Bill 184, Protecting Tenants and Strengthening Community Housing Act, 2020

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June 25, 2020

We are legal counsel to several Mobile Home/Land Lease landlords (Community Operators) in the Province of Ontario. We are requesting, on behalf of Community Operators, that this Committee consider the submissions below and recommend implementation of requested changes which will benefit both landlords and tenants who occupy this unique, and highly in-demand, form of multi-residential, affordable housing.

In addition to supporting the proposed changes to the Mobile Home/Land Lease provisions of the RTA as set out in Bill 184, the Community Operators are seeking the following amendments:

1. **Reinstatement of Above Guideline Rent Increase (AGI) Applications for municipally or provincially imposed "extraordinary" vital services operating costs;**

2. **Permit AGI Capital Cost Phase-ins to Continue When a Tenancy is Assigned to a New Tenant at the time of the purchase/sale of a mobile/land lease home; and,**

3. **Permit Recovery of Unpaid Property Taxes, Special "Services", and s. 166 RTA Charges at the Landlord and Tenant Board (LTB) Consistent With s.20, Bill 184**

Our submissions with respect to each of these issues are set out below.

Context for Community Operator Submission

As the Committee knows, the *Residential Tenancies Act* (RTA) has a distinct set of provisions which regulate many aspects of community operations in Mobile Home Parks and Land Lease Communities (Part X of the RTA). In such communities, the "rental units" are the rented land on which tenant-owned homes are located. The Community Operator is in a similar position to a municipality when it comes to the provision, maintenance and replacement of all basic infrastructure including roads, electricity, water supply and systems, drainage and sewage systems. Like a municipality, the Community Operator provides "vital services" and infrastructure, but unlike municipalities, the Community Operator is restricted by the RTA from recovering government imposed costs through a tax mechanism. The Community Operator is governed by special rent control and other rules set out in the RTA if it wishes to recover mandatory vital service costs imposed by legislation.

There are special rules in the RTA relative to AGI applications. The proposed amendments to clarify that a capital expenditure is "eligible" for relief from caps on phase in of capital expenditure allowances where the work is "required", rather than "ordered", is supported by the Community Operators. The question of whether the work is "required" is generally determined by Community Operators through the assistance of professional consultants making recommendations based on, for example Ministry of the Environment or Electrical Safety Authority regulations or requirements. If it was necessary that there be an “order” from the regulating government agency, it is often the case that occupancy could be prohibited or vital services could be restricted pending compliance with the order. Alternatively, landlords would be discouraged from proactive replacement of infrastructure because recovery of the substantial costs will only be permitted after the infrastructure deteriorates to the point where an order is issued by a regulating authority. A determination that work is “required” allows the work to be done proactively so that an order will not have to be issued. The burden of satisfying the “required” test is upon Community Operators so residents’ interests are protected.

A failure to permit full recovery for the capital costs of major and “required” community infrastructure work may cause some Community Operators to fail to do the work and that, in turn, could ultimately force the community to close, thereby displacing all of the home owners at significant cost to them. Alternatively, home owners’ equity is adversely affected where capital costs cannot be recovered since it means cost cutting in operations costs of infrastructure, landscaping, and roads. A proper balance between the interests of Community Operators and residents ensures a mutual benefit to both as their equity increases in a financially stable community. For these reasons the Community Operators support the changes implemented by s. 27 of Bill 184, amending s. 167 of the RTA.

Another contextual issue you may be aware of is that the previous Wynne government, just prior to the last provincial election, repealed provisions of the RTA which allowed for a "cost pass through" of "extraordinary operating cost increases" of vital services imposed by legislative or regulatory authorities. These were applications for AGI increases based on exceptionally high increases to regulated commodity costs of water, electricity, and fuel/natural gas. This was done in an effort to secure apartment sector tenant votes just prior to the last provincial election but, in our submission, was hastily done without any consideration (and certainly without consultation) with Community Operators in the Mobile Home/Land Lease sector. In our submissions below, Community Operators seek reinstatement of the ability to pass through extraordinary vital services costs over which the Community Operator has no control and which are imposed by governmental or regulatory agencies.

A unique aspect of Mobile Home Park/Land Lease Communities is that certain expenses incurred by landlords are excluded from the definition of "rent". For example, property taxes assessed on tenant-owned homes are paid up front by the Community Operator as part of its property tax levy; however, the Community Operator is permitted, under the RTA and under the terms of the lease, to be reimbursed by the tenant for the property taxes attributable to the tenant's home. In addition, under s. 166 RTA the Community Operator is entitled to recover its "reasonable out of pocket expenses incurred with regard to, among other things, "the testing of water or sewage in a mobile home park". In s. 26 of Bill 184 it is proposed that certain services be excluded from the definition of "rent". All such charges, because they are not "rent" are only recoverable, on default of payment by a tenant, at Small Claims Court; however, proposed s. 88.2 RTA will permit recovery of "utility costs" by granting jurisdiction to the Landlord and

Tenant Board (LTB) to adjudicate such disputes and order payment of same. In its submissions below, and consistent with the intent of proposed s. 88.2, Community Operators seek an amendment to Bill 184 to allow for recovery at the LTB of property taxes, services otherwise excluded from the definition of "rent" (per s. 26, Bill 184), and s. 166 RTA charges rather than forcing Community Operators to seek a remedy at Small Claims Court.

Community Operator Submissions

1. Reinstatement of AGI Applications: Extraordinary Operating Cost Increases "Part X"

During the legislative consultation process leading up to Bill 184 we asked that the ability to pass through certain "extraordinary operating cost increases" with respect to the provision of "vital services" be reinstated for Part X, RTA tenancies. The request was made because Community Operators have no control over the commodity price charges or mandatory vital service upgrade requirements imposed by government or regulatory agencies. We cited, as a clear example of the devastating consequences of the loss of the ability to pass through such costs, the example of circumstances where Community Operators are forced, by municipal legislation, to connect to a municipal water supply rather than continue to draw well water at very little cost. In such a case the operating costs to supply water to the community go from effectively "zero", to a very high cost due to consumption costs payable at municipal water rates. Since there is no ability under the RTA to pass through "extraordinary operating cost increases" for the vital service of water, the Community Operator, through no fault on its part, must absorb the full municipal water costs while the residents enjoy a short term substantial financial benefit in receiving a free supply of municipal water.

Similar serious adverse financial consequences occur if the Community Operator is ordered by a municipal or regulatory authority to connect to a municipal sewage system and decommission a self-contained community sewage disposal system. Residents in the short term benefit financially and Community Operators face devastating financial loss. Ultimately, however, the financial benefit to residents is lost if the operations of the community are financially crippled by the cost to the Community Operator of providing free municipal water: something has to give and inevitably it will, causing home owners to lose the equity value of their homes as the community deteriorates.

Bill 184, s. 26 (adding s. 165.1) makes provision for certain “services” to be exempt from the definition of rent, thereby possibly making it possible for cost increases of vital services (which possibly might include extraordinary water costs) to be exempt from rent control. In our respectful submission, however, landlords and tenants require certainty when it comes to the pass through of unusual and extraordinary costs of vital services for tenants. It is respectfully submitted that a statutory remedy to address government imposed or regulatory agency costs for vital services should be treated in the same way that, for example “water testing” charges are treated: by way of a direct pass through in the provisions of the RTA itself, rather than “possibly” through regulations to the RTA.

For this reason, Community Operators are asking the Province to reinstate the ability of Community Operators to apply for an “extraordinary operating cost increase” for vital services. While it is relatively rare for Community Operators to apply on this basis, they are greatly exposed to serious and severe financial consequences as long as there is no ability to do so. A reinstatement of the ability to pass through extraordinary operating cost increases of vital services, just for the mobile home/land lease sector, would remove the substantial financial losses that Community Operators, and ultimately tenants, face if and when, for example, they are forced to decommission self-contained water and sewer infrastructure systems. The requested amendment would ensure that, despite the imposition of much higher vital services operating costs, the community remains viable.

There are examples in Ontario of devastating losses to tenant homeowners where failure of a Community Operator to meet the costs of infrastructure changes has resulted in the failure of the community and tremendous financial loss to tenants. This housing sector, although substantial, is relatively small compared to the rest of the multi-res sector; the circumstances are unique to the sector; and the financial exposure is both substantial and unfairly prejudicial to Community Operators. It should not be a political ‘hot potato’ to implement the requested change and re-institute the ability of

Community Operators to recover extraordinary operating cost increases for “regulated” vital services, as was permitted prior to the Wynne government’s repeal of the provisions.

2. Permit AGI Capital Cost Phase-in to Continue When a Tenancy is Assigned to a New Tenant

A second major issue for the sector concerns AGI orders issued for capital expenditures. As you may know, if major infrastructure improvements (water and sewage, electrical, roads) are “required” by an engineering or governmental authority in a Mobile Home or Land Lease Community, the costs and AGI justified rent increases are often substantial and subject to a phase in over a period of many years. In Mobile Home Park and Land Lease Communities there is no mandatory “cap” on the percentage rent increase, nor on the number of years over which the rent increase may be phased in. The LTB Board Member is entitled to exercise a broad discretion in deciding phase in issues.

What is unique to the Mobile Home/Land Lease sector is that, unlike the apartment sector, when there is an assignment of the land lease for the home due to the sale of the home, there is no ability for the landlord to increase rent to “market” on turnover: the rent increase is restricted to a prescribed maximum of $50.00 monthly for the new tenancy. In the apartment sector, if an AGI order is issued, the order is extinguished by default if a tenant vacates and a new tenancy agreement is entered into with a new tenant. In the apartment sector the rent for the new tenant is not subject to rent control: it can go to market rent; consequently, any AGI order does not apply to new tenants. In the Mobile Home sector, however, the benefits of the phase in of the awarded rent increase are lost on tenant turnover even though, unlike the apartment sector, the rent for the unit on a change of tenancy is “rent controlled” by limiting the maximum increase on turnover to $50.00. It is submitted that the amendments to Part X of the RTA should specify that the right to recovery of a Capital Expenditure allowance awarded in an AGI is not forfeited when the land lease is assigned to a new purchaser of the tenant’s home.

The loss of the balance of entitlement to a justified AGI increase is a serious financial consequence for operators and one which has no policy justification in the context of the Mobile Home/Land Lease housing sector. In our submission, the loss of the benefits of an AGI order on a change of tenancy was simply not considered when the provisions deeming an AGI increase to be extinguished on rental turnover in the apartment sector were introduced.

For the foregoing reasons, we ask that the Committee recommend that Bill 184 be amended to provide that where a phase in of an AGI is granted, then in addition to the prescribed permitted rent increase, the phase in of the ordered rent increase may continue in circumstances where the home on the rental unit is sold and the lease is assigned to the purchaser.

3. Permit Recovery of Unpaid Property Taxes, Special “Services”, and s. 166 RTA Charges at the LTB Consistent With s.20, Bill 184

Currently, if a tenant fails to pay property taxes owed with respect to their home, or fails to pay water testing charges, the Community Operator must file a claim in Small Claims Court for recovery of same since those charges, while valid, are not “rent”. Section 26 of Bill 184 proposes to remove certain “prescribed services” from the definition of “rent”, just as “water testing charges” and “mobile home property taxes” are currently removed from the definition of “rent” (see the definition of “rent” in s. 2 RTA and s. 166 RTA relative to water testing charges).

Bill 184 (s. 20) proposes to add s. 88.2 to the RTA. That new section will allow landlords to recover “utility costs” (such as unpaid hydro bills) which do not fall within the definition of “rent” and which are not currently recoverable at the LTB. At this time “utility costs” are not recoverable at the LTB even though the LTB has the expertise to adjudicate responsibility for payment of such charges. The LTB is also usually called upon to adjudicate responsibility for payment of water testing and property tax charges, but as with utility costs, it has no jurisdiction to allow a landlord to recover such valid charges from the resident: instead, the landlord must file a claim at Small Claims Court. We have often experienced decisions from Small Claims Court judges dismissing claims for water testing or property taxes on the incorrect basis that the LTB has jurisdiction over such matters. In other cases (often the same parties), landlords seeking recovery of such charges following a dismissal by Small Claims, are told the LTB has no jurisdiction and that the landlord must either accept that it has no remedy, or appeal the incorrect Small Claims Court decision to Divisional Court! It is submitted that it is consistent with the legislative intent of proposed s. 88.2 RTA to recognize that unpaid mobile home/land lease property taxes and unpaid "services" charges (new 165.1 RTA), including water testing charges in s. 166 RTA, should also be recoverable at the LTB rather than the Community Operator having to go to Small Claims Court for the recovery of such "non-rent" sums.

For these reasons Community Operators support the intent of s. 20 of Bill 184 adding s. 88.2 to the RTA. The problem is that the restriction of recovery to "utility costs" would not permit recovery of unpaid services contemplated by s. 26 of Bill 184 (Prescribed Services" which are not 'rent'), nor would it permit recovery of unpaid property taxes or the charges listed in s. 166 RTA at the LTB. The drafters of Bill 184 incorporated the principle of granting jurisdiction to the LTB with respect to utility charges but they did not appear to turn their mind to similar types of "non-rent" charges in Part X of the RTA. We respectfully request that this apparent oversight be addressed by way of a new section in Part X, RTA which, as is the case with "utility costs", grants the LTB the jurisdiction to adjudicate and order recovery of unpaid non-rent charges in Part X of the RTA.

Summary

We would be obliged if this Committee and staff would consider the above submissions on behalf of Community Operators which, collectively, operate well over a thousand viable mobile home/land lease tenancies in the province of Ontario. It is submitted that both Community Operators and residents will benefit from the outcomes requested above. Residents, in particular, benefit from robust attention by Community Operators to the quality of infrastructure, vital services and general services provided in a Mobile Home/Land Lease community. The value of residents' homes has increased substantially in desirable communities over the past decade, but for others, their equity has been substantially eroded in communities which are operated as "trailer parks". The goal of the Community Operators who support our submissions is to create healthy, financially viable communities for the benefit of Community Operators and Residents.

Our submissions above are made with the support of the Community Operators in the list attached to this correspondence. Thank you for your consideration of the above and, should you wish to initiate further stakeholder consultation or have any questions regarding the above, do not hesitate to contact the undersigned.

Yours very truly,

COHEN HIGHLEY LLP

Joseph Hoffer
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email: hoffer@cohenhighley.com
cc: Client

Mobile Home and Land Lease Communities Supporting Submission

Cove Mobile Home Park & Sales Inc.

1343892 Ontario Inc. cob as Rocky Ridge Estates

Anthony's Mobile Home Park Limited

Leeshore Estates

Turnberry Estates

Espanola Mobile Home Park

Linwood Parks- 5 Communities

St. Clair Community Estates

Malden Hill Mobile Home Park

Briarwood Estates

Courtlea Mobile Home Park

Pineview Mobile Home Park

Countryside Village of Windsor

Killam Properties- 13 Communities

Oriole Park

CAP REIT- 15 Communities

London Terrace

Campers Corners

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June 23, 2020

Standing Committee on Social Policy
99 Wellesley Street West
Room 1405, Whitney Block
Toronto, Ontario
M7A 1A2

Dear Committee:

Re: Bill 184; Submissions relative to amendments affecting Mobile Home Park/ Land Lease Communities and requests for review/amendments

We are legal counsel to several Mobile Home/Land Lease landlords (Community Operators) in the Province of Ontario. We are requesting, on behalf of Community Operators, that this Committee consider the submissions below and recommend implementation of requested changes which will benefit both landlords and tenants who occupy this unique, and highly in-demand, form of multi-residential, affordable housing.

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Communities (Part X of the RTA). In such communities, the “rental units” are the rented land on which tenant-owned homes are located. The Community Operator is in a similar position to a municipality when it comes to the provision, maintenance and replacement of all basic infrastructure including roads, electricity, water supply and systems, drainage and sewage systems. Like a municipality, the Community Operator provides “vital services” and infrastructure, but unlike municipalities, the Community Operator is restricted by the RTA from recovering government imposed costs through a tax mechanism. The Community Operator is governed by special rent control and other rules set out in the RTA if it wishes to recover mandatory vital service costs imposed by legislation.

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Similar serious adverse financial consequences occur if the Community Operator is ordered by a municipal or regulatory authority to connect to a municipal sewage system and decommission a self-contained community sewage disposal system. Residents in the short term benefit financially and Community Operators face devastating financial loss. Ultimately, however, the financial benefit to residents is lost if the operations of the community are financially crippled by the cost to the Community Operator of providing free municipal water: something has to give and inevitably it will, causing home owners to lose the equity value of their homes as the community deteriorates.

Bill 184, s. 26 (adding s. 165.1) makes provision for certain “services” to be exempt from the definition of rent, thereby possibly making it possible for cost increases of vital services (which possibly might include extraordinary water costs) to be exempt from rent control. In our respectful submission, however, landlords and tenants require certainty when it comes to the pass through of unusual and extraordinary costs of vital services for tenants. It is respectfully submitted that a statutory remedy to address government imposed or regulatory agency costs for vital services should be treated in the same way that, for example “water testing” charges are treated: by way of a direct pass through in the provisions of the RTA itself, rather than “possibly” through regulations to the RTA.

For this reason, Community Operators are asking the Province to reinstate the ability of Community Operators to apply for an “extraordinary operating cost increase” for vital services. While it is relatively rare for Community Operators to apply on this basis, they are greatly exposed to serious and severe financial consequences as long as there is no ability to do so. A reinstatement of the ability to pass through extraordinary operating cost increases of vital services, just for the mobile home/land lease sector, would remove the substantial financial losses that Community Operators, and ultimately tenants, face if and when, for example, they are forced to decommission self-contained water and sewer infrastructure systems. The requested amendment would ensure that, despite the imposition of much higher vital services operating costs, the community remains viable.

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A second major issue for the sector concerns AGI orders issued for capital expenditures. As you may know, if major infrastructure improvements (water and sewage, electrical, roads) are “required” by an engineering or governmental authority in a Mobile Home or Land Lease Community, the costs and AGI justified rent increases are often substantial and subject to a phase in over a period of many years. In Mobile Home Park and Land Lease Communities there is no mandatory “cap” on the percentage rent increase, nor on the number of years over which the rent increase may be phased in. The LTB Board Member is entitled to exercise a broad discretion in deciding phase in issues.

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For these reasons Community Operators support the intent of s. 20 of Bill 184 adding s. 88.2 to the RTA. The problem is that the restriction of recovery to “utility costs” would not permit recovery of unpaid services contemplated by s. 26 of Bill 184 (Prescribed Services” which are not ‘rent’), nor would it permit recovery of unpaid property taxes or the charges listed in s. 166 RTA at the LTB. The drafters of Bill 184 incorporated the principle of granting jurisdiction to the LTB with respect to utility charges but they did not appear to turn their mind to similar types of “non-rent” charges in Part X of the RTA. We respectfully request that this apparent oversight be addressed by way of a new section in Part X, RTA which, as is the case with “utility costs”, grants the LTB the jurisdiction to adjudicate and order recovery of unpaid non-rent charges in Part X of the RTA.

Summary

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Yours very truly,

COHEN HIGHLEY LLP

signature electronically affixed

Joseph Hoffer
JJH:rmh
email: hoffer@cohenhighley.com

cc: Client

Mobile Home and Land Lease Communities Supporting Submission

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