative impact in Peel may be lesser than Toronto, it is far greater than in other regions in the GTA.

Private Households by Tenure (Census, 2016)					
Municipality	All Households	Owner Households	%	Tenant Households	%
Toronto	1,112,930	587,095	52.8	525,835	47.2
Peel	430,180	327,825	76.2	102,350	23.8
Halton	192,280	156,165	80.9	36,810	19.1
Durham	227,905	184,965	81.2	42,930	18.8
York	357,085	306,535	85.8	50,535	14.2
TOTAL	2,321,080	1,562,585	67.3	758,460	32.7

Tenant households residing in Peel and Toronto comprise 40 per cent of all tenants in Ontario.

Community housing and tenant advocates have also indicated to the Region that in addition to legal challenges, other tools may exist to proactively mitigate a potential evictions crisis in Peel during the ongoing COVID-19 pandemic. These proposals were brought to Regional Council as a communications item on September 10, 2020. They are being evaluated by staff to understand their implications.

Throughout the COVID-19 pandemic, Region of Peel Housing Services has worked closely with clients and providers to ensure housing stability for clients. It has worked with both private and community housing providers to reinforce Provincial directives and encouraged flexibility and empathy in regard to the financial circumstances of tenants.

In particular, it worked with Peel Housing Corporation to develop a three-pronged approach to manage rental arrears for those in difficulty and provided extensive information and support to tenants and providers on resources to maintain housing stability. When the emergency order lifted and Bill 184 was enacted, Region of Peel Housing Services moved immediately to work with providers to assess rental arrears risks for both market and subsidy clients, provided additional resources including information on eviction prevention services, and encouraged providers to work with the Region and to utilize eviction as a process of last resort.

## **Update on the Passage of *Bill 184, Protecting Tenants and Strengthening Community Housing Act, 2020* and Implications for the Region of Peel**

Regional Housing Services is aware of the credible concerns expressed through stakeholder groups around the risks of *Bill 184* and are actively monitoring for changes in demand on services, and actions being considered by other service managers. It has previously provided information to support advocacy on housing issues by Regional Councillors at the Association of Municipalities of Ontario conference.

### **4. *Bill 204 – Helping Tenants and Small Business Act, 2020***

On September 17, 2020, *Bill 204 – Helping Tenants and Small Business Act, 2020* received its first reading and was carried.

*Bill 204* (schedule 7) makes changes to the *Residential Tenancies Act*, which in effect freezes rent for the period of January 1 – December 31, 2021 and sets the rent increase guideline at zero per cent (hereinafter referred to as the ‘Rent Freeze’). The Rent Freeze applies even where notice of a rent increase is given in advance of *Bill 204* receiving Royal Assent, with limited exemptions including:

- (1) special care homes;
- (2) group living/intensive support residences;
- (3) agreed upon rent increases in exchange for additional services or capital expenditures,
- (4) where an order is issued in respect to the increase before *Bill 204* receives Royal Assent for extraordinary increases in property taxes; and,
- (5) eligible increases for capital expenditures and security costs.

The application of *Bill 204* to Peel Housing Corporation and The Regional Municipality of Peel in its role as a Housing Service Provider are being reviewed by Legal Services and guidance will be provided to the appropriate staff members as *Bill 204* receives additional readings and/or Royal Assent.

It is important to note that this bill would not assist tenants currently at risk of eviction, or in payment arrears.

### **RISK CONSIDERATIONS**

The passage of *Bill 184, Protecting Tenants and Strengthening Community Housing Act, 2020* may result in improvements to Regional and community housing operations through *Housing Service Act* changes, and the development of supportive regulations. It also may make it easier for Landlords, including Peel Housing Corporation, to address concerns of non-payment/rental arrears or to terminate a tenancy for cause. Further, it may also improve some opportunities for tenants to recoup some of the costs incurred where a landlord improperly utilizes Personal Use/Renovation Evictions in bad faith to improperly evict a tenant.

However, as a result of *Bill 184* potentially streamlining/simplifying eviction procedures, in combination with the end of the evictions moratorium, and the continuing COVID-19 pandemic, there is a risk of exacerbated housing instability and increased homelessness in Peel. It is likely that such evictions would likely disproportionately impact equity-seeking groups. This could create additional pressures on Region of Peel Housing Services eviction prevention programs in supporting households to maintain their housing and/or to get new housing in the event of housing loss. In addition, the alignment of these circumstances may place increased demand on the shelter system.

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### **FINANCIAL IMPLICATIONS**

Increased demands on the Region of Peel Housing Services Division in order to support households to get and keep housing as a result of evictions pathway changes could result in increased financial and staff resourcing pressures.

### **CONCLUSION**

The passage of *Bill 184* created notable changes to the rental housing legal system in Ontario. It creates some improvements for tenants and smaller landlords. In the Regional Municipality of Peel's role as service manager for community housing, these changes could be beneficial.

However, other changes, particularly those changing tenant process rights as they relate to arrears, damages, and evictions, may present an elevated risk to tenants in Peel and to the Region of Peel's Housing Services, especially in the context of the COVID-19 pandemic.

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#### ***Reviewed and/or approved in workflow by:***

Department Commissioner, Regional Solicitor and Division Director.

Final approval is by the Chief Administrative Officer.



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N. Polsinelli, Interim Chief Administrative Officer