

FLEMINGDON COMMUNITY LEGAL SERVICES

The Chair: The Flemington Community Legal Services is the next presenter. Make yourselves comfortable. Please identify yourselves for the record. Please state your names and your organization and the positions that you may or may not hold within that organization. The schedule shows that we have set aside 40 minutes for your organization, which will allow you 20 minutes to make your presentation and you will be able to dialogue personally with the committee for another 20 minutes. The floor is yours.

Mr Physick: My name is Brook Physick. I am a community legal worker with Flemington Community Legal Services.

Mr Jefferies: I am Ronn Jefferies. I am staff lawyer at Flemington Legal Services.

Mr Physick: And just coming up here is Freda Krol, who is a tenant association head in North York at 22 Elkhorn Drive.

We appreciate the opportunity to present a deputation to the standing committee on general government on the proposed moratorium bill, a bill which we fully endorse. We are pleased to see the government acting on its campaign promises in a way which is both, in our view, responsible and necessary. We hope that this consultation process will demonstrate clearly the need to expedite the implementation of this bill so that the government can continue the process of consultation on the much larger issue of the rent control system.

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Four years ago the previous government of this province passed a law that has proven to be, generally speaking, a very unjust piece of legislation, unjust because it works largely against the tenants who it was supposed to protect. The fact that this law has impacted so greatly on the lives of hundreds of thousands of tenants in this province since its inception is disturbing, particularly since the impact has been, more often than not, negative. This law, of course, is the Residential Rent Regulation Act, and while this legislation does have some redeeming value, the substantive part of this act dealing with whole-building reviews has little, if any, redeeming factors.

This is not a profound revelation. This has been known almost since the day the law came into existence. The Minister of Housing has countless submissions from tenants in which the frustrations with this legislation and, in particular, with the whole-building review provisions have been expressed. Time after time successive ministers of Housing have heard from tenants and tenant advocates about the gross injustices inherent in the Residential Rent Regulation Act, but apart from a rather dubious effort in April of last year to change the regulations

relating to capital expenditures, not a great deal of substance has been accomplished or even attempted.

Tenants are constantly asking how is it that landlords can apply for rent increases of 15%, 25%, 40%, 60% and in the odd instance, nearly 200%, when there is seldom adequate maintenance being done in the common areas or the individual apartments themselves. The disturbing reality is that landlords are constantly being granted excessive rent increases when it is clear that their maintenance obligation is being neglected. Why? Because the Residential Rent Regulation Act not only allows for this kind of nonsense but encourages it and it continues to allow this abuse to happen year after year.

We have for too long had to contend with apartment buildings in which landlords have asked for excessive rent increases resulting from whole-building review applications for capital expenditures. Such applications demonstrated consistently one of the many absurd aspects of the current rent review legislation: These applications appear to be based on little else but an opportunity to take advantage of a law which enables landlords to get large increases without having to do anything which has a direct positive impact on tenants. While little is done for the tenants directly, such capital improvements do enable the real estate asset to be appraised at a higher value, which makes the building much more attractive from an investment perspective. One becomes hard pressed to understand how this would in any way benefit the tenants, though we know that this has a distinct advantage for landlords, particularly in a hot housing market. Let us not forget that at no time is the value of the landlord's assets ever considered in a whole-building review application.

The problem becomes compounded for tenants when the tenants have to pay for massive capital expenditures in a building which then sometimes gets sold to a new landlord who then requests a further excessive increase from the tenants so they will then pay for his financing costs. While it is true that financing costs are phased in, tenants can be paying double the legislated maximum rents over several successive years simply as a result of a landlord's financing costs. What does the tenant get out of it? Nothing -- no improved maintenance, often no maintenance at all and in fact frequently a deterioration in the condition of the building. Is it any wonder that tenants are disgusted with this legislation?

This disastrous law has had serious repercussions for tenants, particularly, though not exclusively, for those on lower, fixed incomes. As the population ages, unemployment increases and the recession persists, more and more of our tenants are going to be faced with the potential for economic eviction with few, if any, stable housing options available to them. Such abuses have led to the need for a massive overhaul, not only of the current Residential Rent Regulation Act but also the entire rent review system, thus the need for the moratorium bill recently proposed by our current government.

Any government which contemplates a major restructuring of its regulation of private sector activities must protect the interests of vulnerable parties who rely on the existing system. Otherwise those who can will engage in profit-taking at the expense of the vulnerable. It is for this reason that the proposed moratorium is necessary. Tenants are vulnerable. They are vulnerable when the government announces that the existing rent review system will be changed to a rent control system in two years' time. It is the two-year period that creates this vulnerability, not the proposition of rent control itself. People dislike uncertainty in the marketplace, let alone speculation and uncontrolled profit-taking. Uncertainty concerning the rent review system started the day the present government was elected with a majority. Dissatisfaction started the day the Residential Rent Regulation Act became law.

The stated position of the NDP with regard to the current rent review system was that it would implement a system of rent controls. With that prospect, many landlords undoubtedly decided to reap whatever benefits the existing system would give them. Knowing that it would take some time to draft new legislation, this certainly was a window of opportunity for these landlords.

To prevent the flood of applications to rent review, to preserve the affordability of tenancies and to prevent a rash of unnecessary capital expenditures, the government had only one option after the election -- that is, to announce its future intentions and to retroactively freeze applications for increases relating to capital expenditures and new financing. Not to do so would have been fatal to the housing policy it espoused.

With the expected rash of capital expenditures and refinancing, at the end of two years residential rents could be so high that very few could afford them and consequently the exercise of controlling these rents would be almost meaningless.

The moratorium also corrects one of the patent injustices in the present legislation. Letting rents rise exponentially by not implementing the cost-no-longer-borne provisions will no longer take place. It has been obvious for years that tenants should not have to continue to pay for capital expenditures that have been paid off. Tenants, as well, will no longer pay for endless cycles of refinancing by successive landlords.

With any proposed radical change in government regulation, it is the government's responsibility to attempt to stabilize the marketplace. A moratorium, as proposed, will do this with the minimum of harm. Some landlords in other segments of the economy may be adversely affected, but in balancing the interests of all concerned, it is our opinion that the route being followed is proper and necessary.

That constitutes our submission, and Freda was going to say a few words from her perspective as a tenant head in a building in North York.

Ms Krol: I am a tenant at 22 Elkhorn in North York. I moved in there almost five years ago and have received four applications. The first three applications amounted to 42%-plus. So far, the only order that has come down is for 11.6% for the first one, 1987, and that is under appeal by the landlord.

After three years, the landlord sold the building. It was all capital expenditures -- marble lobbies, new carpeting. He built a new floor of 22 units and they are all luxury apartments. In the process he updated the whole building and we all got stuck for it, this most unfair, and then he sold the building, so we now have another application. I think that if everything goes through I will be paying about \$300 more, which I cannot afford. It is not just me, it is the whole building.

I would like to know where the fairness is in all of this and why tenants are being asked to pay for someone else's investment. If they cannot afford it in the first place, why go into it? That is all.

The Chair: Do you have anything to add?

Mr Jefferies: As a lawyer at a community legal clinic, we deal with this every day, and especially in East York it is a tremendous problem. I think that a lot of the horror stories we are hearing are from the city of Toronto, Metropolitan Toronto. That is what our focus is at the clinic.

As far as our presence here today is concerned, I understand that we are talking about Bill 4 and whether or not there should be a moratorium. We did not come down to discuss whether or not rent controls are going to be implemented, although that is the way we lean. I think it is quite clear that a moratorium is necessary. If you look over our submission, I think the reasoning is sound and we will answer questions that you have with respect to that.

Ms M. Ward: Mrs Krol, I was interested in your comment about being asked to pay for someone else's investment and that they should not get into it in the first place. That more or less mirrors the way I have always felt about this passing on of financing costs. Essentially, with what the tenants are being asked to pay for that, the tenants should have equity in that building. There was much discussion earlier, a previous presenter being asked whether or not he believed a landlord should be allowed to make a profit, and there was discussion about the private sector owning buildings and so on. I think that is basically what you were saying also. Maybe you could expand on it. If you are paying the financing costs, if they are passed on to you, essentially you morally have an equity in that building. Would you agree with that? Do you have anything further you would like to say?

Ms Krol: All the tenants and myself can feel is the extra burden. The building is 30 years old. The carpeting had not been changed in 30 years, the individual apartments had not been maintained in 30 years, and suddenly, because he wanted rent from luxury apartments, all of that was improved. The rental office got new furniture, new walls, new floors. None of this would have happened had he not been looking at a further investment.

It would have benefited us had he maintained it in the first place. It is very nice to live in a place with marble floors, but it is quite unnecessary. I agree that anyone who goes into business is entitled to a profit, but not to the point where it is exploiting others, and we are being held hostage. I do not think that is correct.

Ms M. Ward: You are saying that the capital expenditures to turn it into a more luxurious place were really made for the purpose of increasing the sale price of it.

Ms Krol: That is right.

Ms M. Ward: And the subsequent landlord, who paid more, had to pay more for it because it had been made more luxurious, then was able to pass those financing costs on to you.

Ms Krol: That is right.

Ms M. Ward: And you are essentially then paying the mortgage of the apartment building.

Ms Krol: That is correct.

Mr Jefferies: If I could just add to that, not only is the tenant paying the mortgage of the landlord, but when that mortgage is paid off, the rents do not go down, they stay up, and the same with capital expenditures. When they are paid off, the rents do not go down. Why?

Ms M. Ward: That is something that has been often pointed out to me. I am perfectly aware of it, but when I meet with tenants they say: "We don't mind paying for this, but why do we have to pay for it for ever? If we need improvements, okay, we'll be reasonable and pay for them, but that cost isn't going to disappear and the next increase will be on top of that and build up and never be taken off."

I enjoyed your presentation and thank you.

Ms Harrington: I would like to ask Mrs Krol what her rent actually is at this time and what it was a few years ago.

Ms Krol: As I say, the ministry has not come down with orders yet on number 3. The first one was for 14% and they were allowed 11.6%. I went to rent review. They appealed it, and I went to the appeal hearings. Of course the response I got was, "You now have the advantage of these marble floors" that were placed in the direct area where the new apartments were built. I did not need those marble floors.

When I moved in there five years ago, I was paying \$450. At the moment I am paying \$620. Were I paying everything that they have applied for, I would be at \$750. With the last one, because of our new landlord who asked for 10.5%, it will be about \$800. It is a one-bedroom apartment.

Ms Harrington: I wanted to comment to Mr Physick that you gave a very wonderful presentation on justifying the moratorium, or Bill 4. I really think you should be in the House giving this kind of presentation. I wish we had someone to do this in the House.

Ms Poole: Thank you for coming before us today. One area, which really concerns me, is the state of our aging housing stock. You, as tenant advocates and as tenants, I suspect, can feel quite strongly on the issue as well. How do you propose we deal with it -- with the capital provisions, with the fact that we do have roofs that need replacing, and windows and underground parking garages? Because we not only have to deal with it in the interim legislation, in what to do, but we also have to deal with it on a long-term basis. Do you have any suggestions as to how you see these should be taken care of? I do not think we deny it has to be done. What we are talking about is how we pay for it. What would you suggest?

Mr Physick: Before Ron pipes in here, if I could just make a statement to that, one of the areas that we service is East York and you are probably quite aware that East York has quite old housing stock. It has been a problem. The way we have chosen to try to address this, because it is abundantly clear to us that the landlords are not addressing it themselves, is to try to convince the local municipal council that it needs to beef up its property standards inspections department, not just to react to problems of maintenance deterioration, but rather to try to prevent it from happening in the future by ensuring that landlords will do general maintenance as required and as they are obligated to do under the Landlord and Tenant Act.

We do not find that a lot of the capital expenditure items that we see being spent, even in those buildings that are 25 and 30 and 35 years old, are necessarily first and foremost in the minds of the landlords, that is, they would not necessarily have done them unless there was an advantage to them to do them. So the question is whether or not those kinds of massive expenditures are necessary to begin with. Our view is that if we can convince our local council to hire enough people to ensure that there are on-spot inspections, periodic inspections on a

preventive basis -- and North York has been attempting to do this -- then at least we may be able to solve part of that problem.

The other aspect with respect to capital expenditures -- and I think Ron mentioned earlier that we are not here to provide an extensive proposition vis-à-vis rent controls, but this is, in our understanding, an interim piece of legislation and we felt that, given the current situation, it is necessary. Whether or not the capital expenditure problem will continue in the future is unclear. One of the areas that we have looked at, of course, is the issue of the capital fund, the trust. The federation has presented that proposition. Condominiums have this, other organizations have it. I am not quite sure how that would be done, quite frankly, but it is an area that I think does need to be looked at. Obviously, we cannot let old housing stock deteriorate entirely. It just cannot be done.

Ms Poole: Surely your comments about the day-to-day maintenance are quite valid as far as increasing the municipal surveillance and ensuring that the standards are met. I can certainly appreciate that point of view, but I also know that no matter how good the maintenance, even if you have the most superb landlord on God's earth, even if the landlord is a co-operative where the tenants themselves are their own landlords, there are items that do have to be replaced and they are very expensive.

When one of our members talked earlier -- and I use "our" meaning committee, not party -- and asked the question about underground parking garages and said, "Had the landlord taken proper maintenance?" I can tell you, anybody familiar with the problem knows that it is massive, it is right across the major urban cities.

It has to do with the fact that the municipalities have used salt on the roads, that the corrosion, the coldness of the winter and the heat of the building all react, and the buildings will fall down if the work is not done. It has nothing to do with maintenance; it has to do with the effects of the weather, the salt and all these things. It has not got to do with what the landlord is using on his driveway; it has to do with the fact that cars drive through all these conditions. So if you have to have that underground parking garage retrofitted and repaired, I think that is something that you and I would probably agree is necessary.

Mr Jefferies: If I could --

Ms Poole: Just one sentence and then I would like hear your response. My question is, how do we deal with the things that you and I would agree 100% are necessary and are not caused by neglect? How do you see that fitting in?

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Mr Jefferies: I think the analogy has to be made to the normal home owner. What does a home owner do when the basement, after 60 years, begins to rot

out? Has that home owner saved, put away money over the years as a contingency fund for that, or has the home owner not done that and has to go to the bank and borrow that money and pay it off bit by bit in the future?

I think if you think of these apartment buildings as homes with the owner being the landlord and figure out what you would do in that situation, you would see that over time the situation would rectify itself inasmuch as there would be contingency plans for these types of situations. The fact that there are not any contingency plans for most landlords now is probably a reflection on how the system has been set up to pamper these landlords into getting whatever they want immediately.

Ms Poole: You mentioned the reserve fund but you also mentioned that you were not familiar with a lot of the terms of the condominium reserve fund. Certainly my understanding from talking to experts in the area is that it is virtually unknown for these reserve funds not to have special assessments time after time after time. In other words, the amount in the fund, even though it is really substantial, is usually not enough when they have a major occurrence.

Do you see a reserve fund as being funded solely by a landlord, where the landlord is the only one who would put in money, or do you see this as a shared responsibility, where the tenants would put in a certain percentage and the landlords would be responsible for a certain percentage? You probably have three seconds to answer that, I think.

Mr Jefferies: I think that any money the landlord gets comes from the tenants in any event. Whether they take it out of the rent or you have tenants put it in by themselves, I think that it is all tenants' money in any event.

Ms Poole: To be more specific, should it come through rent increases to the tenants plus the landlord, or all landlord?

Mr Jefferies: I am not sure right now.

Mr Tilson: Continuing on with that, just so I am clear as to what your position is, because obviously you are getting into areas that are perhaps beyond Bill 4, which we appreciate, are you saying to us -- a question to any of you -- that the tenants should not be responsible for contributing to any of the renovations of an apartment building?

Mr Physick: I think the assumption is that the tenants do, and they do that by providing a certain percentage towards that in their rent.

Mr Tilson: I did not ask you whether they do. I asked whether they should. If we are contemplating legislation in the future, should tenants be obliged to contribute

or should they not be obliged to contribute towards renovations of an apartment building?

Ms Krol: Mr Tilson, what happens when the tenant leaves a building or the landlord the following year sells the building and the new landlord decides to improve something else? When a landlord sells the building, is he then going to give part of his equity back to the tenants?

Mr Tilson: I am trying to clarify your statement when you said that applications were made to rent review with respect to renovations that were done to the building that you did not approve of. I am trying to clarify specifically your statement. My question is specifically to you because of your statement. Should tenants be obliged to contribute to any renovations whatsoever?

Ms Krol: In the matter of the extraordinary renovations that were done in my particular building, a new floor being built on with luxury apartments that were being charged twice as much as we are being charged, I think that the people moving in are being charged in their rent for those renovations, for the marble floor and the new hallways and everything else. If their rent is \$1,500 and they are paying that \$1,500, it seems to me that the renovations are being paid for in that rent.

No, I am not getting any benefit out of it.

Mr Tilson: I am not trying to ask you a trick question, I am just trying to ask you philosophically, should the tenants contribute in any way whatsoever towards renovations contemplated by a landlord? Either yes or no.

Ms Krol: It really depends on what kind of renovations you are talking about. If my fridge is no longer ever going to work again but it has been there for 25 years and he has allocated certain moneys towards that type of appliance, then why should I be paying for it? I have been paying it in my rent all that time.

Mr Tilson: Let me rephrase my question: If a landlord came to a tenant such as yourself or the tenants of the building, presumably by vote -- I am just trying to create something; I am trying to find out where you stand -- and the tenants all agree that certain renovations should be made to a building -- let's say the refrigerators are all falling apart so they are not working, or the roof is leaking or the garage needs repair work and the tenants all agree to that. They all agree to those specific renovations. Who should pay for them? Should the landlord pay for them all?

Ms Krol: We are already paying for it.

Mr Tilson: I am not asking the present, I am trying to contemplate future legislation. Philosophically, should the tenants pay for them or contribute towards paying for them?

Ms Krol: But we are.

Mr Tilson: Okay. Do you agree with that?

Ms Krol: But it is in our rents. Every time they raise it there are the extra moneys that go towards the reserve fund to pay for the extraordinary expenses.

Mr Tilson: Do you agree that new renovations should be paid for by the tenants or contributed to by the tenants?

Ms Krol: We are contributing. We are giving our money to the landlord in our rent.

Mr Tilson: So you agree with that.

Ms Krol: I want to know what actually happened years ago when a garage needed redoing. I have been renting almost all of my life, but for 12 years before I moved into this apartment, I was living in a town house. I was not paying rent. I had never had increases like that before. Maintenance was always looked after. This was before rent review

Mr Tilson: I will tell you why I am asking my question. It is a response to your statement that certain renovations were done to your building which you did not approve of. Do I assume therefore that if you had approved of them, you would have no problem with those renovations?

Ms Krol: I see. That is a different way of asking that. Yes, if I wanted new carpeting, I would not mind paying extra rent for the period of time that the carpeting was paid off. That would be for that particular thing. Not for ever, however, because once it was paid off, I would expect my rent to be brought back to what it was before that.

Mr Tilson: Okay, so you would agree to the fact that for necessary renovations, in the interpretation of the tenants as a group, you would agree that your rent should be increased.

Ms Krol: For a certain reason and for a certain period.

Mr Tilson: What would be the period?

Ms Krol: The period would be until it was paid off.

Mr Tilson: And then presumably if more renovations were required, say, in five years' time, you would concur with those.

Ms Krol: Maybe yes or maybe no, but if we had agreed that we do not want any further renovations for the next two years, I would expect my rent to revert to what it was.

Mr Tilson: So I guess the question is, how are we as legislators going to encourage landlords to make renovations to their buildings, to make capital expenditures that would improve the quality of your life or at least maintain the quality of your life?

Ms Krol: Maintaining is another thing. Yes, if they maintained things -- I am not talking about --

Mr Tilson: But how are we going to do that?

Ms Krol: But the money is already there in our rent to maintain them. When I tell them that I need a new washer and that particular invoice goes in to rent review for a 20-cent washer --

Mr Tilson: What rent do you pay now?

Ms Krol: I pay \$650.

Mr Tilson: All right, \$650, and let's say the building needs a new roof.

Ms Krol: The building just had a new roof.

Mr Tilson: All right. Let's say -- we are creating a hypothetical situation -- the building needs something, a new parking garage. Where is the landlord going to get the money?

Ms Krol: You see, I am not sure why it was not there in the first, second and third place.

Mr Tilson: But it is not there. So where is the landlord going to get the money?

Ms Krol: He is going to the bank obviously.

Mr Tilson: But the bank will say, "You don't have the revenue coming in to pay for that increased mortgage or that increased loan that you are going to get." Where is the landlord going to get the money, from the sky?

Ms Krol: The revenue is there.

Mr Tilson: Where is the revenue? Where is it?

Mr Jefferies: I think this landlord is a bad businessman.

Ms Krol: Thank you.

Mr Tilson: Let's try you, Mr Jefferies.

Mr Jefferies: Certainly.

Mr Tilson: We will pick on you for a minute. You are a lawyer and you have obviously studied this legislation and you have studied other legislation. What legislation could be implemented by this government, or any government, which would encourage the construction of new housing stock in this province?

Mr Jefferies: I would love to answer that question but, to be perfectly honest, I did not come to discuss that today.

Mr Tilson: I am asking your assistance because you are advising us on what the landlords should not be doing and what we should not be doing. What should we be doing to improve the housing stock in this province? If you start listening to all the examples that you are giving, why should landlords even be in the business of maintaining buildings? They are not going to have a profit; they are not going to be allowed to improve their place because they will not have the money to do it; the banks will not give them loans. So how are we going to encourage landlords to do all the things that you want to maintain the quality of life that your tenants have, and more important, how are we going to create new housing stock for all of the new people who are coming into our cities?

Mr Jefferies: First of all, I think we need a new generation of landlords who are not going to rely on the government to give them everything they want and to have their profits guaranteed by the government. In what other business is the profit guaranteed? That produces lazy landlords and lazy businessmen. Now, we are going to have a transition period. Whatever the new legislation is, this legislation is going to encourage good management, good business practices and financial management. There could be a period of 10 years where there is a turnover in the type of landlord that we have now.

I do not have the answers to all those questions. I know that we have a lazy system now, and any system that guarantees profits to businessmen produces bad decision-making.

Mr Tilson: Over the next 10 years in this province, should the private land owners get out of the business of --

The Chair: Mr Tilson, please. Order.

Mr Jefferies: No.

The Chair: Order. Thank you. I want to thank the delegation for coming before us. We appreciated your brief and we acknowledge that you have probably provided us with information that you had probably not planned for. We also appreciate that. It was a pleasure for the committee to have you, and I am sure you will be following our deliberations.

By previous agreement, the committee has decided to adjourn for 15 minutes. I would ask all committee members to be back by 12:20 because I understand we wish to discuss further matters with ministry officials for approximately one hour. I want to let committee members know that lunch has been ordered and lunch is here. So, please be back at 12:20 or your lunch will be cold.

The committee recessed at 1205.