Durham Community Legal Clinic
& Access to Justice Hub

Written Submissions to:

Standing Committee on Social Policy

of the

Legislative Assembly of Ontario

Re: Bill 184, *Protecting Tenants and Strengthening Community Housing Act, 2020*

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Executive Summary

1. Bill-184 is the proposed *Protecting Tenants and Strengthening Community Housing Act, 2020* which would amend the *Residential Tenancies Act, 2006* (RTA), the *Housing Services Act, 2011*, the *Ontario Mortgage and Housing Corporation Act* and the *Building Code Act, 1992*. Our submissions will focus on the RTA, with the understanding that these other amendments may indeed have implications for our clients and communities, once further details are available.
2. The changes to the RTA found in Schedule 4 of Bill 184 are being proposed in order to "strengthen protections for tenants, make it easier to be a landlord, and help both landlords and tenants resolve disputes." Some of these changes may indeed protect tenants and strengthen our communities. These submissions focus on how these changes may achieve these goals, and what is needed to ensure that changes to our residential tenancy protection system benefit the public as a whole.
3. Community Legal Clinics (CLCs) provide a voice for the most impoverished members of society, who often have no input or interaction with policy and decision-makers. By providing summary advice and legal representation, CLCs also ameliorate much of the delays and expenses involved with Self-Represented Litigants (SRLs), who would otherwise be unable to navigate the legal system.
4. These submissions are made with particular consideration and support for the principles in the 2019 Budget, in particular: ensuring accountability; reducing red tape to provide greater convenience for individuals and families; reducing duplication of services; guaranteeing valuable programs and services are sustainable and modernized; using an evidence-based approach towards decision-making; breaking down silos; and ensuring services are provided to the people of Ontario where they live, in consideration of who they receive services from, and with consideration of their unique circumstances.[1]
5. These submissions conclude that Bill 184 does not contain a major overhaul of any part of the RTA. It simply tweaks parts of the act. Both landlords and tenants get some small gains, often at the expense of the other

[1] The Hon. Victor Fedeli, Minister of Finance, "2019 Ontario Budget: Protecting What Matters Most," 2019, at 44, available at: https://budget.ontario.ca/pdf/2019/2019-ontario-budget-en.pdf.

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party. Although neither tenants or landlords will be particularly pleased with these changes as a whole, there is a risk that tenants may be adversely affected, especially if the Landlord and Tenant Board (LTB) continues to be inadequately funded. Enacting these changes during the pandemic is also problematic, given the public health implications.

6. DCLC agrees that significant reform is needed in the residential tenancy regime, but this must be done with full consideration of the ramifications of any changes to low-income populations, and with a commitment by government to ensure that the tribunal has adequate funding and support. After providing an overview of the changes, we provide recommendations in light of Bill 184 as follows:

1) Evictions for personal use should require details of ownership or control over the 2-year period, to avoid abuse of affidavits in s. 71.1 (1) applications;

2) Specify an inability to obtain legal assistance (including summary legal advice) as a justifiable basis for not complying with the proposed written notice requirements for s. 69 terminations of tenancy under s. 82(1) of the RTA;

3) Reconsider the provisions for expedited evictions under s. 206 and landlord compensation;

4) Expand s. 237 of RTA to ensure a reasonable care standard for directors and officers, so that fines and bad faith applications are effective;

5) Mandate that changes in rent for mobile homes and lease communities must be conveyed in writing to the tenants and the LTB; and

6) Ensure that any alternative dispute resolution mechanisms under s. 194 require that both parties are represented, where the term representation is inclusive of summary legal advice.

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Background

7. The Durham Community Legal Clinic (DCLC) was founded in 1985, after operating for a couple years as a telephone service for tenants providing summary advice. For much of its history, DCLC focused income security matters with its Legal Aid Ontario (LAO) funding, such as Ontario Works (OW), Ontario Disability Support Program (ODSP), and Canada Pension Plan Disability (CPP-D) denials. A significant surge in housing needs over the past 5 years resulted in the clinic expanding its tenant law services from summary advice to representation. This mirrored much of the economic downturn observed in Durham Region, in part connected to closures in manufacturing and industry. Housing law is now the largest area of services DCLC provides in Durham Region.
8. DCLC experiences some significant challenges with housing services, in particular because of the set-up of the Landlord Tenant Board (LTB) in Durham Region. There is only a single LTB location in Durham Region, situated in Whitby, for a population over 645,862 and across 2,523 km². This location can see up to 250 people in a crowded space of approximately 2000 sq. ft., in an area shared with a Service Ontario office. DCLC provided services for 2,690 housing cases between 2019-2020, up by 460 cases from the previous fiscal year, which includes summary tenant duty services on-site at the LTB, also provided free of cost to all tenants. The clinic is the primary provider of legal services for tenants in Durham Region, and typically the exclusive provider of legal assistance for low-income residents.
9. Affordable housing is a significant concern in Durham Region. Only 18% of all newly built rentals between 2011 and 2016 were considered "affordable."[2] The average rental rate for a 1-bedroom unit in Durham in 2018 was estimated to be $1,518, meaning only 14% of all listings were "affordable." Durham was historically considered

[2] This is based on a Canada Mortgage and Housing Company (CMHC) definition of affordability, defined as when a household spends less than 30% of its pre-tax income on adequate shelter. This definition does not properly apply to low-income Ontarians, who would still find many of these affordable housing stock to still be too expensive given their personal financial circumstances, defined by CMHC as in "severe housing need," where over 50% of pre-tax income is spent on shelter. Unfortunately, these population trends are not adequately tracked.

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one of the most affordable places to live in the GTHA, but there are now significant concerns of affordability for many households.[3] To put this into perspective, the Ontario Works amount for a single person is only $736/month.

10. Internal statistics based on the average cost of last month rent deposits obtained from Community Development Council Durham (CDCD) demonstrate that the average rent for a 1-bedroom unit in Durham rose from $950 in 2014 to $1250 in 2020. These statistics are based on the experiences of low-income individuals in Durham as CDCD is an organization that assists such individuals obtain housing by providing them with payment for last month's rent deposit. It is important to note the difference in average rental rates from CDCD's statistics and the statistics from Durham region (cited above). The CDCD statistics demonstrate that low income residents of Durham seek out and live in units that are much cheaper than the actual average rental rate. This is because the actual average rental rate in Durham region is simply unaffordable for low income members of the community.
11. Of particular concern is the City of Oshawa, where DCLC's main offices are located. The City of Oshawa is estimated to contain 66,864 dwelling units in 2019, including 18,603 apartment units. The vacancy rate in southern Oshawa increased from 3.0% in 2017 to 4.5% in 2018,[4] which is well above the national average of 2.2% in 2019.[5] This was largely due to an increase in 1-bedroom units in parts of Oshawa that are considered priority, low-income neighborhoods.[6] Rental rates in Oshawa have gone up significantly, from $858 for a 1-bedroom in 2014, to $1,204 in 2018, well beyond the rent guideline increases for this same period.[7] In part, this can be explained by abuse of the RTA by landlords in Oshawa, including the use of renovictions.[8] Consequently, Oshawa has been listed in one

[3] Envision Durham, "Housing Policy Planning – Discussion Paper," Durham Region Planning and Economic Development Department, December 2019 at 14; The Regional Municipality of Durham, "Envision Durham – Housing Policy Planning Discussion Paper, File D12-01," December 3, 2019 at 3, available at: https://www.durham.ca/en/regional-government/resources/Documents/Council/Reports/2019-Committee-Reports/Planning-Economic-Development/2019-P-47.pdf.
[4] City of Oshawa, "2018 City of Oshawa Housing Monitoring Report," Feb. 12, 2019, available at: http://app.oshawa.ca/agendas/info_package/2019/02-12/info-19-34.pdf
[5] Canada Mortgage and Housing Corporation (CMHC), "Canada's National Vacancy Rate Declines for Third Year," Jan. 15, 2020, available at: https://www.cmhc-schl.gc.ca/en/media-newsroom/news-releases/2020/canadas-national-vacancy-rate-declines-third-year.
[6] Durham Region Health Department, "Building on Health in Priority Neighbourhoods," December 2015, available at: https://www.durham.ca/en/health-and-wellness/resources/Documents/HealthInformationServices/HealthNeighbourhoods/buildingOnHealth.pdf.
[7] See, Government of Ontario, "Rent increase guideline," available at: https://www.ontario.ca/page/rent-increase-guideline. A corresponding increase on a rent of $858 for 1.6% in 2015, 2.0% increase in 2016, 1.5% increase in 2017, and 1.8% increase in 2018 would result in approximately $926, still over $300 the 2015 rental rate, even when accounting upwards for in-year increases that could create variances in data points.
[8] Dave Flaherty, "Oshawa renters forced out by "renovictions": MPP," The Oshawa Express, Dec. 10, 2019, available at: https://oshawaexpress.ca/renovictions-in-oshawa/. See also, Legislative Assembly of Ontario, "Official Report of Debates (Hansard) No. 135," 1st Session 42nd Parliament, Dec. 3, 2019 at 6578 [Ms. Jennifer K. French, MPP Oshawa]:

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of the top ten most expensive cities for rental apartments in all of Canada.[9] Bill 184 is intended to specifically address some of these problems, including increasing fines for landlords who break the law.[10]

12. There are currently only a Vice-Chair, 2 full-time, and 3 part-time LTB adjudicators in Durham, meaning that decisions that would take 30 days as little as 4 years ago currently take up to 3-4 months or more. Although the shortage of LTB adjudicators is a general concern across Ontario,[11] this shortage is particularly acute in Durham Region.
13. A shortage of tribunal members also means that there are significant delays, cancellations, and inefficiencies. All of these challenges were in place prior to the pandemic, and are expected to only get worse following.
14. In addition to the LAO funded services described above, DCLC has been involved in the development of innovative models to expand services. One example of this has been the Durham Access to Justice Hub®, launched in 2019. The Hub is located in the clinic and involves a partnership with The Regional Municipality of Durham, Durham College, John Howard Society of Durham, Durham Mental Health Services, Community Development Council Durham (CDCD), DRIVEN Durham (a Hub for domestic violence and sexual abuse that includes other agencies), Brain Injury Association of Durham (BIAD), Durham Region Unemployed Help Centre, Canadian Mental Health

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> Speaker, almost 100 residents of a few Oshawa apartment buildings found out this summer that their leases were being terminated because of renovations. They're being renovicted. These soon-to-be-displaced residents are seniors, working families and folks on a fixed income. The housing situation in Oshawa is dire and they don't know where they will go.
> [emphasis added]

[9] Rent Seeker, "Updated Averages Rents and Vacancy Rates Across Canada," Spring 2019, available at: https://www.rentseeker.ca/blog/rentseeker-publishes-new-rental-data-showing-top-10-most-and-least-expensive-cities-to-rent-in-canada/; Durham Radio News, "Oshawa makes top ten list of most expensive cities for rental apartments in Canada," May 27, 2019, available at: https://www.durhamradionews.com/archives/119261.

[10] Legislative Assembly of Ontario, "Official Report of Debates (Hansard) No. 163," 1st Session 42nd Parliament, May 26, 2020 at 7910 [Hon. Steve Clark, Minister of Municipal Affairs and Housing]:

> But Mr. Speaker, we need to do more than just build new apartment buildings. We need to make renting easier and fairer for both landlords and tenants. And I'm pleased to tell you, Speaker, how the Protecting Tenants and Strengthening Community Housing Act would boost protections for tenants while making it easier to be a landlord.
> So for context, I'm going to outline some of the challenges that landlords and tenants face and how this legislation that we're debating this afternoon would help. For tenants, this legislation proposes to increase compensation for no-fault evictions. It proposes measures to address the serious problem of renovictions, and it would increase fines for landlords who break the law.
> [emphasis added]

[11] See, for example, Tribunal Watch Ontario, "Statement of Concern about Tribunals Ontario," May 14, 2020, available at: https://tribunalwatch.files.wordpress.com/2020/05/statement-of-concern-may-14.pdf. The report states that the LTB had 9 part-time and 44 full-time adjudicators across Ontario in 2018, and has 9 part-time and 31 adjudicators in 2020. See also,
Emily Mathieu, "Shortage of adjudicators hits Landlord and Tenant Board," Toronto Star, Oct. 31, 2018, available at: https://www.thestar.com/news/gta/2018/10/31/shortage-of-adjudicators-hits-landlord-and-tenant-board.html, discussing the 2017-2018 Social Justice Tribunals Ontario (SJTO)'s Annual Report. Since that time, the 2018-2019 Annual Report indicates that the number of Landlord and Tenant Board applications and appeals received went up further, from 80,791 to 82,095; available at: http://www.sjto.gov.on.ca/documents/sjto/2019_11_19-Tribunals-Ontario-Annual-Report.pdf/.
The vast majority of these applications are L1, Termination and eviction for non-payment of rent, which comprise 62.4% of all of the landlord applications in 2018-2019, and landlord applications generally comprised almost 90% of all matters heard by LTBs .

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Association Durham, Durham Welcome Centre Immigrant Services, and others. The goal of this Hub is to improve inter-agency collaboration, reduce administrative barriers and silos, and develop a better client-centered focus.

15. Some examples of the way that the Hub transforms the approach DCLC takes towards housing issues include, frequently assisting clients in obtaining alternative housing through one of our Hub partners, such as CDCD or John Howard Society, or assisting clients with obtaining employment in order to meet their rent, through the Durham Region Unemployed Help Centre or John Howard Society. As a result, we focus on the root causes of the legal issues of our clients, with the goal of preventing legal problems and ultimately addressing poverty alleviation.
16. Housing issues have become particularly significant during the COVID-19 crisis.[12] The combination of job losses, economic uncertainty, and potential evictions, has the potential to exacerbate the public health crisis. Low-income tenants are unlike other tenants in the community in that their eviction dislocates them not into another housing unit, but into a shelter or onto the street.[13] The living conditions in both these circumstances are not conducive to reducing the spread of COVID-19, which is also why DCLC takes the position that the time for making these amendments is premature as the pandemic and its ultimate course still remains uncertain.[14]

Part 1: History of Tenant Protections in Ontario

17. Ontario has a long history of regulating rent. In 1974, Premier William Davis promised the imposition of rent controls in response to inflationary and economic concern, and subsequently enacted the *Residential Premises Rent Review Act, 1975*[15] on Dec. 15, 1975. Although this was a temporary legislation, the province engaged in

[12] John Chidley-Hill, "Residential tenants, landlords face dilemma as rent comes due on April 1," CTV News, March 25, 2020, available at: https://www.ctvnews.ca/health/coronavirus/residential-tenants-landlords-face-dilemma-as-rent-comes-due-on-april-1-1.4867222; Matt Lundy, "Tenants wanted April rent relief. Some got it, others didn't," The Globe and Mail, April 1, 2020, available at: https://www.theglobeandmail.com/business/article-with-april-rent-due-tenants-seek-breaks-from-landlords/; Rachael D'Amore, "Rent is due May 1. Experts say CERB isn't enough for some Canadian tenants," Global News, April 29, 2020, available at: https://globalnews.ca/news/6882311/coronavirus-canada-rent-rights-may-1/; Briar Steward, "Anxiety rises for tenants and landlords as May rent comes due," CBC News, April 30, 2020, available at: https://www.cbc.ca/news/canada/tenants-landlords-may-rent-1.5548502.

[13] Omar Ha-Redeye, "Letter to AG Re Evictions," Durham Community Legal Clinic, March 17, 2020, available at: https://www.durhamcommunitylegalclinic.ca/wp-content/uploads/2020/03/Letter-to-AG-re-evictions-March-17-2020.pdf. Note that two days later, the Chief Justice issued a Court Order suspending residential evictions: e Chief Justice Court Order – Suspending Residential Evictions, March 19, 2020, available at: https://www.ontariocourts.ca/scj/chief-justice-court-order-susp-resid-evict/. See also, Omar Ha-Redeye, "DRPS Letter to the Chief," Durham Community Legal Clinic, April 7, 2020, available at: https://www.durhamcommunitylegalclinic.ca/wp-content/uploads/2020/04/DRPS-Letter-to-the-chief-April-7-2020-2.pdf

[14] In this context, DCLC supports the letter by the Advocacy Centre for Tenants Ontario (ACTO), "Bill 184: Wrong Bill, Wrong Time," June 24, 2020, available at: https://www.acto.ca/bill-184-wrong-bill-wrong-time/.

[15] 1975 (2d Sess.), S.O. 1975, c. 12.

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further reform to ensure that residential landlord and tenant issues would be properly addressed by an administrative tribunal, instead of the courts, leading to the *Residential Tenancies Act, 1979* in June 1979. Due to several abuses of landlords in seeking rent increases above guidelines, the government enacted the *Rental Housing Protection Act, 1986*, which was followed by a series of legislative reforms.[16]

18. By April 1976, all Canadian provinces imposed rent controls.[17] Prior to this, the landlord/tenant relationship was strictly market based and grounded in property rights.[18] The imposition of rent controls was indicative of a changing understanding of the landlord tenant relationship, as one that is socio-political in nature, and effectively an issue of human rights.[19]

19. The 1984 Report for the Ontario Commission of Inquiry explained four justifications for rent regulations in the late 1970s as follows:[20]

    1) Security of Tenure (protection from economic evictions)
    2) Preserving the affordability of the existing rental stock
    3) Preventing a regressive income redistribution
    4) Mediation of conflicts relating to rental tenure including protection from human rights abuses)

20. Security of tenure and rent regulations were introduced in order to mitigate the substantial influence of the market economy over fundamental human needs such as shelter.[21] These changes also reflect governmental attempts to prevent the exploitation of basic rights on the basis of gender and race. The growth of these societal underpinnings provided the basis for the emergence of landlord and tenant legislation.[22]

[16] Robert G. Doumani, Carol A. Albert, "Ontario Residential Tenancies Law – 2nd ed.," 2017 Thomson Reuters Canada Limited, at "Introduction and History." In particularly, the purchase and sale transactions between Leonard Rosenberg, Bill Player and Andrew Markle on Nov. 5, 1982 for the residential portfolio of Cadillac-Fairview in the GTHA, for purposes that appeared to be in order increase rent above the guidelines due to artificial financial losses from the transaction. This controversy gave rise to the Commission of Inquiry into Residential Tenancies (the Thom Commission). The debate that ensued played a significant role in the 1985 provincial election and a change in government, which was followed by the creation of a new government policy of "Assured Housing for Ontario" that led to rent regulation, Bills 77 and 78, and the RTA.
[17] J. David Hulchanski, "The Evolution of Property Rights and Housing Tenure in Postwar Canada: Implications for Housing Policy", Urban Law and Policy (1988) at 149, available at: http://www.urbancenter.utoronto.ca/pdfs/researchassociates/Hulchanski_Housing-Tenure-C.pdf.
[18] Hulchanski, *ibid* at 150.
[19] *Ibid.*
[20] J. David Hulchanski, "The Economics of Rental Housing Supply and Rent Decontrol in Ontario" 1997, at 1, available at: http://www.urbancentre.utoronto.ca/pdfs/researchassociates/Hulchanski_Ont-Leg_Economic.pdf.
[21] *Ibid.*
[22] *Ibid* at 147.

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21. Some jurisdictions enforced control of rent levels as a means of preventing landlords from raising rents to evict tenants (economic evictions). This was an explicit acknowledgment that rental housing is distinct, and separate from what society typically considers a market commodity.[23]

22. More recently, the introduction of the *Tenant Protection Act*[24] (TPA) in 1996 legislated vacancy decontrol, which led to a 7% increase in rental rates demonstrated by a survey taken in 1998 in Toronto (seven times the rate of inflation).[25] This was attributed to landlords increasing rent to the maximum legal amount upon lease renewal. The TPA also increased the allowances a landlord could claim in applications for above-guideline rent increases for repairs.[26]

23. Another consequence of the TPA was that vacancy decontrol eliminated one of the main grounds for illegal rent applications. This problem was exacerbated by TPA provisions changing the limitation period for such applications from 6 years to 1 year.[27]

24. The elimination of rent controls incentivized landlords to encourage tenants paying lower rents to move out, as demonstrated by a 6% increase in evictions and arrears applications, and a 51% increase in failed settlements. An increase of 21% of eviction applications for non-arrears problems or landlord's own use was also observed in this period.[28]

25. Prior to the TPA, tribunals had the authority to issue Orders Prohibiting Rent Increases ("OPRIs"), if landlords failed to comply with maintenance obligations.[29] The TPA removed the ability of administrative tribunals to issue OPRIs, thus giving landlords greater ability to increase rent without following through on their obligation to

[23] *Ibid.*
[24] SO 1997, c 24.
[25] Mahoney, Elinor. "The Ontario Tenant Protection Act: A Trust Betrayed." Journal of Law and Social Policy 16. (2001) 266 at 261-278, available at: https://digitalcommons.osgoode.yorku.ca/jlsp/vol16/iss1/10.
[26] *Ibid*.
[27] *Ibid* at 268.
[28] *Ibid* at 275
[29] Mary Truemner, An Overview of the Residential Tenancies Act: A Tenant Advocate's Perspective, 2006, at 2, available at: http://www.acto.ca/~actoca/assets/files/docs/Article_AnOverviewOfTheRTA_MTR_0507.pdf

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repair/improve the rental properties at issue.[30] The RTA re-introduced OPRIs as a form of protection against this particular problem, but the RTA did not address the problem of vacancy decontrol.

26. The LTB, under the TPA regime, regularly declined to hear landlord breach issues in eviction hearings unless there was a "serious breach," such as the obligation to maintain the premises in a good state of repair. This was because tenants were required to make their own applications.
27. The RTA enhanced tenant rights by giving the Board jurisdiction to make an order in respect of any issue a tenant raises if that issue could be the subject of a tenant application despite an application not being made.31
28. Further reforms were introduced in 2017, under Bill 124, *Rental Fairness Act, 2017*,[32] which was part of a 16-point plan intended to provide measures that would help more people find affordable homes, increase housing supply, protect buyers and renters, and bring stability to the real estate market.
29. One of the key changes under Bill 124 was to remove the rent guideline exemption for post-1991 units, a measure initially introduced to stimulate new affordable housing units. These exemptions were reintroduced in 2018 under Bill 57, *Restoring Trust, Transparency and Accountability Act, 2018*, which made amendments to s. 6.1 of the RTA under Schedule 36 to provide an exemption to all new unites after November 15, 2018. While this may have been a prudent economic stimulus strategy at the time, it could not have envisioned the COVID-19 pandemic, and the unemployment, underemployment, and economic recession that will invariably follow. Rent increases as high as 25% were already being observed, prior to the pandemic.[33]
30. The 2017 amendments retained the use of a sworn affidavit for certain filings, and continued to make it an offence to provide false or misleading information. However, landlords were still able to get around these offences by utilizing arms-length agents, or rapidly changing property managers, who would provide an affidavit that had incomplete or inaccurate information based on their limited knowledge.

[30] *Ibid.*
[31] *Ibid* at 6.
[32] SO 2017.
[33] Gilbert Ngabo, "The Ford government removed rent control on new units. A year later tenants are reporting double-digit increases," Toronto Star, Nov. 22, 2019, available at: https://www.thestar.com/news/gta/2019/11/22/the-ford-government-removed-rent-control-on-new-units-a-year-later-tenants-are-reporting-double-digit-increases.html.

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31. Bill 124 also prohibited the collection of money after a tenancy is terminated, which was important to prevent abuses by landlords who would push a tenant out of a unit prematurely in order to replace them with a higher paying tenant, and then subsequently also pursue that previous tenant for claims that may or may not have merit. Bill 184 re-introduces this process for landlords, which will invariably place greater strain on tenants and the LTB.
32. Despite these numerous reforms over the years, the LTB and residential tenancy system remains under strain. While there are several reported cases of tenant fraud in the news,[34] these remain exceptions and not the norm. The primary reason for the current and future difficulties is the lack of affordable housing, and an administrative tribunal system that is inadequately supported to resolve disputes under the current or future legislative scheme.

Part 2: Overview of the Changes

a) New Exemption from the RTA

33. Bill 184 creates a new exemption under s. 5.2, which provides that a rental unit that is a site on which a land lease home is located is exempt from the RTA, if the unit is owned by an employer and is provided to an employee in connection with their employment.
34. There are other existing provisions in the RTA that exempt certain classes of tenants from its protections. This particular exemption creates a very limited exempted class that will not affect many tenants, but it does increase the number of classes, and therefore the total number of tenants excluded from the protections under the RTA.
35. Given that this new exemption is related to the employment of the tenant, "in connection with the employee's employment," DCLC is confident that other protections in the legal system, in particular those related to employment, could provide sufficient protection. These protections could include actions before the Ontario Superior Court of Justice, the Human Rights Tribunal, or for more minor issues around these arrangements, through the Ministry of Labour or Ontario Labour Relations Board (OLRB). These changes are also unlikely to

[34] See, for example, CBC News, "Toronto's 'professional tenant' found guilty of fraud for skipping out on rent for 2 years," June 25, 2019, available at: https://www.cbc.ca/news/canada/toronto/guilty-toronto-james-regan-3-counts-1.5189852; Peggy Lam, "Landlords claim 'professional tenant' scammed them out of thousands in rent," CBC News, Dec. 3, 2018, available at: https://www.cbc.ca/news/canada/kitchener-waterloo/tenant-rental-scam-waterloo-region-1.4915096.

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significantly affect low-income populations, unless this exception is used for transient, migrant, or precariously employed individuals, in which case this could be a potential area of abuse by landlords.

b) No-Fault Evictions

(i) Landlord's/Purchaser's Own Use Eviction

36. The RTA currently permits landlords under ss. 48-49 to initiate an eviction in order to allow for themselves, a family member, a purchaser or a purchaser's family member, to move into the unit. This provision has been of existing concern, as it has been a long-standing basis for landlords to improperly claim personal use in order to evict a tenant, and the remedies once this is discovered are inadequate to dissuade these landlords from utilizing this approach.[35]

37. Landlords frequently use the personal use provisions in order to evict a tenant who is not in any way at fault, but is a tenant that the landlord wants to get rid of. The greatest risk of victims for this type of abuse are long-time renters, because their rent is often lower than what the market rent for a new tenant would be. Landlords often prefer this type of approach to eviction because there are little consequences for them doing so, even if it is conducted in bad faith.

38. Amendments to the RTA on Sept. 1, 2017 to attempt to address this problem were introduced as part of the province's "Fair Housing Plan."[36] These changes introduced the following for evictions for personal use:

    a. Payment by landlords of one month's rent or an alternative rental unit;
    b. Occupancy by the landlord or immediate family member for a minimum 12 months;
    c. Notice by landlord can only be where they own the unit in whole or in part;
    d. Created a new offence to knowingly end a tenancy in bad faith, with a fine up to $25,000; and,
    e. A presumption that termination was provided in bad faith if any of the following occur within a year of the notice:
        i. Advertisements for rent of the unit
        ii. Entering a tenancy with someone other than the tenant
        iii. Advertising the sale of the unit or building
        iv. Demolishing the unit or the building

[35] Shane Dingman, "Evicted: The loophole Ontario landlords use to force tenants out," The Globe and Mail, May 1, 2019, available at: https://www.theglobeandmail.com/canada/article-evicted-how-landlords-are-forcing-tenants-out/; Kate McGilivray, "As 'personal use' evictions appear to spike in Toronto, tenants suspicious of landlord cash grabs," CBC News, Feb. 11, 2018, available at: https://www.cbc.ca/news/canada/toronto/personal-use-evictions-1.4530383/

[36] Ministry of Finance, "Ontario's Fair Housing Plan," April 20, 2017, available at: https://news.ontario.ca/mof/en/2017/04/ontarios-fair-housing-plan.html. This was implemented under Bill 124, *Rental Fairness Act, 2017*, SO 2017.

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v. Converting the until or building for any purpose other than residential use.

Despite these amendments in 2017, abuse of these personal use provisions continues to occur in large numbers.

39. Bill 184 adds a provision under a new section 71.1 (1) that would require the landlord to inform the LTB through an affidavit as to whether they have utilized these personal use eviction or other no-fault eviction processes, such as for demolition, conversion, repairs or renovations (ss. 72 (3) and 73 (2)), in the prior two years. This reporting requirement is meant to assist the LTB easily identify landlords who abuse the eviction for personal use mechanism

40. While this amendment adds some additional scrutiny to landlords evicting for personal use, it would not have any impact on an application to evict for own use made by an unscrupulous landlord who is abusing this form of eviction for the first time for a specific unit. One possible way that landlords would circumvent these controls is by changing ownership or control of a unit in between personal use evictions, thereby limiting the information that would be known by an affiant. This could be done by switching property management companies, or moving a building through different holding corporations, both of which emphasize the need for greater responsibility of directors and officers, as described below in paras 84-85.

41. While the LTB might look more carefully at landlords who have engaged in these evictions over the past two years, there is no actual presumption for the landlord to have to rebut. The onus for the landlord is not onerous in this regard, and simply requires an affidavit from the landlord, family member, purchaser, purchaser's family member, stating the intention to live in the unit. The two-year window also means that landlords may still engage in this process, but simply do so at a lesser rate.

42. One suggestion to help improve this process would be to include any change of ownership or control of the residential unit in the past two years as required information in the affidavit, which could be included in the amendments as follows:

> 71.1 (3) A landlord who, on or after the day subsection 11 (2) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force, files an application under section 69 based on a notice of termination given under section 48, 49 or 50 shall, in the application,
> (b) set out, with respect to each previous notice described in clause (a),

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…
(iv) any change of control or ownership of the rental unit over the past two years, and
(v) such other information as may be required by the Rules.

Alternatively, this could be included as required information under the Rules, but this requirement is more effective if it is provided directly through legislation.

43. The use of the affidavit for a landlord or purchaser's own use is not new, and the only change in that respect is that under Bill 184 the landlord will be required under s. 71.1(1) to provide the affidavit to the tenant ahead of the hearing date. This is a minor improvement to the process, as the tenant might be able to better prepare a challenge to the affidavit, rather than if the affidavit is only produced on the hearing date. However, the burden on the landlord to prove the intention of own/purchaser's own use remains exceedingly low and many landlords will feel no compunction about filing an untruthful affidavit. The changes to bad faith damages under Bill 184, discussed below at paras 54-57, should explicitly refer to the use of untruthful or misleading affidavits in proceedings as a basis for awarding this form of relief.
44. While it is commendable that Bill 184 is attempting to address this long-standing problem, it is only really going to have a significant effect on large, corporate, multi-unit buildings who may be engaging in these evictions improperly on an ongoing basis. Many of these more sophisticated landlords have already taken steps to avoid these types of abuses after the 2017 amendments. For a significant number of rental units on the market, which might be closely held or personally owned units, the LTB is unlikely to catch these types of abuses. Without adequate resources for the LTB, it is very likely that these abuses will continue to occur.

(ii) Eviction for Demolition or Repairs/Renovations

45. Currently, under section 52 and subsections 54 (1) and (2) of the RTA, a landlord is required to compensate a tenant if the landlord gives a notice of termination of the tenancy for the purposes of demolition or conversion to non-residential use or for the purpose of repairs or renovations, provided that the residential complex in which the rental unit is located contains at least five residential units.

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46. Bill 184 adds Subsections 52 (2) and 54 (3) and (4), which also impose an obligation to compensate the tenant if the residential complex contains fewer than five residential units.
47. Expanding these compensation provisions may impose a minor financial burden on smaller landlords, who may not have as many units and revenue streams as other landlords, but provides an important protection for tenants of the growing number of smaller landlords who offer units on the rental market.

(iii) Compensation

48. Currently, landlords who evict tenants in order to demolish to demolish the rental property or do extensive repairs or renovation must compensate the tenants financially and offer accommodations.
49. In the demolition situation the landlord must either pay an amount equal to three months' rent, or offer another rental unit that is acceptable to the tenant.
50. If a tenant does not want to move back in once repairs or renovations are complete, the landlord must pay an amount equal to three months' rent, or offer another rental unit that is acceptable to the tenant. If the tenant does wish to move back in once the repairs or renovations are complete, the landlord must pay an amount equal to three months' rent, or the rent for the period of time the rental unit is being repaired or renovated, whichever is less.
51. Currently, landlords who evict tenant for own or a family member's use must pay the tenant an amount equal to one month's rent by the termination date in the notice, or offer another rental unit that is acceptable to the tenant. However, for a purchaser's or purchaser's family member's use, no compensation to the tenant is required.
52. Bill 184 expands the requirement to offer compensation of one month's rent to tenants in no-fault evictions under s. 49.1. This requirement would be expanded to include landlords of buildings with one to four units, who evict a tenant for the purposes of renovations and repairs, and to landlords who evict a tenant on behalf of a purchaser who wants to use the unit personally or for a family member.

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53. As with the other changes addressed above, these changes will provide protections to a broader class of tenants.

(iv) Bad Faith Evictions

54. Currently, if the LTB finds under s. 57 that a landlord has acted in bad faith in terminating a tenancy by reason of the landlord's or purchaser's personal or family member's use, or for demolition, conversion or renovation, the LTB may order the landlord to compensate the former tenant for:[37]
    a. any portion of increased rent that it has incurred or will incur for a one-year period after vacating the rental unit; and,
    b. reasonable out-of-pocket moving, storage or similar expenses incurred, as well as an administrative fine, up to the maximum of the Small Claims Court's monetary jurisdiction, which is now $35,000.00.
55. Bill 184 proposes to add s. 49.1 to these potential penalties against the landlord, by giving the LTB the discretion to also order the landlord to compensate the former tenant in an amount equal to up to twelve months' rent, at the monthly rate last charged by the landlord to that tenant. This order can be made regardless of whether the former tenant has incurred any actual expenses, or whether an order was made to compensate the tenant.
56. This is a significant change to the RTA, which could provide an effective deterrent effect against abuses of the RTA, if the LTB is able to properly enforce these provisions. These provisions have also been extended to landlords with fewer than five residential units, under ss. 52 and 54 of the RTA.
57. If further increases to the Small Claims Court's monetary jurisdiction occur, which is currently being contemplated, this may enhance the ability of LTB to create a deterrent effect against abuses, in ss. 31(1)(d), 41(6)4., 57(3)3., 115(3), 207(1).

[37] Ministry of the Attorney General, "Ontario Making It Faster, Easier, More Affordable to Settle Small Claims," Oct. 23, 2019, available at: https://news.ontario.ca/mag/en/2019/10/ontario-making-it-faster-easier-more-affordable-to-settle-small-claims.html.

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c) Tenant Issues in Evictions for Non-Payment of Rent

58. A tenant responding to a hearing of a landlord's application under s. 69, to evict for arrears of rent based on a notice of termination, may currently raise *any* issue under s. 82(1) that could be the subject of an application made by the tenant under the RTA. A common example of these types of issues raised is for a maintenance and repairs application.

59. Under s. 82, as re-enacted under Bill 184, a tenant will only be able to raise these issues if the tenant complies with certain new requirements, which include giving of advance written notice of intent to raise the issue, or providing an explanation satisfactory to the LTB explaining why the requirements could not be met. These additional procedural requirements create an onerous burden for tenants, especially the most vulnerable tenants who may have difficulties with literacy, internet access and/or mental health issues.

60. Although s. 82(1)(b) allows for a tenant to provide an explanation for why the notice requirements are not met, it is essential that the interpretation for providing satisfactory explanations to the LTB include many of the limitations that low-income populations face, and should include inability to secure or obtain legal assistance. This consideration can be included in the legislation itself, as follows:

> **82** (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,
>
> …
>
> (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2), <u>including an inability to obtain legal assistance.</u>

61. While this legislative requirement may appear to provide a basis for tenants to disregard the notice requirement entirely, it ensures that there are some procedural safeguards in place. This requirement may not necessarily result in additional delays in proceedings, as the 72 CLCs across Ontario play a crucial role in providing these free services to tenants, including on-site summary legal advice at the LTB. Adjudicators who hear a s. 69 application and receive these objections can direct a tenant to obtain this assistance on the spot, which will not create undue delay, and would likely expedite proceedings.

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d) S. 78 Evictions for Arrears Without a Hearing

62. The Backgrounder on Bill 184 states, "To encourage negotiated settlements, landlords who reach an agreement with a tenant on outstanding rent would not have to go back to the Landlord and Tenant Board for an eviction hearing, if the tenant breaches the repayment agreement."[38]

63. Currently, the landlord in these situations would have to return to the LTB to get the eviction order after the tenant's breach. The landlord could apply *ex parte*, but at least there would be some scrutiny of the situation by the LTB before an eviction order was issued.

64. Sections 206(3) and 206(3.1) of Bill 184 allow the LTB to include in a s. 206(1) order that a landlord may make a s. 78 application for eviction for non-compliance with an order. This effectively removes the right of a tenant to appear before the LTB prior to an eviction based on an alleged breach of a settlement agreement .The existing protections under s. 206(3), which prohibit a tenancy from being terminated before a hearing before the LTB or allowing s. 78 applications to be included in an agreement to settle, ensure that the LTB plays an important role with regards to parties following settlements, but also that they do not engage in bad faith behaviour following a settlement. The provisions under s. 206(5), for example, allow for a party to reopen an application within 30 days, if a party "coerced them or deliberately made false or misleading representations," also highlighting the important role the LTB plays in ensuring good faith settlements.[39]

65. If a tenant was made aware of the s. 78 hearing, they would be able to provide a response to the landlord's attempt to evict to the LTB. There are instances of negotiated settlements where the landlord subsequently engages in bad faith behaviour, including harassment and agitation of a tenant, which invariably escalates the

[38] Ministry of Municipal Affairs and Housing, "Protecting Tenants and Strengthening Community Housing Act, 2020," March 12, 2020, available at: https://news.ontario.ca/mma/en/2020/03/protecting-tenants-and-strengthening-community-housing-act-2020.html.
[39] In *TSL-95114-18 (Re)*, 2019 CanLII 86875 (ON LTB), the LTB clarified that s. 206 applications are very rare, and only apply to an application under s. 59 for rent arrears.

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conflict between the parties. The inability of a tenant to challenge an eviction based on an alleged breach of a negotiated settlement prevents this evidence from being presented to LTB.

66. The Bill 184 amendments under s. 194(1) that promote mediation and settlement of any matter under dispute are commendable, and DCLC encourages that all legal disputes be encouraged by way of settlement wherever possible. However, the guise of settlement with the intention to subsequently evict may thwart the ability of parties to enter into settlements if these provisions are abused. The existence of abuse will result in less willingness to enter into settlements, a preference by tenants to have a full hearing and obtain orders from the LTB, and therefore create additional and unnecessary delays in proceedings.

e) Landlord Applications for Compensation

67. A landlord's application to the LTB for rent arrears, compensation for the use, and occupation of a rental unit by an overholding tenant or compensation for damage to the rental unit, may currently only be made if the tenant is still in possession of the unit. If the tenant is not in possession, the landlord's only recourse is to seek recovery in Small Claims Court.
68. Bill 184 amends ss. 87 and 89 to provide that these types of applications may be made while the tenant is still in possession of the unit, but also up to one year after the tenant or former tenant cease to be in possession of the unit.
69. Bill 184 also creates new provisions under s. 88.1, where a landlord may make an application for compensation for interference with the reasonable enjoyment of the residential complex or with another lawful right, privilege or interest of the landlord.
70. Under the new provisions in s. 88.2, a landlord may make an application for compensation for failure to pay utility costs that a tenant or former tenant was required to pay. Such applications may be made while the tenant is in possession of the unit, but also up to one year after the tenant or former tenant ceased to be in possession of the unit.

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71. Under the new provisions in s. 189.0.1, it is provided that, if a landlord makes any of the applications described above, or the tenant or former tenant is no longer in possession of the rental unit, the landlord must give the tenant or former tenant a copy of the application and a copy of any notice of hearing issued by the Board. They must, in specified circumstances, file with the Board a certificate of service on the tenant or former tenant. For low-income tenants who are displaced and transient, in a shelter, or homeless, it's unlikely that this notice will be provided in a timely or effective manner.
72. These compensatory relief provisions create the potential that low-income tenants will receive orders months after they are already renting in a different unit with a different landlord, and will impose unusual financial burdens on them that will invariably create new arrears problems with the new landlord. This delayed process is effectively shifting the problems of a previous landlord to a future landlord, and will only serve to increase the number of cumulative landlord applications before the LTB. Given the current staffing and resource issues plaguing the LTB, this is not something they are prepared or equipped to handle.
73. Further, the terminology used in s. 88.1 is poorly defined, and will likely give rise to additional applications by landlords to collect payment from tenants for a wide variety of activities and purposes.
74. For many low-income tenants, the collection of compensation in this manner will effectively result in an eviction, as tenants will not be able to afford additional expenses in the form of compensation to the landlord above their existing obligations to pay rent. With terms that remain this ambiguous, it is inevitable that some landlords will attempt to force an eviction through compensation applications by forcing the tenant into arrears or by other means.
75. Of greater concern is how landlords may use this mechanism to otherwise circumvent other aspects of the RTA. Some clear examples may include evicting tenants who own pets, which is prohibited under s. 14 of the RTA, or attempting to evict tenants with young or loud children,, which would fall under the *Human Rights Code* protections found in s. 3(4) of the RTA.

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76. If a compensation mechanism is to be added to the RTA, there needs to be greater precision with regards to the purpose and meaning of these provisions.

f) Illegal Rent Increases Not Void After a Year

77. A landlord may increase the rent annually by an amount prescribed by annual guidelines, and only after giving the tenant the required amount of notice. This is an essential protection that the RTA provides, to ensure that tenancies are available and affordable across the province. Despite these protections, it is widely acknowledged that rent in Ontario is unaffordable,[40] and the current situation is recognized as a crisis.[41]
78. The RTA currently provides in s. 135(4) that a tenant or former tenant may apply to the LTB for an order requiring the landlord to pay back to the tenant any money that the landlord improperly collected, within one year of the illegal rent being paid. This can occur either as a result of a rent increase above the guideline amount, or when a rent increase is imposed without the proper notice having been given to the tenant.
79. Bill 184 proposes in s. 135.1 that a tenant cannot seek reimbursement for an improper rental increase if the tenant has already paid the increased rent for at least twelve months, unless the tenant makes an application to the LTB challenging the illegal rent within one year from the date that the rental increase was first charged. It also deems compliance with the notice of rent increase, which is required under s. 116.
80. This amendment is ripe for abuse, and will invariably encourage landlords to increase rent above the prescribed annual guidelines. Most tenants will not be aware of the illegality of the increase, and the small fraction of tenants who do challenge this within the one-year timeframe are unlikely to create an adequate economic disincentive for landlords from abusing these controls. This is of particular concern, as the rent increase regulations are the primary basis for ensuring affordable housing in Ontario.

[40] Pete Evans, "It's next to impossible to pay the rent working full time for minimum wage, new report calculates," CBC News, July 18, 2019, available at: https://www.cbc.ca/news/business/ccpa-rents-minimum-wage-1.5216258.
[41] Advocacy Centre for Tenants Ontario (ACTO), "Where Will We Live – Ontario's Affordable Rental Housing Crisis," May 2018, available at: https://www.acto.ca/production/wp-content/uploads/2018/05/WhereWillWeLive_May2018_ACTO_Report.pdf.

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g) Maximum Fines for Offences to be Increased

81. The RTA does allow the LTB to impose administrative fines as well as fines that can be imposed by a provincial offences court upon conviction for offences under the act.
82. The amounts for these fines under Bill 184 would increase under s. 238(2) from $25,000 to $50,000 for an individual, and from $100,000 to $250,000 for a corporation.
83. Increasing the fines is a strong deterrent, and will encourage compliance with the RTA. However, the LTB rarely imposes fines on the higher end of this scale. These fines are not payable to tenants, and are therefore of no direct benefit to them. However, promoting greater compliance with the RTA for landlords is an approach that will benefit all parties.
84. The existing provisions under s. 237 which hold every director and officer of a corporation guilty of an offence ensures a degree of vicarious liability, but the provision requires knowledge of the contravention, which can be challenging to prove. Instead, this provision could be amended to create greater compliance by adopting a similar approach to director and officer liability in other legislation,[42] as follows:

> Directors and officers
> 237 Every director or officer of a corporation shall take all reasonable care to ensure that the corporation does not engage ~~who knowingly concurs~~ in an offence under this Act ~~is guilty of an offence~~.

85. Allowing directors and officers to continue to claim plausible deniability circumvents the goals of the RTA, and makes any increases in fines meaningless without this type of accountability.

h) Mobile home parks and lease communities

86. A proposed change in Bill 184 to mobile home parks and land lease communities under s. 165.1 would allow certain services and facilities to be excluded from the definition of "rent." Previously, if these services and facilities were included in the rent, the tenant may have been entitled to a rent reduction.

[42] See, for example, s. 32 of the *Occupational Health and Safety Act*, RSO 1990, c O.1.

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87. Bill 184 also provides, under s. 167, an ability for landlords to seek rent increases above the annual guideline amount based on prescribed rules, which are yet to be developed. Currently, above-guideline rent increases are only permitted for capital expenditures for infrastructure work that is required by a government. The amendment would permit above-guideline rent increases irrespective of whether the infrastructure work is required by a government. In effect, this would lead to an increase in the off-loading of some of the costs of investments and major infrastructure upgrades, like water and sewage systems in the property, to tenants. These increases still require an application by the landlord under s. 126, which is reviewed by the LTB who must approve the amount of the above guideline increase as well as the number of years it may occur.

88. Mobile home and land lease community tenants are among the most vulnerable tenants in the province, with many of these parks disappearing due to a focus on more profitable developments.[43] Specific rules apply for them, such as specific notification of any rules for the park under s. 154, and special responsibilities and remedies for maintenance and repair under s. 161. A landlord may even dispose of a mobile home under s. 162(3), if certain conditions are met. Specific maintenance regulations can be found under the RTA applying to mobile home parks and land lease communities.[44]

89. The concern with these amendments is that they could be abused, increasing the cost to tenants who are already financially strained. Although s. 165.1(3) allows for a reduction of a rent charged to the tenant for amounts included in prescribed services and facilities, there is no direct oversight by the LTB in this process. DCLC's recommendation is that this process only occurs through application to the LTB, as follows,

> Not within the definition of "rent"
> 165.1(2) On and after the applicable prescribed date and if the prescribed circumstances apply,
> (a) the prescribed services and facilities or the prescribed privilege, accommodation or thing shall not be considered to be services and facilities or a privilege, accommodation or thing that fall within the definition of "rent" in subsection 2 (1); ~~and~~
> (b) the amount charged by the landlord for the prescribed services and facilities or the prescribed privilege, accommodation or thing shall not be included in the rent charged to the tenant; and,
> (c) any changes in rent shall be provided in writing to the tenant, and the Board, within 30 days.

[43] CBC Radio, "No Place For Home: Are trailer parks a thing of the past?," April 15, 2014, available at: https://www.cbc.ca/radio/thecurrent/apr-15-2014-1.2908292/no-place-for-home-are-trailer-parks-a-thing-of-the-past-1.2908293.
[44] Maintenance Standards, O Reg 517/0, Part V.

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90. The majority of tenants in mobile homes and land lease communities are unlikely to be aware of these statutory changes, and while experiencing a reduction in rent, may not account for the additional living expenses in services and facilities that they would subsequently have to pay for.
91. These amendments do not appear to address any pressing or identified challenge with the RTA; rather, they serve the interests of developers who are looking to convert mobile park homes to urbanized areas. Capital expenditures that are not required by the government, in particular for water and sewage, and offsetting those expenses on to low-income tenants, may be an area of interest for the LTB to control and regulate, to ensure these are not undertaken as part of a pre-development plan or project.

i) Mediation and Negotiation Outside of the LTB

92. The current RTA allows for both landlord and tenant to mediate their disputes through the LTB under s. 194, if both parties are willing, which then makes the agreement official. As discussed above, if the tenant breaches the agreement, the landlord can return to the LTB *ex parte* to get an eviction order.
93. The changes proposed by Bill 184 would allow the parties to mediate on their own, or use other dispute resolution processes. This new procedure is a double-edged sword. On one hand, it could be more efficient for both tenant and landlord to work things out ahead of time, rather than on hearing day at the tribunal. Alternatively, a tenant negotiating outside of the LTB may suffer an even greater disadvantage than usual, given the inequality of bargaining power between these parties.
94. This potential for abuse is especially concerning given the proposed amendment to s. 194(2) in Bill 184,

> Settlement may override Act
> (2) Despite subsection 3 (1) and subject to subsection (3), a settlement <u>agreed to</u> ~~mediated~~ under this section may contain provisions that contravene any provision under this Act.

Whereas derogations from the RTA may be practical in nature in any mediated settlement, the ability of landlords to force an agreed upon settlement is ripe for abuse, especially when the tenant is unrepresented or has not received legal advice. Rent increases can be the subject of a mediated agreement, meaning that landlords can use

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the mediation process to impose higher rents on tenants including rent increases that would otherwise be illegal under the RTA.

95. There are no protections under Bill 184 from a landlord making false representations about the law, applying pressure or coercion, or otherwise engaging in improper tactics to obtain a settlement. In order for this process to have any validity, and to reduce the inevitable appeals that will emerge in a system with no controls in place, the following modification is recommended to this provision,

> Board may mediate
> 194 (1) 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, and if both parties are represented.

96. While nearly every landlord remains represented at proceedings at the LTB, very few tenants have the same assistance. Ensuring representation in alternative dispute resolution processes prevents improvident settlements and their subsequent challenges, and can effectively be achieved for free through CLCs and duty counsel services provided on-site at LTB.

j) Orders for Production of Documents

97. Bill 184 adds a provision under s. 231.1 that would allow judge or justice of the peace to issue a production order compelling a person, other than the person under investigation, to produce documents or copies of documents where there are reasonable grounds to believe that an offence relating to filing false or misleading information with the LTB has been committed.
98. This amendment which gives the ministry more power in the investigation of offences, could help tenants seeking to prove landlord offences.
99. One of the greatest challenges in demonstrating a landlord's contravention of the RTA is having sufficient documentary evidence. The grounds for such an order under s. 231.1(3) requires an oath or affirmation that there are reasonable grounds to believe that an offence has been or is being committed, that the document will provide evidence of that offence, and the person to whom the order is made has possession and control of that evidence.

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100. When combined with the increased fines already included in Bill 184, and the modifications proposed above at paras 84-85 to s. 237 of the RTA, these amendments provide an effective procedural basis to address contraventions and properly use the RTA for its intended deterrent effect.

Part 3- Conclusions

101. While Bill 184 does contain some significant improvements that could encourage greater compliance with the RTA, including the increase of fines and providing mechanisms to elicit documentary evidence to demonstrate bad faith; there are several amendments that will invariably be abused by landlords, and this is especially true for the surge of applications that are expected once the moratorium on residential evictions is lifted.

102. Of particular concern are the mechanisms that may expedite evictions, especially without proper notice to tenants. This would be unwise to enact at this particular juncture, especially if these evictions displace people from their homes and into shelters or force them to become homeless. This would create significant public health risks, especially as the tail end of the COVID-19 pandemic may give rise to a second wave.

103. All of the changes in Bill 184 are also unlikely to create any additional efficiencies or increased effectiveness without proper resources. The LTB, especially in Durham Region, is inadequately supported, with significant backlogs, crowded quarters, and numerous adjudicator vacancies. DCLC anticipates that the LTB in Durham Region will be particularly strained following the pandemic.

104. Despite the numerous recommendations provided in these submissions, DCLC's primary suggestion is to abstain from any widespread statutory reform to the RTA, until the complete conclusion of the pandemic. The LTB will need to process the existing applications that have been held in abeyance, and will be more effective in doing so without having to adapt to new rules and provisions that will raise novel legal issues. Introducing these changes at a time when the LTB will already be overwhelmed, and landlords, tenants, and their representatives will all be extraordinarily busy, is not an approach conducive to successful reform.

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105. Instead, DCLC calls for Bill 184 to be considered for some time longer, and only passed once the pandemic is over. Alternatively, the legislature can set an effective date to some day far enough in the future that it does not interfere with the post-pandemic LTB work that will need to be done.

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