

Submission to the Standing Committee on Social Policy

Re: *Bill 184: Protecting Tenants and Strengthening Community Housing Act, 2020* (Schedule 4)

Prepared By:
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Introduction

The Niagara Community Legal Clinic is a community legal clinic funded by Legal Aid Ontario that provides legal services to low-income residents of the Niagara Region, including the communities of St. Catharines, Welland, Niagara Falls, Grimsby, Thorold, Niagara-on-the Lake, Port Colborne, Lincoln, West Lincoln, Pelham, Wainfleet, and Fort Erie. The Niagara Community Legal Clinic provides legal representation and assistance on matters related to housing, human rights, income maintenance, employment, workers' compensation, immigration and refugee, civil litigation, consumer protection, and estate planning. The Niagara Community Legal Clinic engages in social justice advocacy through public legal education, law reform and community development.

Bill 184 fails to advance tenant rights amid a pandemic and a housing crisis in the Niagara Region

The Niagara Community Legal Clinic is deeply concerned that Bill 184, *Protecting Tenants and Strengthening Community Housing Act, 2020* (hereinafter referred to as "Bill 184")¹ proposes to introduce amendments to the *Residential Tenancies Act, 2006* (hereinafter referred to as the "*Act*"),² which will have a profoundly negative impact on the tenants and communities served by the Niagara Community Legal Clinic. These amendments show a failure to provide meaningful protections to tenants from unlawful rent increases and evictions, and in doing so, fail to promote the very purpose for which the *Act* came into effect.³

¹ Bill 184, *Protecting Tenants and Strengthening Community Housing Act, 2020*, 1st Sess., 42nd Leg., Ontario, 1991.

² *Residential Tenancies Act, 2006*, S.O. 2006, c. 17.

³ *Ibid* at s. 1. Section 1 of the *Act* currently states as follows:

(1) The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. 2006, c. 17, s. 1.

(2) Subsection (1) does not apply to Part V.1. The purpose of Part V.1 is to provide protection to members of non-profit housing co-operatives from unlawful evictions under this Act and to allow non-profit housing co-operatives and their members access to the framework established under this Act for the adjudication of disputes related to the termination of occupancy in a member unit of a non-profit housing co-operative. 2013, c. 3, s. 20.

The Niagara Region is currently seeing an increase in housing prices as prospective homeowners look for cheaper housing markets. This is forcing a lot of individuals and families, who would traditionally buy a home in the Niagara Region, into the rental market.⁴ Due to the high demand for rental properties and lower vacancies, many Niagara residents are finding it difficult to afford housing. This is further exacerbated by the popularity of short-term rentals in the Niagara Region, through programs such as Airbnb, which is resulting in fewer long-term rental properties on the market. The few that are available, are seeking unaffordable rental rates. A recent report examining the average monthly rental rates across Canada, found that St. Catharines is the 12th most expensive city in which to be a tenant.⁵

The amendments in Bill 184, which were introduced prior to the enactment of the COVID-19 emergency measures, do not adequately reflect this reality or the reality that many tenants now find themselves in during the pandemic. The pandemic has had a devastating impact on the tourism industry in the Niagara Region, an industry that many residents rely upon for jobs and income. Many residents in the Niagara Region have experienced lay-offs or are currently facing a reduction in work hours as a result of the pandemic. This has significantly impacted their ability to pay rent and their ability to maintain their housing, at a time when the province is facing a housing crisis. Despite the City of St. Catharines currently experiencing an unemployment rate of 12.2% and being amidst a pandemic, the city has continued to see an increase in the price of rental units.⁶

This will undoubtedly lead to a higher demand for affordable housing at a time when such housing is scarce in the Niagara Region. If stronger protections for tenants are not legislated, homelessness is likely to increase in a region that lacks a centralized shelter system and relies exclusively on ad-hoc programs to provide emergency housing. This will place a significant financial burden on the Niagara Region.

Since the introduction of Bill 184, the government has advised tenants that if faced with the choice, they should buy food instead of paying their rent. Yet, no protections have been legislated for tenants who made that choice and will likely now be facing eviction. This is a choice no Ontarian should have ever had to make. The measures introduced in Bill 184, ironically titled the "Protecting Tenants and Strengthening Community Housing Act", do not protect tenants. So why is the government trying to quickly pass Bill 184 at this time?

The proposed amendments will only overburden the Landlord and Tenant Board by adding to the backlog that currently exists. The litigation process will not be improved for either tenants or landlords. The proposed dispute resolution process will push vulnerable tenants into private spaces where they lack bargaining power. A restriction on the information that tenants were previously required to receive from their landlords, will only increase the power imbalance that currently exists between landlords and tenants. The new disclosure requirements imposed on tenants will create barriers to accessibility especially for tenants from marginalized communities, disproportionately of whom are individuals living with disabilities. These barriers will make it easier for landlords to subject vulnerable tenants to unlawful rent increases and will not deter unlawful and bad faith evictions.

The pandemic has made it clear that if action is not taken, tenants will face an access to justice crisis. Bill 184 was drafted and introduced before the province was severely impacted by the pandemic. Since then, the rental landscape has changed, the concerns of tenants have become more pressing, and the housing crisis has worsened.

⁴ Niagara Association of Realtors, "Media Release" (June 2020), online: <https://www.niagararealtor.ca/sites/default/files/Media%20Release%20JUNE%202020.pdf> and The St. Catharines Standard, "Niagara home listings, sales plummet faced with COVID-19; prices up" (6 May, 2020), online: <https://www.stcatharinesstandard.ca/news-story/9971589-niagara-home-listings-sales-plummet-faced-with-covid-19-prices-up/>.

⁵ PadMapper, "June 2020 Canadian Rent Report" (15 June, 2020), online: <https://blog.padmapper.com/2020/05/14/may-2020-canadian-rent-report/>.

⁶ *Ibid* and Statistics Canada, "Regional unemployment rates used by the Employment Insurance program, three-month moving average, seasonally adjusted" (17 June, 2020), online: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410035401>.

The Niagara Community Legal Clinic strongly recommends that the Ontario Legislature reconsiders Bill 184 and instead engage in public, meaningful, and open consultations with low-income communities and their community legal clinics about reforms that are needed to address the effects of the current COVID-19 crisis.

Expansion of the Landlord and Tenant Board's jurisdiction to hear post-tenancy disputes (Sections 18-21, 28, and 29)

The addition of post-tenancy disputes to the jurisdiction of the Landlord and Tenant Board,⁷ a jurisdiction that is typically held by the Small Claims Court, will significantly add to the current backlog at the Landlord and Tenant Board.⁸ The backlog is expected to worsen once the moratorium on evictions is lifted and the Landlord and Tenant Board begins hearing all eviction and tenant applications. This backlog will be further worsened by the fact that the Landlord and Tenant Board presently has fewer adjudicators in comparison to previous years.⁹

The current jurisdiction of the Landlord and Tenant Board is focused on matters where there is an ongoing and subsisting relationship between landlords and tenants. Adding post tenancy disputes to the workload of the Landlord and Tenant Board has no real social purpose. These types of disputes are best dealt with by the Small Claims Court. The *Rules of Small Claims Court*¹⁰ and the ability of tenants to rely on formal rules of evidence provide greater protection for tenants against inflated claims of damages by landlords. Debt collection can be a lengthy and complex process that should remain within the jurisdiction of the Small Claims Court, which has the time and capacity to properly adjudicate such claims. It is unclear whether the limitation period of 12 months for such post-tenancy claims¹¹ will ensure finality for tenants. The proposed amendments currently do not remove a landlord's ability to pursue such claims at the Small Claims Court one year after the tenant ceases to be in possession of the rental unit.

The amended provisions further require that a landlord serve a copy of the application and the notice of hearing on a former tenant who is no longer in possession of the rental unit.¹² As evidenced at the Small Claims Court, this will likely lead to additional disputes related to whether the documents were properly served on the tenant. The Small Claims Court is better equipped to address such concerns as it has already developed clear set of rules of service and procedure. If these provisions are enacted, there will be an increase in default judgments and without proper scrutiny of service, tenants will not be protected.

For these reasons, the Niagara Community Legal Clinic submits that adding this workload to the Landlord and Tenant Board does not help streamline or improve the litigation process. Instead, it will only increase the number of landlord applications to an already overburdened system.

⁷ *Supra* note 1 at ss. 18-21. The addition will enable landlords to file a claim against former tenants at the Landlord and Tenant Board in order to recover rental arrears, unpaid utility costs and out-of-pocket expenses resulting from claims of substantial interference. The only caveat being that the claim must be brought within one year after the tenant ceases to be in possession of the rental unit.

⁸ Ombudsman Ontario, "Ontario Ombudsman to investigate delays at Landlord and Tenant Board" (9 January 2019), online: <https://www.ombudsman.on.ca/resources/news/press-releases/2020/ontario-ombudsman-to-investigate-delays-at-landlord-and-tenant-board>; and Canadian Lawyer, "Around 80 complaints cited delays at landlord and tenant board; Ontario Ombudsman to investigate" (10 January, 2020), online: <https://www.canadianlawyermag.com/practice-areas/real-estate/around-80-complaints-cited-delays-at-landlord-and-tenant-board-ontario-ombudsman-to-investigate/324810>.

⁹ The Star, "Doug Ford says he wants to fight racial injustice. So why is he undermining tribunals that help do just that?" (10 June, 2020), online: <https://www.thestar.com/politics/political-opinion/2020/06/10/doug-ford-says-he-wants-to-fight-racial-injustice-so-why-is-he-undermining-tribunals-that-help-do-just-that.html>.

¹⁰ O. Reg. 258/98: Rules of the Small Claims Court under *Courts of Justice Act*, R.S.O. 1990, c. C.43.

¹¹ *Supra* note 1 at ss. 18-21.

¹² *Supra* note 1 at ss. 28 and 29.

Changes to the Landlord and Tenant Board process are harmful to tenants

A. Alternative dispute resolution and Expanded section 78 usage (Sections 30 and 31)

The addition of the alternative dispute resolution process and the changes to repayments agreements for rental arrears will force vulnerable tenants into private spaces where they lack bargaining power:

(a) Alternative dispute resolution (Section 30)

Bill 184 seeks to expand the Landlord and Tenant Board's mandate under section 194(1) of the *Act* to replace the phrase "may attempt to mediate a settlement" with "may attempt to settle through mediation or another dispute resolution process".¹³ In doing so, Bill 184 provides little clarity as to what this alternative dispute resolution process will look like and removes the protections that tenants currently have when entering settlement agreements with the assistance of duty counsel and a trained mediator at the Landlord and Tenant Board. This is especially problematic for low-income tenants who do not share an equal bargaining power with their landlords.

(b) Expanded section 78 usage (Section 31)

Currently, section 206 of the *Act* does not allow a landlord to file for eviction without notice to the tenant for a breach of a term under a repayment agreement related to an application for rental arrears.¹⁴ Bill 184 will enable parties to file repayment agreements that include a section 78 clause with the Landlord and Tenant Board.¹⁵ This clause will enable a landlord to seek an eviction without notice to the tenant, when the tenant fails to meet a condition of the repayment agreement.

This amendment will weaken protections for tenants as it will allow landlords to file for eviction, without notice to the tenant, using repayment agreements that were entered into outside of a Landlord and Tenant Board setting; a setting where tenants have access to legal advice of tenant duty counsel and mediation services from a trained mediator. This is troubling as low-income tenants with disabilities as well as tenants with language and literacy barriers, who comprise a significant portion of the clients the clinic serves, will not understand the ramifications of signing such repayment agreements. These tenants will face significant pressure from their landlords to enter into unreasonable repayment terms in exchange for preserving their tenancies. This will likely lead to more evictions, which is especially concerning during a pandemic.

Therefore, the alternative dispute resolution process proposed under section 194(1) of the *Act* and the amendments to section 206 of the *Act*¹⁶ do little to alleviate the significant power imbalance that exists between low-income tenants and their landlords. These amendments further fail to ensure that the object of any dispute resolution process or a repayment agreement is to ensure the preservation of tenancies.

¹³ *Supra* note 1 at s. 30. Currently section 194(1) of the *Act* states as follows: "The Board may attempt to mediate a settlement of any matter that is the subject of an application or agreed upon by the parties, if the parties consent to the mediation". This section would be replaced with the following: "The Board may attempt to settle through mediation or another dispute resolution process any matter that is the subject of an application or agreed upon by the parties, if the parties consent to participating in the mediation or other dispute resolution process".

¹⁴ *Supra* note 2 at s. 206.

¹⁵ *Supra* note 1 at s. 31.

¹⁶ *Ibid* and *Supra* note 1 at s. 30.

B. Advance written notice required to raise section 82 concerns (Section 16)

Instead of protecting tenants, the proposed amendments to section 82 of the *Act*, will make it easier for landlords to evict tenants by limiting their defenses to applications for non-payment of rent. The additional requirement that tenants provide advance written notice to their landlords raises serious accessibility concerns.

Currently, under section 82 of the *Act*, a tenant has the right to respond to an application for non-payment of rent by raising issues that may have contributed to their failure to pay rent.¹⁷ Typically, a tenant will raise their landlord's failure to maintain their rental unit as a means to offset the amount of rental arrears and as a defense at their eviction hearing. While the proposed amendments still allow a tenant to raise these concerns, they impose an added obligation on the tenant to inform their landlord in writing, ahead of the hearing, that they will be raising these issues.¹⁸

If a tenant fails to provide written notice, the amendments could be used to deny tenants the opportunity to raise issues that may have contributed to their failure to pay rent, at their eviction hearing for rental arrears. This will result in more tenant applications at the Landlord and Tenant Board, where tenants are more likely to be self-represented. It is more expedient for the Landlord and Tenant Board to hear the landlord's rental arrears claims and tenants' claims simultaneously, especially in light of its backlog.

It is unclear what the format and content of this written notice will need to be in order to comply with the requirements under the amended section 82. Will a tenant, who raises maintenance issues in writing to the landlord prior to attending a hearing for rental arrears, be deemed as having provided the proper written notice? It is difficult to believe that landlords are unaware of serious repair issues in the units they are seeking rental arrears from, or of harassment and other interference that the tenant has suffered.

This is an important clarification that is needed particularly for low-income tenants who are more likely to have underlying mental health conditions, physical disabilities, language barriers, and low literacy comprehension, when compared to landlords who may be more sophisticated in their understanding of the law and typically experience fewer barriers when required to follow specific filing requirements. As such, requiring low-income tenants to give advance written notice, will create real barriers to accessibility.

The Landlord and Tenant Board process should not create additional barriers for tenants when they are required to defend against an eviction for non-payment of rent.

Limiting liability for landlords while removing tenant rights

The most marginalized and vulnerable tenants are least likely to know of or assert their rights under the *Act*, which only highlights the negative impact the following provisions will have on tenants:

A. Curing void rent increases (Section 24)

The *Act* has been created to balance the rights of landlords and tenants and therefore must be read in its entirety to ensure the objective of prohibiting unlawful rent increases is preserved. Currently, any illegal rent increase by a landlord is considered null and void.¹⁹ However, under the newly proposed section 135.1, illegal rent

¹⁷ *Supra* note 1 at s. 82.

¹⁸ *Supra* note 1 at s. 16.

¹⁹ *Supra* note 2 at s. 135.1.

increases will be deemed legal if the tenant continues to pay the illegal rent increase for a period of 12 months.²⁰ This will lead to a significant increase in a tenant's cost of living and will make the tenant more susceptible to losing their housing. Deeming any illegal rent increase as legal sends out a harmful message to tenants that the *Act* will reward a landlord's breach of their rights.

B. Eliminating disclosure to tenants with respect to suite meter usage (Section 25)

Under Bill 184, the government proposes to repeal subsections 137(7) and (8) of the *Act*, which removes the landlord's obligation to inform a prospective tenant about the history of electricity consumption for their unit and the age of the rental unit's refrigerator.²¹ As more suite meters are being installed by landlords, in an effort to offset utility costs, full disclosure when entering into a lease agreement is needed to ensure tenants understand their payment obligations. If this information is not provided, it can mislead tenants, in particular low-income tenants, about their ability to afford the rental unit.

C. Standard Form Tenancy Agreement (Section 4)

The new amendments to section 11 of the *Act* remove the requirement that landlords inform their tenants about their rights and obligations under the *Act* as well as inform tenants about the role of the Landlord and Tenant Board, in situations where the landlord is required to use a standard form lease agreement.²² Permitting landlords the ability to deprive tenants of crucial information about their rights, will only make tenants more susceptible to abuse by their landlords.

It is unclear how these amendments in Bill 184 streamline the Landlord and Tenant Board process or strengthen tenant protections.

Land lease communities and mobile home parks (Sections 26-27)

The amendments to the *Act* under Bill 184 regarding land lease communities and mobile home parks, could lead to significant deregulation and to an increase in rent for tenants living in such communities without proper oversight.

The newly added section 165.1 of the *Act*, proposes to exclude certain prescribed services and facilities that were previously included under the definition of rent.²³ Under the amended section 167 of the *Act*, landlords in such communities can now subject tenants to above-guideline rent increases for capital expenditures regardless of whether the infrastructure work is required by the government.²⁴ This will allow landlords to seek above-guideline rent increases on charges that were previously subject to rent control and in doing so, lead to a higher cost of living and monthly rental obligations for tenants.

While land lease communities and mobile homes are currently a form of affordable housing in Niagara, these amendments will make it easier for landlords to charge substantial rent increases and therefore make it easier for such landlords to displace tenants in such communities.

²⁰ *Supra* note 1 at s. 24; and *Price v Turnbull's Grove Inc.*, 2007 ONCA 408, (2007), O.R. (3d) 641.

²¹ *Supra* note 1 at s. 25.

²² *Ibid* at s. 4. Section 11 of the *Act* currently states, "11 (1) If a tenancy agreement is entered into, the landlord shall provide to the tenant information relating to the rights and responsibilities of landlords and tenants, the role of the Board and how to contact the Board. (2) The information shall be provided to the tenant on or before the date the tenancy begins in a form approved by the Board".

²³ *Supra* note 1 at s. 26.

²⁴ *Ibid* at s. 27.

No-fault Evictions (Sections 5- 7, and 10-14)

The amendments to the no-fault evictions provisions under the *Act* do little to advance the goal of encouraging landlords to keep housing on the rental market, prevent bad faith evictions, or alleviate the stress tenants currently experience in securing affordable housing.

While the proposed amendments increase compensation for tenants who receive no-fault eviction notices,²⁵ stronger measures are required to prevent such evictions from occurring in the first place and to ensure tenants are being properly compensated for the loss of affordable housing during a housing crisis. Even though these amendments provide tenants with compensation equivalent to one month's rent that is currently not available to them, this additional cost to the landlord is unlikely to change the landlord's decision to sell, demolish, or renovate the unit. Moreover, it provides little relief to tenants who are now forced to vacate their units on short notice due to no fault of their own. This compensation will not adequately cover the expenses that tenants will have to incur as a result of their displacement or help these tenants find alternative housing, which will undoubtedly cost more.

The amendments further specify that the Landlord and Tenant Board *may* order a landlord to pay to a former tenant, who has been evicted in bad faith, 'general compensation' equivalent to 12 months' rent up to a maximum award of \$35,000.²⁶ The government also proposes to increase fines for offences under the *Act*; \$50,000 for an individual and \$250,000 for a corporation.²⁷ However, the reality is that the "residual" remedial clause under the *Act* already permits the Landlord and Tenant Board to award general compensation by making "any other order that [it] considers appropriate".²⁸ The Landlord and Tenant Board has exercised this discretionary authority on multiple occasions when adjudicating tenant applications, and yet bad faith evictions continue to occur at an increasing rate. Bill 184 does not go far enough to deter landlords who choose to risk having to pay a former low-income tenant additional compensation, in exchange for securing a higher income tenant who can be charged significantly higher rental rates. Landlords face low risk especially when the Landlord and Tenant Board has historically used its discretion to award nominal administrative fines against landlords.

The additional disclosure requirements for landlords proposed under Bill 184, in cases where the landlord wishes to end a tenancy under sections 48 (landlord requiring unit personally), 49 (purchaser requires unit), or 50 (demolition, conversion, or repair of unit), are a good first step towards determining the intention of the landlord.²⁹ However, these changes do not go far enough. Instead of introducing meaningful measures to prevent no fault evictions, Bill 184 places the onus on tenants to enforce penalties against landlords who make false statements that lead to their evictions and as such, fails to prevent bad faith evictions from occurring in the first place.

²⁵ *Supra* note 1 at ss. 5-7. Specifically, the proposed section 49.1 in the *Act* requires a landlord, who gives a notice of termination of a tenancy on behalf of a purchaser under section 49 of the *Act*, to compensate the tenant by either giving one month's rent or by offering another rental unit that is acceptable to the tenant. In addition, the proposed amendments to subsections 52(2), 54(3) and 54(4) under the *Act* mandate landlords of buildings of five or less units to provide one month's rent as compensation to tenants when giving a notice of termination for demolition, conversion to non-residential use, or for the purpose of repairs or renovation.

²⁶ *Supra* note 1 at s. 9.

²⁷ *Ibid* at s. 35.

²⁸ *Supra* note 2 at s. 31(f).

²⁹ *Ibid* at ss. 11-14. For instance, the additional filing requirements require the landlord to provide an affidavit to the tenant at the time a N12 eviction notice is served and permit the Landlord and Tenant Board to consider evidence related to similar notices of termination given to tenants by the landlord in the previous two years, when determining whether a bad faith basis exists for the eviction.

In the context of not being afforded the right of first refusal in repair and renovation cases, the amendments further seek to permit former tenants to file a T5 application within two years from the date they vacate the rental property, up from the current one year limitation.³⁰ These amendments fail to address or remove any barriers that currently exist for tenants when enforcing such claims. All too often, tenants who are evicted using a N12 or N13 notice, cannot garner the evidence required to prove that the eviction was in bad faith. Given the evidentiary and investigative challenges with determining whether the notice was provided in bad faith, tenants often only discover that they have been illegally evicted after their limitation period has expired. Bill 184 does not change the fact that tenants still have the onus and burden to prove and enforce such bad faith evictions, which can be challenging for tenants.

Call for Action

If the province is truly committed to enacting meaningful legislation that protects tenants and strengthens communities, Bill 184 should address the serious concerns that have arisen for vulnerable tenants during the pandemic and that will continue to impact tenants once the pandemic subsides:

(1) Update the purpose of the *Act* to recognize the human right to housing

The Niagara Community Legal Clinic calls on the government to amend the purpose of the *Act* to recognize that the right to adequate and affordable housing is a fundamental human right as affirmed under the *National Housing Strategy Act*.³¹ The purpose of the *Act* should recognize that housing is essential to people's inherent dignity and well-being and is essential to building sustainable and inclusive communities.

(2) Implement rent relief measures for tenants

The pandemic has had a devastating impact on the ability of tenants across the province to pay their rent, especially low-income tenants who have been disproportionately impacted by the pandemic. Many of these tenants are worried about how they will keep a roof over their heads after the moratorium on evictions is lifted. Bill 184 offers no solutions for these tenants, who are unable to pay their rent through no fault of their own and will likely face eviction. It is anticipated that when the Landlord and Tenant Board begins hearing these matters, there will be mass evictions which will leave many homeless.

The Niagara Community Legal Clinic urges the government to create a fund to help low-income residential tenants with their rent obligations as rental assistance should not be limited to commercial tenants.³² The Niagara Community Legal Clinic calls on the government to introduce legislation that ensures tenants cannot be evicted if they are unable to pay rent or are facing financial hardships because of lost income due to the pandemic. In particular, the government should expand the scope of section 83 of the *Act*,³³ in order to address the needs of tenants that have resulted from the COVID-19 crisis. In particular, section 83 of the *Act* should be amended to include a provision that allows the Landlord and Tenant Board to refuse an eviction application relating to rental arrears, where the tenant can show that his or her inability to pay rent was due to one of the following reasons:

- a) Involuntarily stopped working and ceased earning any or some income due to COVID-19;

³⁰ *Supra* note 1 at s. 10.

³¹ *National Housing Strategy Act*, SC 2019, c 29, s. 4; online: [ps://laws-lois.justice.gc.ca/eng/acts/N-11.2/FullText.html](https://laws-lois.justice.gc.ca/eng/acts/N-11.2/FullText.html).

³² Niagara Poverty Reduction Network, "A Moratorium on Rent Obligations Needed" (31, Mar 2020), online: https://12e537f2-590e-b160-f334-1b0438a32212.filesusr.com/ugd/8ea78d_294cedd078f2404881f410f4b39752fb.pdf and Niagara Poverty Reduction Network, "NPRN Calls for Government-Ordered Moratorium on Rent for Third Consecutive Month" (27 May, 2020), online: https://12e537f2-590e-b160-f334-1b0438a32212.filesusr.com/ugd/8ea78d_80a70f9bc7b74dd8a9ba5bb6c3082b30.pdf.

³³ *Supra* note 2 at s. 83.

- b) Stopped working because under quarantine or ill due to COVID-19;
- c) Stopped working because caring for someone who is under quarantine or ill due to COVID-19;
- d) Stopped working because need to remain at home in order to care for children as their care provider is closed due to COVID-19;
- e) Loss of income because as a seasonal worker, can't find a job due to COVID-19; and,
- f) any other relevant reasons related to COVID-19 that may be deemed appropriate

(2) Reinstate effective rent control in Ontario

Rent control policies in Ontario play a vital role in ensuring that there is affordable housing for tenants. The Niagara Community Legal Clinic is calling on the government to pause all rent increases for tenants, including those in units first occupied after November 15, 2018, during the pandemic. The Niagara Community Legal Clinic also urges that rent control be instituted between tenancies to eliminate incentives for displacement and rent gouging.

(3) Invest in more affordable housing units in the Niagara Region and create a centralized and accessible shelter system

Social housing is one form of affordable housing in the Niagara Region in which the Niagara Community Legal Clinic is seeking more investment. Individuals and families are currently experiencing long wait times to secure social housing. In particular, individuals between the ages of 16 and 54 in St. Catharines and Welland, hoping to secure a one-bedroom rental unit are estimated to be on a waiting list for 16 years, while in Niagara Falls, they will likely have to wait 18 years.³⁴

The Niagara Community Legal Clinic further calls on the province to provide reasonable protections for individuals in shelters by investing in a centralized and accessible shelter system. This will ensure that individuals currently residing in temporary shelters, who often suffer from mental health issues, will not add to the ranks of homelessness lining the streets of Niagara.

(4) Strengthen provisions under the *Act* to prevent unlawful no fault evictions

In order to prevent the issue of 'renovictions',³⁵ the Niagara Community Legal Clinic calls on the government to impose additional disclosure obligations onto landlords to prove that the unit will be substantially renovated or demolished. In particular, landlords should be required to disclose details of the proposed work and to provide documentation confirming that the required permits have been sought when issuing a N13 eviction notice. This requirement would not be onerous on landlords as they already have to provide detailed proposals when seeking permits from the city for renovation and/or demolition work.

The Niagara Community Legal Clinic also calls on the government to introduce amendments to reverse the onus of proof onto the landlord, thereby requiring the landlord to prove that the eviction was in good faith for all matters under section 57 of the *Act*.³⁶ In addition, the discovery principle, contained in the *Limitation Act*,³⁷ should apply to the two-year limitation included in Bill 184 for a tenant's bad faith application. This will

³⁴ Niagara Regional Housing, 2020 Housing Wait Times", online: <http://www.nrh.ca/applicants/Wait-Times-Chart.shtml>.

³⁵ "Renoviction" is when a landlord evicts a tenant under the guise of needing to complete major renovations that requires the tenants to move out, but then re-lists the apartment for more than the original rent.

³⁶ *Supra* note 2 at s. 57.

³⁷ *Limitations Act*, 2002, SO 2002, c 24, Sch B at s. 4.

ensure that the limitation period does not commence until the date the tenant discovers or could have discovered the landlord's bad faith conduct.

(5) Immediate appointments of experienced adjudicators to the Landlord and Tenant Board in order to address the backlog and delays

The Landlord and Tenant Board has had its 44 full-time adjudicators reduced to 31 at a time when residential tenants are desperate for protection. The delays caused by the shortage of adjudicators have left tenants, who have sought an Order for the completion of necessary repairs, or who have been threatened with eviction by their landlords, in a state of uncertainty and open to mistreatment by their landlords.³⁸

During the pandemic, tenant applications have been adjudicated quickly in an effort to make more time for eviction applications. As the pandemic subsides and the Landlord and Tenant Board sees an increase in eviction applications for rental arrears, tenants are right to be concerned about whether they will be afforded proper justice.

For these reasons, the Niagara Community Legal Clinic calls on the government to immediately appoint experienced adjudicators to the Landlord and Tenant Board in order to address the backlog and delays.

(6) Collection of race-based and socioeconomic data to understand the implications of the COVID-19 crisis

The Niagara Community Legal Clinic calls on the government to collect race-based and socioeconomic data to fully understand the implications of the COVID-19 crisis on low-income and marginalized communities before making any further legislative reforms. This is especially needed as preliminary research has found that low income communities, who are at a greater risk of experiencing mental health concern,³⁹ might be disproportionately impacted by the COVID-19 crisis.⁴⁰ In addition, since the outbreak, fewer individuals with a mental health condition have reported that they have accessed mental health supports and even more have stated that they do not have all of the supports they need during the pandemic.⁴¹ With a rise in mental health concerns, provisions may be required to ensure tenants living with disabilities are able to comply with the procedures of the Landlord and Tenant Board.

(7) Narrow the exemptions under the *Act* and strengthen our community by protecting vulnerable Ontarians

Tenants, who share accommodations with their landlord, are not afforded any statutory protections under the *Act*. Under section 5(i) of the *Act*, those who share 'washroom and kitchens' with the owner are exempt from

³⁸ *Supra* note 7.

³⁹ Mawani and Gilmour (2010). Validation of self-rated mental health. Statistics Canada Catalogue no. 82-003- X.

⁴⁰ CBC, "Lower income people, new immigrants at higher COVID-19 risk in Toronto, data suggests" (12 May 2020); online: <https://www.cbc.ca/news/canada/toronto/low-income-immigrants-covid-19-infection-1.5566384>.

⁴¹ CAMH, "New data says fewer Ontarians are seeking mental health supports during COVID-19, but services are helping those who use them" (22 May 2020); online: <https://ontario.cmha.ca/news/new-data-says-fewer-ontarians-are-seeking-mental-health-supports-during-covid-19-but-services-are-helping-those-who-use-them/>; The St. Catharines Standard, "Sharp increase in people seeking counselling after COVID-19 outbreak" (20 Mar 2020); online: <https://www.stcatharinesstandard.ca/news-story/9912525-sharp-increase-in-people-seeking-counselling-after-covid-19-outbreak/>; and, The St. Catharines Standard, "COVID-19 Front Line: Distress Centre Niagara volunteers answer the call to help people in crisis" (23 April 2020); online: <https://www.stcatharinesstandard.ca/news-story/9960977-covid-19-front-line-distress-centre-niagara-volunteers-answer-the-call-to-help-people-in-crisis/>.

the protection of the *Act*.⁴² There is no rationale for why someone, who shares a washroom or kitchen with the homeowner, should not be afforded legislated protections for their tenancy when compared to someone who does not. Often landlords will use this provision as a loophole to evict vulnerable tenants with little notice. There is little protection for these tenants, many of whom end up homeless, and on the streets, when they are evicted. This has become even more apparent during the current COVID-19 crisis as these tenants have lost their homes despite a province-wide moratorium on evictions.⁴³ The Niagara Community Legal Clinic calls on the province to remove this exemption from the *Act*.

(8) Better living conditions for migrant workers

The Niagara Community Legal Clinic requests that the government strengthen our community by setting province-wide housing standards for migrant workers, who are an invaluable part of our community. The housing conditions on Ontario's farms have already led to three migrant worker deaths and the spread of COVID-19 has exposed the blatant lack of effective enforcement mechanisms of housing rights available to migrant workers in Ontario. In the Niagara Region, more than 17 new cases have been diagnosed on a single farm, making the outbreak among migrant workers at Pioneer Flower Farms the largest COVID-19 outbreak outside of long-term care homes in the region.⁴⁴

The substandard living conditions of migrant workers in Ontario,⁴⁵ exacerbated by the present COVID-19 pandemic, have affirmed the need for an effective enforcement mechanism to provide safe living conditions for migrant workers on Ontario's farms and greenhouses. The *Charter of Rights and Freedoms*⁴⁶ requires that the provincial government act swiftly to protect the rights of migrant workers, particularly the right to equality (migrant workers in Niagara are predominantly from Mexico and the Caribbean) and the right to life, liberty and security of the person.

The Niagara Community Legal Clinic calls on the province, who has jurisdiction over housing-related matters⁴⁷, to amend or declare of no force and effect section 5(b) of the *Act*,⁴⁸ extending the application of Part XV of the *Act* (s. 227 and following of the *Act*) to migrant workers in Ontario. The proposed legislative amendment would allow enforcement by the Ministry of Housing's Rental Housing Enforcement Unit to ensure there is a more prompt and expeditious enforcement mechanism available to migrant workers in Ontario.

Finally, the Niagara Community Legal Clinic strongly recommends that the Ontario Legislature reconsider Bill 184 and instead engage in public, meaningful, and open consultations with low income communities and their community legal clinics about reforms that are needed to address the effects of the current COVID-19 crisis.

⁴² *Supra* note 2 at s. 5(i). This section states as follows: "living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located".

⁴³ The Toronto Star, "Why this renter is suddenly homeless despite Ontario's order to halt evictions" (25, Mar, 2020), online: <https://www.thestar.com/news/gta/2020/03/25/why-this-renter-is-suddenly-homeless-despite-ontarios-order-to-halt-evictions.html>.

⁴⁴ The St. Catharines Standard, "Close quarters, no PPE use, contributed to COVID-19 outbreak among migrant workers at Niagara greenhouse (01 June 2020); online: <https://www.stcatharinesstandard.ca/news-story/10002295-close-quarters-no-ppe-use-contributed-to-covid-19-outbreak-among-migrant-workers-at-niagara-greenhouse/>.

⁴⁵ Migrant Workers Alliance for Change, "Unheeded warnings: Covid-19 & Migrant Workers in Canada" (8 June 2020); online: <https://migrantworkersalliance.org/wp-content/uploads/2020/06/Unheeded-Warnings-COVID19-and-Migrant-Workers.pdf> at p. 21.

⁴⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24).

⁴⁷ *Constitution Act, 1982* (80) 1982, c. 11 (U.K.), Schedule B, s. 92.

⁴⁸ S. 5(b) of the *Act* reads 'This Act does not apply with respect to: [...] b) living accommodation whose occupancy is conditional upon the occupant continuing to be employed on a farm, whether or not the accommodation is located on that farm...".