



Centre for Equality Rights in Accommodation
Centre pour les droits à l'égalité au logement

June 26, 2020

Ontario Legislature's Standing Committee on Social Policy

The Centre for Equality Rights in Accommodation's Submission on Bill 184: Protecting Tenants and Strengthening Communities

About CERA

The Centre for Equality Rights in Accommodation (CERA) is a non-profit organization founded in 1987 and dedicated to advancing the right to housing. CERA is recognized internationally as a world leader in promoting and protecting human rights in housing and in applying both domestic and international human rights law to address issues of homelessness and poverty. Every year, we assist over a thousand renters facing eviction or a human rights violation in the context of their housing stay in their home and this work provides us with significant insight into the issues faced by renters across Ontario, particularly vulnerable renters, including seniors, newcomers to Canada, racialized individuals, persons with disabilities, and families.

Renters in Ontario have experienced an affordability crisis for years

The introduction of Bill 184 and its proposed amendments to the *Residential Tenancies Act* come at a time when Ontario renters have experienced a decades-long, province-wide housing affordability crisis. Over the past decade, average market rent for a one-bedroom apartment has skyrocketed and in Toronto now sits at \$2300 per month,¹ while half of Ontario renters earn less than \$40,000 per year.² Low income tenants across Ontario are struggling to stay in their homes.

The current policy environment, which includes vacancy decontrol and the removal of rent control from units constructed after November 2018, combined with decreased funding for social housing initiatives, have contributed to record low vacancy and turnover rates and the

¹ Smith, Ainsley. (2020, Jan). Average Rent For One-bedroom in Toronto Hits \$2300: Report. *Toronto Storeys*. Retrieved from <http://torontostoreys.com/toronto-rent-report-january-2020>

² ACTO. (2020, Nov) We Can't Wait Report: Preserving Our Affordable Housing in Ontario. *Advocacy Centre for Tenants Ontario*. P.12. Retrieved from https://www.acto.ca/production/wp-content/uploads/2019/11/FINAL_Report_WeCantWait_Nov2019.pdf

driving up of average rent costs up by as much 50% over 10 years.³ The discrepancy between current market rental rates with those of just five years ago provides landlords with strong incentive to illegally evict longer-standing tenants to increase profits. This troubling trend is evidenced by the fact that Landlord's Own Use eviction claims (N12 applications) at the Landlord and Tenant Board have nearly doubled since 2015.⁴

Once pushed out of their homes into an astronomically high rental market, low-income renters have little choice but to work extra jobs, move away from their communities, and limit spending on necessities. Many of the most vulnerable risk joining the 12,000+ homeless individuals currently living in Ontario.⁵

The impacts of the housing crisis are disproportionately borne by marginalized and racialized communities including Black and Indigenous communities

Low-income renters across Canada are at the highest risk of eviction into homelessness, and they are disproportionately more likely to be racialized, young people, single parent households and immigrants.⁶ Research shows that over 50% of racialized people in Canada live in homes which are not affordable, inadequate and overcrowded, as compared to 28% of non-racialized households.⁷ Additionally, 52% of Canada's racialized people with the lowest incomes reside in Ontario,⁸ and 69% of low-income neighborhoods in Toronto are racialized communities.⁹ Of note, researchers have found that 87% of Indigenous individuals in Toronto qualified as low-income.¹⁰

COVID-19 has significantly escalated income instability and housing precarity for renters in Ontario and they need help

Ontario renters were already struggling in a hostile and unaffordable housing market before COVID-19 arrived. And now, since mid-March, an estimated 4.9 million Canadians have lost their jobs or had their employment hours drastically reduced. Those hit hardest are low-income

³ ACTO. (2018, May). Where Will We Live Report: Ontario's Affordable Rental Housing Crisis. *Advocacy Centre For Tenants Ontario*. P.5 Retrieved from https://www.acto.ca/production/wp-content/uploads/2018/05/WhereWillWeLive_May2018_ACTO_Report.pdf

⁴ Ibid at 2. p.19

⁵ Scheel, Elise von. (2017, Sept 25) Homeless shelter demand rising in Ontario as facilities close. *CBC*. Retrieved from <https://www.cbc.ca/news/canada/ottawa/homeless-shelter-ontario-closures-1.4299243#:~:text=The%20closures%20amounted%20to%20the,unknown%20what%20prompted%20the%20closures.&text=With%20about%2012%2C000%20people%20experiencing,at%2090%20per%20cent%20capacity.>

⁶ Ibid at 2

⁷ Colour of Poverty. (2019). Fact Sheet #9: Racialized Poverty in Housing and Homelessness. Retrieved from <https://colourofpoverty.ca.files.wordpress.com/2019/03/cop-coc-fact-sheet-9-racialized-poverty-in-housing-homelessness-2.pdf>

⁸ Ibid.

⁹ Ayer, Steve. (2020). Toronto's Vital Signs: Growing Pains and Narrow Gains Report 2019/20. *Toronto Foundation*. Retrieved from <https://torontofoundation.ca/wp-content/uploads/2019/10/VitalSigns2019.pdf>

¹⁰ Ibid

earners, with half of those earning less than \$16 an hour losing all or most of their income due to COVID-19.¹¹ Preliminary data shows that young people aged 18-24 are facing a 43% unemployment rate, with women being the first to be laid off and last to be re-hired.¹² The Canadian Centre for Policy Alternatives estimates that 16% of unemployed workers are not eligible for CERB, nor are workers whose hours were reduced but whose monthly earnings remained above \$1,000.¹³

Bill 184 undermines access to justice for tenants, expedites evictions and creates financial hardship at a time when they can least afford it

At CERA, we are deeply concerned with Bill 184 because it expedites eviction, undermines access to justice and has a negative financial impacts on tenants. Moreover, all of these impacts will disproportionately accrue to marginalized Ontarians – individuals who are low income, racialized, newcomers, and persons with disabilities.

Bill 184 will expedite evictions

Ex-parte eviction notices

Subsection 206.1 of the bill will allow a landlord to apply for an ex-parte eviction order under section 78 of the *Residential Tenancies Act* if their tenant defaults on a negotiated repayment plan. This will expand the authority of administration of the Landlord and Tenant Board to grant applications to evict without the supervision of a mediator or an adjudicator. This amendment would allow a landlord to evict a tenant without a hearing where the tenant would have opportunity to adjust their arrears plan. Many tenants do not understand that they can file a Motion to Set Aside an Ex-parte Order and/or do not have the capacity to do so without legal assistance, and this amendment could lead many to lose their homes without a hearing.

At CERA, we have helped many tenants who have defaulted on repayment plans by no fault of their own to stay housed, by using the important procedural protections that Bill 184 would remove. The people we have helped include:

- Low income single parents who default on their repayment plans when their partner leaves the home;
- Low-income earners who lose their jobs unexpectedly;
- Seniors who need help amending their repayment plan when the fixed income on which they rely is adjusted.

¹¹ Macdonald, David. (2020, June 5). Canadas job losses reach Great Depression levels. Here's how we move forward. *CCPA: Behind the Numbers*. Retrieved from <http://behindthenumbers.ca/2020/06/05/job-losses-reach-great-depression-levels/>

¹² Ibid.

¹³ Ibid.

We ask that the government withdraw Subsection 206.1 to maintain the right of due process for tenants in the grave matter of eviction. We find this amendment alarming in the context of the current economic crisis, where an estimated 50,000 arrears applications could come forward for processing at the Landlord and Tenant Board when the current eviction moratorium is lifted.¹⁴

Bill 184 will undermine access to justice

Expansion of mediation at the Landlord and Tenant Board

Bill 184 proposes to expand the use of mediation at the Landlord and Tenant Board as a way to “make better use of LTB resources, while encouraging landlords and tenants to come to resolutions faster.”¹⁵ On the face of it, this is a laudable goal; however, upon closer inspection, this could significantly disadvantage tenants.

Research shows that only 2.6% of tenants have legal representation at hearings, compared with 79.5% of landlords.¹⁶ Encouraging mediation without investing in legal aid services to assist tenants has the potential to exploit the existing power imbalance between landlords and tenants. Without legal representation, it is entirely likely that tenants will feel pressured to agree to unrealistic agreements in the mediation process that set themselves up for failure because they don’t know their rights or the law. This is particularly concerning considering Bill 184’s plan to introduce ex-parte evictions in cases of defaulted repayment agreements.

Should the government continue to pursue this objective, it is imperative to expand access to no-cost legal representation for tenants in order to ensure mediation is fair for both parties.

New requirement for advance notice of issues brought forward by tenants

Bill 184 also proposes to amend Section 82 of the *Residential Tenancies Act* to provide advance notice of concerns and complaints they would like to raise against the landlord in arrears. This will undoubtedly be devastating for tenants. Upwards of 97% of tenants do not have legal representation and as such, they are simply not going to know about this requirement.¹⁷

In addition, tenants often don’t raise problems with their landlord until they get to a hearing for the simple fact that they are afraid of losing their home in retaliation in the form of eviction,

¹⁴ Sharp, Alastair. (2020, May 22). Toronto renters in for a ‘bloodbath’ of evictions after the pandemic ends, advocate warns. *The Toronto Star*. Retrieved from <https://www.thestar.com/news/canada/2020/05/22/toronto-renters-in-for-terrifying-bloodbath-of-evictions-after-pandemic-ends.html>

¹⁵ Clarke, Steve. (2020, June 6). CLARKE: Bill 184 would strengthen protections for tenants. *Toronto Sun*. Retrieved from <https://torontosun.com/opinion/columnists/clark-bill-184-would-strengthen-protections-for-tenants>

¹⁶ ACTO. (2019, Nov) We Can’t Wait Report. *Advocacy Centre for Tenants Ontario*. p.21 Retrieved from https://www.acto.ca/production/wp-content/uploads/2019/11/FINAL_Report_WeCantWait_Nov2019.pdf

¹⁷ Ibid.

harassment, deportation or loss of landlord referral.¹⁸ For many tenants, the hearing is quite literally the only opportunity they have to resolve grievances or defend themselves against eviction. Removing the opportunity to raise their own issues at the hearing has the effect of removing their opportunity to be heard altogether.

Currently, Section 82 provides an important opportunity for tenants to raise grievances and this section should remain as is in order to ensure that tenants are able to bring forward their concerns and adequately defend themselves against eviction.

Bill 184 will increase financial disadvantage for tenants

Compensation for interference with the reasonable enjoyment of the landlord

Under proposed section 88.1, a landlord may make an application for compensation for interference with the reasonable enjoyment of the residential complex by the landlord, or with another lawful right, privilege or interest of the landlord. This amendment could likely have a disproportionate impact on vulnerable tenants, who would incur significant financial repercussions as a result of factors beyond their control.

At CERA, we regularly receive calls from frightened parents of children with disabilities, including autism, who have been threatened with eviction because of noise their children make and other behavioural issues. Section 88.1 is problematic from a human rights perspective because it removes the ability of the tenants to raise human-rights related concerns. For example, if a tenant with a disability made excessive noise for a reason related to their disability, if a landlord were to proceed with an eviction hearing (by issuing an N7 – interference with reasonable enjoyment), that individual would be able to raise a human rights defense under section 83 of the *Residential Tenancies Act*. However, there is no such parallel provision in the proposed new section under Bill 184 that would allow an individual to prevent a fine on the basis of a protected human rights ground.

We recommend that section 88.1 be removed or amended to ensure that the human rights of tenants are protected.

Void Illegal Rent Increases after 12 Months

The introduction of Section 135.1 of the *Residential Tenancies Act* would legitimize illegal rent increases if a tenant unknowingly paid the illegal increase amount for one year. At CERA, we hear from tenants that they sometimes unknowingly pay illegal rent increases when they are unaware of their rights under the *Residential Tenancies Act* or have been bullied by their

¹⁸ Chisolm, Elinor; Howden-Chapman, Philipa; Fougere, Geoff. (2020). Tenants' Responses to Substandard Housing: Hidden and Invisible Power and the Failure of Rental Housing Regulation. *Housing, Theory and Society*. Vol 37(2): p.p. 139-161

landlord. This amendment will only help facilitate theft from tenants, particularly newcomers, youth, and tenants who do not speak English, and other groups who tend to have less knowledge about their rights and ability to assert them.

Oddly, this change is offside the *Limitations Act* which allows parties in civil matters two years from point of discovery to contest illegal acts. In a bizarre move, this clause would leave tenants with fewer rights than parties in any other civil proceeding in Ontario.¹⁹

This clause must be revoked to ensure tenants who have been exploited by illegal rent increases can pursue justice at the Landlord and Tenant Board regardless of when it was discovered.

Conclusion

Bill 184 is coming forward in the context of an unprecedented economic crisis caused by COVID-19, where an estimated 50,000 arrears applications await processing when the current eviction moratorium is lifted.²⁰

The mass homelessness that could result from these evictions could be the largest human rights crisis that this province has ever faced and Bill 184 is only going to make it easier for that to happen.

Moreover, all of these impacts will disproportionately accrue to our most vulnerable and marginalized residents – people who face multiple barriers in particular those who are low income, racialized, newcomers to Canada, people who don't speak English, youth and tenants with disabilities. These are all groups who tend to have less information about their rights and ability to assert them.

While the rest of the world is finally waking up to the systemic racism faced by black, indigenous and other racialized groups, this bill would render significant numbers of racialized people homeless.

CERA strongly encourages the government to reconsider these provisions and instead focus efforts toward strengthening protections for tenants in Ontario at a time when they are needed more than ever.

¹⁹ Limitations Act, 2002, SO 2002, c24, Sch B, S 4-5. Retrieved from <https://www.ontario.ca/laws/statute/02l24>

²⁰ Sharp, Alastair quoting Geordie Dent. (2020, May 22). Making rent: Ontario landlord and tenant groups expect arrears to grow. *The National Observer*. Retrieved from <https://www.nationalobserver.com/2020/05/22/analysis/making-rent-ontario-landlord-and-tenant-groups-expect-arrears-grow>