

Submission to the Ontario Human Rights Commission
Consultation on Human Rights and Rental Housing

Federation of Metro Tenants' Associations

August 31, 2007

Ontario Human Rights Commission Consultation

I. Introduction

Founded in 1973, the Federation of Metro Tenants' Associations is the oldest tenant advocacy organization in Canada. We work with tenants across the City of Toronto, educating them about their rights, advocating on their behalf, and organizing tenants to work together to improve their living conditions. The Federation of Metro Tenants' Associations welcomes this opportunity to submit its position on human rights and rental housing to the Ontario Human Rights Commission.

II. Raising Public Awareness and Addressing Discrimination

Through our Tenant Hotline, Outreach and Organizing and Tenant Education workshops, we constantly hear from tenants about some of the most egregious violations of the *Code*.

Many tenants in Ontario are unaware that they have rights protecting them from discrimination. Communities of newcomers to Canada, who are most often tenants, tend to be the least likely to know their rights. Many of the resources available to newcomers are not in their first language, which almost ensures that they are unlikely to understand the *Code*, much less access the Ontario Human Rights Commission.

Recommendation 1: That the Commission engages in a widespread public education campaign using both mainstream media and language/culturally appropriate media. It is also imperative that housing providers be educated about the *Code* and the consequences of ignoring it.

Many not-for-profit organizations already do public education about the *Code* and attempt to intervene on behalf of clients who have been discriminated against. We have found that some community housing workers do their own independent audits of landlords in an ad hoc manner. For example, a housing worker at Evergreen Ministries at the Yonge Street Mission told us that she sometimes calls a landlord back after they have turned down a young person to see if the apartment is still available for rent. She told us that the apartment is often still available and therefore proves that age discrimination is at work.

Currently, the onus is on the victim of discrimination to enforce the *Code*. This puts an extreme burden on people who are already overwhelmed, afraid, and unaware of their rights. Many tenants lack knowledge of the law and do not have the resources to proceed with a long and arduous legal process.

In the past, the Centre for Equality Rights in Accommodation (CERA) has been able to audit landlords to determine compliance with the *Code*. We would like to see a return to this type of pro-active investigation and enforcement. Pro-active measures would ensure that the entire burden of enforcing the *Code* is not placed on vulnerable populations, and that the issue of discrimination can be addressed before, not after, the fact.

Recommendation 2: That the Commission fund pro-active enforcement in order to prevent the undue burden on already vulnerable groups to enforce the *Code*, and to free the Commission of its reliance on a complaint driven process.

III. Affordable Housing

Canada signed onto the *UN International Covenant on Economic, Social and Cultural Rights* in 1976. We feel strongly that the Federal Government should assist the OHRC in its work by upholding the *Covenant*, and by working to ensure that housing is a right of all Canadians.

Though social and economic status is not in itself a prohibited ground, the intersectionality of prohibited grounds makes it so that members of protected groups under the *Code* tend to be overrepresented in the lower end of the income spectrum.

Recommendation 3: That the Commission request legislative changes to amend the *Ontario Human Rights Code* to include social and economic status as a prohibited ground.

It is our position that vacancy decontrol, the policy that came into effect in Ontario in 1998 with the introduction of the *Tenant Protection Act*, invites discrimination. The recently introduced *Residential Tenancies Act* left the policy in tact and does not remedy the harm done by vacancy decontrol. Because landlords can charge whatever amount of rent they want to a new tenant, landlords can simply pick and choose tenants by asking certain tenants to pay a rent that is unaffordable.

The sky-rocketing rents that have been the result of 10 years of vacancy decontrol have most significantly affected people belonging to groups protected under the *Code*.

Recommendation 4: That the Commission review the *Residential Tenancies Act*, and specifically the policy of vacancy decontrol, to ensure that the legislation is consistent with the spirit of the *Code*.

Subsidized housing is often 'housing of last resort'. Because people who are included in the protected groups are overrepresented in the lower end of the income spectrum, these are the people that are more likely to need to use the benefit of social housing. It is our belief that social housing providers therefore

ought to be prepared to accommodate people who belong to protected groups. Although we do not believe that private landlords ought to have a different standard when it comes to following the *Code*, we do believe that social housing providers should at least understand that enforcement of the *Code* is necessary to protect the people living in their housing stock.

We are hearing from more and more tenants with mental health issues that they are facing evictions from social housing as a result of their disruptive behaviour. While we are aware that accommodating tenants affected by mental health issues is a delicate balancing act for landlords, particularly when the duty to the unwell tenant conflicts with a duty to keep other tenants safe from real or perceived danger, we believe that tenants with mental health issues are in fact less likely to be able to afford to live outside of a social housing context. Simply evicting tenants with mental health issues is not the solution to dealing with a disruptive tenant. That tenant has very few options in terms of affordable housing, and in the end the problem may simply be transferred to the street.

At the root of the issue is the lack of funding for social housing. Since the province downloaded social housing to municipalities in 1998, social housing providers have been unable to keep up with the demands of maintenance and repairs to their crumbling housing stock, never mind an improvement in social service and community building models of social housing.

Recommendation 5: That the Commission review the funding of social housing, to ensure that there are adequate funds to provide social housing tenants with supports that protect their rights under the *Code*.

VI. Discrimination in Rental Housing

Tenants are at their most vulnerable when they are attempting to secure rental housing. Tenants who belong to communities protected by the *Code* are more likely to be on the lower end of the income scale. Low-income tenants often know that they are being discriminated against, but lack of money often leads to a lack of choices. Low-income tenants do not have any real choices when it comes to accommodation.

We are extremely concerned about the fact that the *Code* does not apply when a tenant shares the kitchen or the bathroom with the landlord or a member of the landlord's immediate family. Human rights ought not to be attached to one's living situation. This gap in protection isolates already vulnerable tenants. Newcomer tenants are more likely to live in this type of housing scenario, and are the least likely to have access to community resources to assist them in dealing with an attack on their human rights.

Recommendation 6: That the Commission request legislative changes to amend the *Ontario Human Rights Code* to include those tenants who share the

kitchen or the bathroom with their landlords or a member of the landlord's immediate family.

We are concerned about the lack of protection in the Ontario *Human Rights Code* for tenants with criminal records, as well as those tenants who have come into contact with the police, particularly contacts made under the *Mental Health Act*. Many contacts with the police are as a result of struggles with addictions and mental health issues. We are concerned that more and more landlords are asking for police and criminal record checks. Allowing landlords to engage in this practice further marginalizes already vulnerable tenants with mental health or addiction issues.

Any investment comes with a certain degree of risk. Investing in housing comes with its own risks, including arrears in rent. Currently, the *Residential Tenancies Act* supplies remedies for landlords whose tenants are in arrears, namely the ability to evict. As a preventative measure, *O. Reg 290/98* is an attempt to create legal boundaries around what amounts to an inherently discriminatory practice. The requirement of a guarantor also creates a barrier for a tenant who is new to Canada, for the simple reason that newcomers often have no resource in Canada with enough money to act as a guarantor. The requirement of a last month's rent deposit creates a barrier for many tenants attempting to access housing in the rental market.

According to the *Analysis of Evictions in the City of Toronto under the Tenant Protection Act*, of tenants in arrears interviewed, 39% cited job-related reasons for being in arrears, 17% cited medical reasons, 12% cited other financial reasons, and 7% cited family issues. Combined, these reasons account for 75% of all the reasons tenants gave for being in arrears (12% cited 'other' reasons and 13% cited landlord/tenant conflict). The reality is that no amount of credit checks, income verification or other business practices allowed by *O. Reg 290/98* will prevent a tenant from losing their job, falling severely ill, or experiencing a family breakdown.

Recommendation 7: That the Commission request legislative changes to amend *O. Reg. 290/98* to prohibit a housing provider from asking for last month's rent, credit references, income information, police or criminal record checks, and to eliminate the practice of asking for a guarantor for those tenants with little or no credit history.

V. Conclusion

We are encouraged by the Commission's interest in human rights in rental housing. As people working in the realm of housing, whether as advocates, volunteers, service providers, or tenants, we need to work to ensure that all Ontarians can access the Human Rights Commission. We look forward to

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working with the Commission to improve human rights protections for tenants in Ontario.

ⁱ Lapointe, Linda. March 2004. *Analysis of Evictions in the City of Toronto: Overall Rental Housing Market*