

October 17, 2016

DELIVERED BY EMAIL TO: residential.tenancies@ontario.ca

Residential and Commercial Tenancies Unit
Housing Policy Branch
Ministry of Housing
777 Bay Street, 14th Floor
Toronto, Ontario M5G 2E5

Attention: Sonya Rolfe, Manager

Dear Ms. Rolfe,

Re: *Residential Tenancies Act* Transitional Housing Consultation

Our firm represents many housing providers, among them, those that provide transitional housing. These submissions reflect challenges we have faced representing transitional housing providers trying to determine whether and if so, how, the *Residential Tenancies Act, 2006* (**RTA**) applies to them.

First, let me say on behalf of our clients that have been “caught” by the limited nature of section 5(k) of the RTA that we applaud this initiative. Transitional housing providers and their participants alike need more certainty about their rights and obligations. We look forward to helping adjudicate those rights in a framework that better reflects the reality of transitional housing. In the main, the adjudication of those rights arises in the context of eviction – early termination of program participation by the housing provider - and so it is from that perspective that we provide these submissions.

In the Ministry of Housing’s (**MHO**) September 2016 consultation paper, “Legislative Framework for Transitional Housing Under the Residential Tenancies Act, 2006,” (**Consultation Paper**) the MHO asked for feedback on proposed changes to the RTA and three proposed frameworks for governing transitional housing tenancies. Some of the feedback questions posed by the MHO in the Consultation Paper require the knowledge and experience of transitional housing providers and participants themselves. However, from the perspective of legal representatives of transitional housing providers we can address:

- a. which option of the three suggested in the Consultation Paper is the most appropriate to address the concerns and needs of transitional housing providers;
- b. with regard to a streamlined eviction process (option 3), the kind of process that would work best for providers while ensuring fairness for participants; and
- c. concerns with maintaining the existing RTA section 5(k) exemption.

1. **An Appropriate Framework to Govern Transitional Housing**

The most appropriate framework for transitional housing will offer housing providers and participants a clear understanding of their rights and obligations, making it easy for both parties to understand the process for ending the relationship early if things are not working out or ending the relationship at the end of the program period.

Options 1 and 2, as described in the Consultation Paper are not appropriate, in our opinion. We are concerned that Option 1 (complete exemption from the RTA for transitional housing occupancies of up to three years) does not provide a dispute resolution forum in lieu of the Landlord and Tenant Board (**LTB**). While this is already true with the one year exemption, increasing the exemption period to three years increases the period within which issues may arise which necessitate early termination of program participation. While a blanket exemption from the RTA may appear to provide more flexibility to transitional housing providers, it would not help providers or participants when a tenure dispute arises.

Option 1 does not provide a way for transitional housing providers to evict. The most formal route, through the Ontario Superior Court of Justice, is time-consuming and financially out of reach for providers and participants alike. The other alternative would be for transitional housing providers to simply evict by changing the locks. Program participants may not have the capacity - financial or otherwise - to challenge this, putting an already vulnerable group at even greater risk.

Option 2 of the Consultation Paper provides a full exemption from the RTA for up to three years with a required occupancy agreement that ensures participant protection. We anticipate similar results to Option 1, although the safeguards in the new tenancy agreements would help provide some protection. These tenancy agreements, however, require a certain administrative capacity on the part of the housing providers, a capacity that is often absent in organizations that are stretched addressing programming needs.

For these reasons, therefore, although it is the most bureaucratic of the options, we favour Option 3, providing special provisions under the RTA and a streamlined eviction process for transitional housing that is provided for up to three years. The LTB allows self-represented litigants to enforce landlord and tenant rights, and is therefore the most appropriate method we have to address tenancy disputes in transitional housing. The exact content of participant rights and the nature of the exemption from the RTA for rent and program rules should be established in consultation with providers and participants.

2. **What Streamlined Eviction Process Would Work Best?**

Under Option 3, the MHO suggests that a streamlined eviction process would be developed through the LTB to allow a provider to evict a participant before the end of the agreed-upon term for the reasons identified on page 23 of the Consultation Paper, or, at the end of the agreed-upon term if the participant refuses to leave.

In either of these situations, the LTB should be able to evict without holding a hearing:

- a. after reviewing a provider's application and supporting documentation; and

- b. where a provider has secured appropriate accommodation or made good faith attempts to ensure accommodation is available before the end of the tenancy.

An expedited eviction process would offer several benefits to both transitional housing providers and program participants, such as:

- a. allowing new participants quicker access to transitional housing;
- b. circumventing an LTB hearing, by far the most time-consuming and, if legal representatives are involved, most expensive part of the traditional eviction process; and
- c. avoiding undue strain on the already busy LTB where it can take up to two months at times to get a hearing date.

3. Concerns with Maintaining the Current System

3.1 The Current Exemption Period is Too Short

As the MHO identifies in the Consultation Paper, a major concern of transitional housing providers is that the current the exemption under section 5(k) is limited to one year.

For example, one of our clients operates a two-year transitional housing program, thus making its tenancies subject to the RTA. However, it satisfies all the other requirements of section 5(k): occupancy periods of a specified duration and an agreement that the occupancy will terminate when the objectives of the services are met or when it is determined they will not be met.

At least two of our transitional housing clients offer two-year transitional housing programs because they cannot complete their program goals in one year. They do so with full knowledge of the one-year requirement in section 5(k). Extending the RTA exemption to tenancies of three years or less (or creating special rules in the RTA with the same effect), would bring the spirit of the current section 5(k) exemption in line with the reality that some transitional housing programs need to be longer than one year in order to meet the needs and goals of participants. We know that you will receive many submissions from transitional housing providers in support of this!

3.2 A Definition of “Transitional Housing” is Necessary

The RTA currently does not define transitional housing. As the Consultation Paper identifies, there is conflicting jurisprudence from the LTB on the definition of “rehabilitative or therapeutic” in disputes classifying a housing provider as “transitional”. This ambiguity would be resolved by defining “transitional housing” in the RTA.

Clarity will allow transitional housing providers to more confidently plan their programs to better serve participants’ needs.

The draft definition provided on page 19 of the Consultation Paper is comprehensive and does not appear to encompass housing providers that were not intended to be caught by the definition or exclude those who should be included.

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Thank you for extending the call for submissions on this very important policy change initiative. We look forward to following developments on this issue. Please do not hesitate to contact us with questions regarding our submissions.

Yours truly,

ILER CAMPBELL LLP

A handwritten signature in black ink, appearing to be 'Celia Chandler', written over the typed name 'ILER CAMPBELL LLP'.

Celia Chandler

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