



A BALANCED APPROACH
TO ENFORCING TENANT
EVICTION ORDERS



Federation of Rental-housing
Providers of Ontario

Submission to the Civil Enforcement Service
Delivery Review Initiative

February 26, 2016

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Ms Lynne Wagner
Assistant Deputy Attorney General
Court Services Division
Ministry of the Attorney General
720 Bay Street, 2nd Floor
Toronto, ON M7A 2S9

Dear Ms Wagner:

Re Civil Enforcement Service Delivery Review

On behalf of the Federation of Rental-housing Providers of Ontario (FRPO), I am pleased to submit to you our comments and advice regarding alternatives to the current single-provider model of the Sheriff's Office to enforce eviction orders issued by the Landlord and Tenant Board.

We appreciate the opportunity to provide you with our advice, and we would be pleased to respond to any questions you may have from our submission.

Thank you again for allowing FRPO to participate in this consultation process.

Sincerely,



Scott Andison
President & CEO

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EXECUTIVE SUMMARY

The Federation of Rental Housing Providers of Ontario (FRPO), representing 2,200 housing provider owners and property managers in Ontario, welcomes the opportunity to participate in the Ministry of the Attorney General's consultation on new models for civil enforcement service delivery across the province.

FRPO's members have raised concerns about the current system of evictions enforcement which is putting tenants' safety and security at risk, and which ultimately causes increases in the cost of rental housing.

According to the *Courts of Justice Act*, a housing provider must hire a Sheriff to enforce an eviction order by Landlord and Tenant Board (LTB). This requirement unnecessarily lengthens the evictions process, creating additional stress on tenants as well as housing providers.

Tenant evictions are never a best case scenario for housing providers or tenants. The evictions process is costly and lengthy for housing providers, which is why housing providers explore a variety of methods to resolve a situation to everyone's satisfaction which allows the tenant to remain in their unit. However, in rare cases, evictions are unavoidable.

FRPO respectfully submits that the evictions enforcement process in Ontario could be improved significantly by dissolving the current monopoly held by the Sheriff's Office. This solution would not involve any new direct cost to the Ontario government.

Specifically, FRPO believes the most efficient and cost-effective solution is by authorizing the use of off-duty police officers or private bailiffs who have been trained in the applicable sections of the RTA to enforce tenant evictions. This model has been successfully implemented in many other provinces across Canada and can provide a model for Ontario.

This expanded service delivery model would provide much-needed additional enforcement options for housing providers when the timeline offered by the regional Sheriff's Office fails to meet the immediate needs of an eviction situation. FRPO also recommends that the fee for these services should be regulated by the province, and a common policy manual to be used by all providers.

FRPO is not supportive of establishing a new Delegated Administrative Authority for the purposes of enforcing LTB eviction orders. We believe this would not be a cost effective solution to the scope of the problem. We believe that the current infrastructure used to support the Enforcement Unit within the Ministry of Municipal Affairs and Housing could be easily extended to support the training and certification activities of additional providers.

Establishing an expanded provider model for evictions in Ontario will reduce the time and cost of the evictions process for the industry, thereby relieving the upward pressure on rents for tenants. In addition, this change will increase the quality of life for all tenants who live in rental housing by improving the evictions process for tenants who may be disturbing other residents, or who are engaged in illegal activities.

EXPERIENCE WITH THE CURRENT CIVIL ENFORCEMENT SYSTEM

The current system for enforcing evictions in Ontario is flawed, and should be improved in order to protect the livelihood of housing providers, and the safety and security of tenants.

According to the *Residential Tenancies Act (RTA)*, there are several reasons that a tenant can be evicted, which includes not paying rent, causing damage to the rental property, engaging in illegal activity, affecting the safety of others, and disturbing the enjoyment of other tenants.

Out of approximately 1.3 million rental households in Ontario, only about 4.5 percent of tenants will face a potential eviction. About two thirds of tenants who fall into arrears do manage to ultimately make the rent payment, clear up their debt and retain their occupancy. This is a shared objective between housing providers and tenants who wish to remain in the rental unit.

When a housing provider makes the difficult decision to evict a tenant, it can be the start of a long process that can take several months to resolve, costing housing providers thousands of dollars in fees and unpaid rent, and cause distress for other tenants.

Under the RTA, a housing provider is required to provide a tenant with a Notice to End a Tenancy, which allows 14 days for the tenant to pay rent that is owed, or 20 days notice for causing damage or disturbing other tenants.

If the tenant does not vacate within the notice period, the housing provider must apply to the LTB for an eviction order. The tribunal process takes on average 29 days to schedule a hearing, the longest delay of any Canadian jurisdiction. Furthermore, the length of the tribunal can be extended by the tenant by seeking an adjournment, or appealing to divisional court, without an obligation to pay rent during the appeals process.

On average, the tribunal process costs housing providers in Ontario \$4,400 in legal costs and lost rent expenses. Unfortunately, there are too many examples where the combined legal and lost rent expenses far exceed the average—in some cases where LTB eviction orders are appealed by tenants to Divisional Court, where the vast majority of which are found to be without merit, the combined costs can be in the tens of thousands of dollars. These costs must ultimately be passed along to other current and future tenants. While our recommendations for improvements to the enforcement process do not address all of these additional cost concerns, they would help to alleviate at least some of the pressure on future rental costs to the people of Ontario.

Following an eviction order by the LTB, if the tenant does not vacate the premises by the date in the order, the housing provider must take the eviction order to the Superior Court of Justice Enforcement Office to schedule an eviction with the Sheriff's office. The housing provider will be required to pay a non-refundable fee of \$330 plus a mileage charge of \$0.58 per kilometer for the distance the Sheriff must travel from the courthouse to the eviction address.

Scheduling an eviction with the Sheriff's office can take several weeks, and currently over two months in Peel Region, while rent remains unpaid and the tenant may cause damage to the rental unit knowing there will be little consequence. While the housing provider waits for the Sheriff to enforce the eviction order, the tenant is provided with another 11-day period to pay the rent owed and void the eviction order.

The length of time required to resolve a housing provider-tenant dispute, and to ultimately enforce an eviction order are issues of significant concern for FRPO's members. The current system is particularly burdensome for small housing providers who must find a way to cover their costs and expenses, often at the expense of other tenants who follow the rules and make their rent payments. We believe this to be unjust, and unfair, and does not help to improve the quality of rental housing available in Ontario.

Once a decision has been rendered by the LTB, any additional unnecessary delays in carrying out the decision by the LTB is not in the interest of tenants, housing providers, or any other party that has been impacted by the party(ies) who are responsible for causing the issue.

Comparison of Average Days to Resolve Landlord-Tenant Disputes

British Columbia	35
Alberta	17
Saskatchewan	25
Manitoba	32
Ontario	90

FRPO believes that implementing an enhancement to the single-provider model (Sheriff) for evictions enforcement will help to make a difference in improving the dispute system for housing providers and tenants in Ontario, and reduce upward pressure on rents across the province.

At a time when both government and the rental housing industry are exploring ways to increase the availability of rental housing for all household income levels, it is appropriate to pursue all reasonable opportunities that will reduce the cost of providing rental housing for all Ontarians.

RECOMMENDATIONS

FRPO has been a long-time advocate of the objective that is clearly set out in the Ministry's consultation document dated January 20, 2016:

Changing the way that civil enforcement services are delivered would create access to more enforcement officers, in more locations, with the objective of speeding up the enforcement of court orders across the province.

It is our belief that a more effective and efficient enforcement system will contribute to better service for all tenants, and help to defer increases to the cost of rental housing. Our recommendations that follow will address the long-standing problem of delays in carrying out necessary tenant evictions following a lawful determination of the tribunal process.

FRPO recommends that the *Courts of Justice Act* should be amended to allow private service providers to enforce an evictions order by the LTB with the same powers and protection of a

Sheriff, including immunity from potential actions in carrying out the act of eviction. It is essential that the same protection be extended to other service providers as is enjoyed by Sheriff officers.

We do not recommend the creation of a new delegated administrative authority (DAA) for the purposes of enforcing LTB eviction orders, as we believe the overall higher operational cost and administrative burden of this approach would exceed the benefit of any cost savings and time efficiencies that may be realized.

Finally, FRPO recommends that there should be a common procedures policy or manual used by all providers of evictions enforcement, which could be adapted from the current Sheriff's Office protocol. The Ministry of Municipal Affairs and Housing already has an Enforcement Unit in place, suggesting that there is an established infrastructure available to train current and new staff working in the Enforcement Unit. FRPO respectfully suggests that this infrastructure could be readily adapted to provide training and certification for off-duty police officers and private bailiffs, and to use a cost recovery model that would be appropriate for the service.

We would be pleased to work with the government to develop this manual, provide input and advice on the training, and help to promote to the industry on how to select the most appropriate delivery option that would be in the best interest of the parties impacted by the eviction order

CONCLUSION

Allowing alternative provider options beyond the current monopoly held by the Sheriff's Office for evictions enforcement would help to resolve eviction disputes more quickly and easily, and reduce real rental costs for tenants.

The current wait times for enforcement by a Sherriff simply prolongs the evictions process, often making it worse for the evicted tenant, the housing provider, and other tenants in the building.

These issues can be easily resolved by allowing additional service provider options such as an off-duty police officer or a private bailiff who have been trained in the relevant sections of the RTA to provide this service as is done in other provinces.

We believe the recommendations in this report are in support of the government's objectives of making housing affordable to Ontarians at all income levels. Further, there would be not additional direct cost to the Ontario government to implement these recommendations as they would be supported by an appropriate cost recovery fee model.

FRPO welcomes the opportunity to work with the government of Ontario on any initiative that will improve the quality of rental housing in Ontario. We encourage you to contact our office directly should you have any further questions.

ABOUT FRPO

FRPO is the largest association of housing providers and property managers in Ontario, representing 2,200 members who provide rental homes to over 350,000 Ontario households. In total, one-third of Ontarians live in rental housing.

FRPO, on behalf of our members, is eager to partner with all levels of government to advocate for policy changes that will improve the quality and availability of rental housing in Ontario.

FRPO has worked with the Ontario government on the review of the Long-Term Affordable Housing Strategy to encourage the development of new rental housing in Ontario, and most recently FRPO has participated as a member of the refugee settlement working group.



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