

**REPORT ON THE EVICTION OF AL GOSLING
AND THE EVICTION PREVENTION POLICY OF
TORONTO COMMUNITY HOUSING CORPORATION**

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FOREWORD

Each of us is limited by what we don't know and by what the others don't know. With knowledge comes understanding. With understanding comes wisdom and with wisdom comes justice and to have justice we must never forget how the world looks to those who are vulnerable. I will never forget the people who taught me to see the world through their eyes.¹

In October 2009 Toronto Community Housing Corporation asked me to conduct a review and prepare a report on the circumstances surrounding the eviction and subsequent death of Al Gosling and their Eviction Prevention Policy and practices, particularly as they relate to 'vulnerable' tenants.

A website was created so that interested persons could provide their confidential comments relating to my review. A telephone hotline was established to receive confidential recorded messages. I conducted consultation meetings with 300 – 400 tenants, TCHC frontline staff and management and representatives from community support agencies and legal aid clinics. We have also received numerous written submissions by mail and email from other interested individuals and organizations.

It is important to begin by recognizing and commending the work that is done every day by the frontline staff and management of TCHC. Throughout this review TCHC staff demonstrated compassion, professionalism and understanding of the challenges facing the tenants at TCHC. This is particularly impressive since their work is carried out in an environment of funding and resource limitations, both within TCHC and in the community. I was also greatly impressed by the many community, social and legal agencies with whom I met, for their insights, their vigor and their commitment to service and to justice.

Perhaps most impressive was the insight, strength and resilience of the tenants at TCHC with whom I met, spoke or heard from throughout this review. The wealth of talent, energy and goodwill among the residents of TCHC, if properly supported and encouraged, will greatly assist

¹ The Honourable Justice Rosalie Silberman Abella of the Supreme Court of Canada in the Koskie Minsky Lecture delivered at the University of Western Ontario, October 30, 2009.

TCHC in the times ahead to meet the challenges it faces on a daily basis in carrying out its most important mandate.

I wish to acknowledge the assistance throughout this review of Lynn Mahoney, Mark Crane and Geoffrey Leung, as well as the administrative support of Iris Wordsworth and Sarah Nath. I am also grateful to Howie Wong, Michelle Wong and Mitzie Hunter of TCHC for facilitating the production of information necessary for this review.

Keiko Nakamura has recently been appointed Chief Executive Officer of TCHC. She impresses me as one who has the vision, determination and heart to guide TCHC on its path as a successful social housing provider.

Section 1: Terms of Reference and Scope of Review

A. Introduction

In October 2009, following the eviction and death of Mr. Al Gosling, the Board of Directors of the Toronto Community Housing Corporation asked me to conduct an independent review of the circumstances surrounding Mr. Gosling's eviction from TCHC, and to review and make appropriate recommendations regarding TCHC's Eviction Prevention Policy. Although the focus of this report is to examine the policies and practices of TCHC relating to eviction prevention, especially as they relate to vulnerable tenants, it is important to keep in mind that an impetus for this review was the untimely death of Al Gosling.

Al Gosling was born in June 1927. At age 60, he became a tenant of TCHC. He lived in a bachelor apartment at Arleta Manor (11 Arleta Avenue, Toronto)² from 1988 until his eviction 21 years later on May 28, 2009, one month before his 82nd birthday. It appears he may have lived in a stairwell at Arleta Manor for some short period between his eviction and being transported by paramedics on June 6, 2009 from Arleta Manor to Humber River Hospital. After Mr. Gosling was released from the hospital, he resided at various times at the Good Shepherd Centre shelter.³ In September 2009, after apparently living in shelters for several months, Mr. Gosling developed an infection. He was transferred to the Sherbourne Health Centre.⁴ TCHC staff visited him there to arrange for his return to his bachelor apartment at Arleta Manor. Unfortunately, before he could return, Mr. Gosling's health deteriorated, resulting in his transfer to Toronto General Hospital, where he died on October 11, 2009.

B. Terms of Reference

The terms of reference for this review as set out by the Board of TCHC are as follows:⁵

- In light of the eviction of the late Mr. Al Gosling, identify any gaps in how the Eviction Prevention Policy (the

² Joe Fiorito, "Fiorito: Answers still elusive in death of Al Gosling" *The Toronto Star* (23 November 2009), online: thestar.com <<http://www.thestar.com/news/gta/article/729399--fiorito-answers-still-elusive-in-death-of-al-gosling>>.

³ Good Shepherd Centre, 412 Queen Street East, Toronto.

⁴ Sherbourne Health Centre, 333 Sherbourne Street, Toronto.

⁵ Terms of Reference (Tab 1).

“Policy”) and procedures under it were applied and suggest remedial measures to prevent further occurrences.

- Review the interim actions taken by Toronto Community Housing to strengthen the Policy and advise on whether additional procedures are needed to implement the purpose of the Policy.
- Advise on the implementation of amendments to the Policy proposed by Toronto Community Housing to avoid the eviction of vulnerable tenants for the non-payment of rent.
- Advise on any other changes to the Policy or additional procedures to address other eviction prevention issues that arise out of the independent review.

C. **Eviction Prevention Policy**

Below is the summary of TCHC’s Eviction Prevention Policy prepared by TCHC for this review and posted on its website. I have reproduced it in its entirety since it provides the context for this review:

Toronto Community Housing’s Eviction Prevention Policy

Toronto Community Housing recognizes that some tenants may have trouble paying the rent or completing forms. When this happens, our policy is to work with tenants to prevent eviction because of unpaid rent at every step of the legal process, and to ensure eviction is a last resort.

We use a range of strategies, including tenant education, clear communication with tenants, and helping each tenant who has difficulty with rent payments to develop a good plan for staying housed.

The policy covers tenants in both market and rent-geared-to-income housing, and applies to communities directly managed by Toronto Community Housing and communities where property management services are contracted.

Rights and Responsibilities

Tenants

- Tenants can come forward and speak to staff at any point in the legal process to seek help in developing strategies to keep themselves housed.

- Tenants must pay their rent before or on the first day of each month. Eviction prevention strategies must not be an incentive not to pay rent on time.
- Tenants must complete forms that tell Toronto Community Housing about any changes in income and household composition within 30 days of the date of the change, so that rent can be calculated properly.
- Tenants have the right to a clear, complete explanation of how their rent is calculated.

Toronto Community Housing

- Operating Unit Managers will work with any tenant who comes forward at any point in the legal process. Staff will stay in regular contract until the problem is solved.
- Toronto Community Housing will clearly inform tenants about the Eviction Prevention Policy, the actions they can take and their obligations.
- Toronto Community Housing will contact tenants who are late paying the rent within eight business days to find out why and help solve the problem.
- Operating Unit Managers will choose appropriate strategies to prevent evictions, such as education, communication and helping tenants to understand their responsibilities and address their difficulties in paying rent.
- Operating Unit Managers will ensure there is direct contact with affected tenants at these key points in the rent collection process:
 - When sending a late payment notice to a tenant
 - When a tenant gives notice that they have a problem paying the rent
 - Before filing an application with the Landlord and Tenant Board
 - At the time the Landlord and Tenant Board makes a decision

- Operating Unit Managers will continue efforts to collect rent and support a tenant facing eviction through every step of the legal process.

D. Summary

The mandate of this review is to make recommendations to help prevent evictions of vulnerable tenants for non-payment of rent. As I said throughout the consultations held in this review, “vulnerability” is a term that is and should be elastic so that it encompasses a wide range of challenges facing an individual. Vulnerable tenants should clearly include those such as seniors and those with physical disabilities, mental health difficulties and disabling emotional problems. However, there are a host of other risk factors, some of which can cause a person not otherwise considered vulnerable, to very quickly become vulnerable. It is important that TCHC develop strategies for assessing a tenant’s status on an ongoing basis so that if and when they become vulnerable or, as I would prefer to describe it, they become “at risk,” systems are in place to provide extra assistance for them to maintain successful tenancies.

A number of recommendations made in this report, most notably those relating to improved communication strategies, could well apply to many aspects of the relationship between tenants and TCHC, not just the eviction prevention policies. I heard from many people who were frustrated in their attempts to navigate through various policies and procedures at TCHC. I spoke with the families of a woman in her 80’s and a man in his 90’s about the upset those TCHC tenants experienced with the complex rental procedures. It is my fervent hope that this report will assist in alleviating some of these frustrations and preventing a recurrence of the tragedy experienced by Al Gosling.

Section 2: Toronto Community Housing Corporation: Mandate and Structure

A. Social Housing in Toronto - Generally

“Social housing” generally refers to housing that is run on a non-profit basis with government capital and/or operating assistance. There are approximately 99,000 social housing units in the City of Toronto including private, publicly-owned non-profit housing and co-operative housing.⁶ TCHC owns and operates 58,500 of these units which provide housing for 164,000 persons. As a result of the Province handing over responsibility for social housing to the municipality in 1995, the City of Toronto now administers and largely funds almost all social housing units in the City. The legislative framework for social housing is set out in provincial legislation, in the *Social Housing Reform Act, 2000* and its regulations.⁷

B. Mandate of TCHC

The mandate of TCHC is “to provide quality housing for low and moderate income households and to create community conditions that minimize risk and promote resiliency.”⁸

This principle must guide TCHC and its employees in every aspect of their work. Throughout my consultations I heard from tenants, agencies and staff about the confusion regarding the role of TCHC. Is it just another commercial landlord or is it something “more” than that? Are TCHC staff to provide social work services?

The answer to both questions is “no”. The written mandate of TCHC speaks of “minimizing risk and promoting resiliency,” so it is not just a commercial landlord. However, the current staffing and funding model under which TCHC operates precludes it from providing services that are in the nature of social work or even supportive counselling.

⁶ Linda LaPointe and Sylvia Novac, LaPointe Consulting, *Analysis of Evictions Under the Tenant Protection Act in the City of Toronto: The Non-profit Housing Sector* (2004).

⁷ *Social Housing Reform Act, 2000*, S.O. 2000, c. 27 [SHRA]; O. Reg. 298/01.

⁸ Toronto Community Housing’s Mandate and Roles, online: <http://www.torontohousing.ca/about/mandate_roles>. [TCHC Mandate]

TCHC's new Mental Health Framework explicitly recognizes these limitations in stating, "Toronto Community Housing does not have – and can never have – individualized supports for tenants who want and need it."⁹ It is important that it be clearly understood that TCHC cannot itself provide social work services for its tenants. However, in order to fulfill its mandate to "create community conditions that minimize risk and promote resiliency," TCHC must reach out to agencies that are in a position to provide assistance, particularly for vulnerable tenants. However, as recognized in the Mental Health Framework, accessing these services can be challenging; they are fragmented and not funded to a level that allows them to meet what is a very significant demand.¹⁰

C. Background and Current Structure of TCHC

The Metropolitan Toronto Housing Authority and the Toronto Housing Company, (which consisted of the former Cityhome, and the Metropolitan Toronto Housing Company Limited) merged in January 2002 to form the Toronto Community Housing Corporation. The City of Toronto is the sole shareholder of TCHC, however, TCHC is operated at arm's length from the City. TCHC has two subsidiary organizations: Access Housing Connections, which manages the wait list; and Housing Services Inc., which is the Contact Centre (Call Centre).

The original housing corporations had different histories and different types of tenants. Over time these differences have diminished as existing tenants moved out and new tenants moved in. The former Metropolitan Toronto Housing Authority, with approximately 28,000 housing units, accommodated tenants on a 100% rent-geared-to-income basis including a high proportion of families, particularly single parent families. The Toronto Housing Company, with approximately 30,000 units, contained a large number of seniors buildings, almost all of which were 100% rent-geared-to-income, while the City Home units were mixed household incomes as well as a mix of household types.

Today TCHC operates approximately 58,500 low and moderate income tenant households in 360 developments, comprised of 2,200 buildings, of which over 1,000 are houses. TCHC, with

⁹ Toronto Community Housing Corporation, *Toronto Community Housing's Mental Health Framework: Executive Summary* (5 November 2009) at 5. [*Mental Health Framework Executive Summary*] (Tab 2)

¹⁰ *Mental Health Framework Executive Summary* at 3 (Tab 2).

164,000 tenants, is the largest social housing provider in Canada and the second largest in North America.

TCHC tenants are from diverse backgrounds in terms of age, household type, background, culture, language, sexual orientation, and mental and physical ability. About 90% of tenants in TCHC pay on a rent-g geared-to-income basis, 10% pay market rent. Twenty-five percent of the tenants are seniors, almost all of whom live in one-person households. Twenty-eight percent of the tenants self-report as physically disabled and 9% self-report as having mental illness. The average age of tenants is 54 years and 37% of TCHC tenants are 65 years or older.

TCHC manages its housing by direct service delivery (Toronto Community Housing staff) and by contract management (property management contractors delivering all or a range of tenancy management and maintenance services). There are 1,942 units, less than 4% of the total, contract-managed. During the consultations we heard of significant variation in the service received depending on the type of management in the building.

D. Reorganization of TCHC

It was clear during the consultations that everyone, whether tenants, TCHC staff or outside agencies, was challenged and some were exasperated by the amount of change TCHC has undergone in recent years. A staff member aptly described all the changes as having created “change numbness.” The frequency and breadth of change has contributed to confusion on many levels. For example, the location of offices, travel distance to central offices, the identity of staff, the job description of staff, which policies apply, services available to tenants and tenants’ understanding of staff responsibilities have all added to the confusion. These issues contribute to the inability of some tenants to live up to their responsibility to pay their rent, to complete the annual review documents in a timely fashion or at all, and to the inability of staff to know what to do “to create community conditions that minimize risk and promote resiliency.”¹¹

Since July 2008, TCHC is organized as follows:

¹¹ TCHC Mandate.

- 13 Operating Units, two of which are focused on seniors and single family homes. This is a reduction from the prior 27 operating units;
- 13 Operating Unit Managers, each reporting to one of four Housing Directors. Previously there was one Director instead of four;
- 91 Tenant Services Coordinators: TSCs are primarily responsible for administering the annual review process, including completing rent calculations and managing the tenant files;
- One Customer Service Facilitator working at the front desk of each of the 13 Operating Unit Offices;
- 4 Community Health Managers who focus on development efforts at the building level;
- 27 Health Promotion Officers: HPOs are primarily responsible for liaising with tenant representatives, attending and organizing meetings in tenant buildings, and intervening in situations when called upon by a TSC or an Operating Unit Manager;
- TSC and HPO offices are located in the Operating Unit Offices, which were until recently often some considerable distance from some of the buildings for which they are responsible;
- One Superintendent for each building or group of buildings; however, depending on the number of units, there may also be a Senior Superintendent. The Superintendent is responsible for addressing building-specific conditions such as cleaning and repairs. The Superintendents do not live in the TCHC buildings, but will have an office in the building or group of buildings.¹²

The waiting list for TCHC units is managed by Access Housing Connections, a TCHC subsidiary. The waiting and internal transfer lists are seen by many tenants as frustrating and non-transparent processes. There are currently approximately 70,000 households on the TCHC waiting list, which provides some insight into the importance of and need for social housing

¹² Other staff positions include Community Safety Promotion Officers and Building Supervisors.

alternatives in Toronto. Annually, only 10% of those households on the list obtain a unit, which demonstrates the difficulty Toronto residents, some of whom are vulnerable, face when seeking to become TCHC residents.

Tenants, staff and community agencies alike express extreme frustration with the Contact Centre (Call Centre) (416-981-5500) run by Housing Services Inc. This Call Centre is usually the only avenue most tenants and agencies have available to contact TCHC. It is open 24 hours a day, seven days a week, for tenant calls. Difficulties tenants have encountered with the Call Centre service have been a noteworthy factor in the challenge TCHC faces in achieving its mandate.

Tenants and agencies related the frustration and utter futility of making contact or receiving a response from TCHC through the Contact/Call Centre. We heard numerous cases where calls were unanswered after a very long wait time. Many tenants, particularly vulnerable tenants, may have no telephone or may use a payphone or telephone calling card with limited time availability.

E. Community Management Plan

In order to gauge success in satisfying its mandate of “providing quality housing... and to create conditions that minimize risk and promote resiliency,”¹³ TCHC has developed a three-year strategic management plan. The Community Management Plan, which is to guide TCHC by setting its priorities and identifying areas for improvement, is revised annually. It recognizes that TCHC is “more than a landlord and a developer” in that it also has a mandate “to deliver sustainable, healthy communities.”¹⁴

The Plan identifies and recognizes some of the very significant challenges facing residents and what TCHC must do in response:¹⁵

Toronto Community Housing continues to feel the impact of the mental health concerns experienced by tenants and the social isolation that often results when such issues remain unaddressed and/or unidentified. Toronto Community Housing provides

¹³ TCHC Mandate.

¹⁴ Toronto Community Housing, Community Management Plan: 2008-2010 (14 December 2007) at 4 [CMP 2008-2010].

¹⁵ CMP 2008-2010 at 37.

housing to a large number of people living in poverty. A large proportion of that population are of ethno-racially diverse populations for whom mental health services are limited. Its communities are also home to a large proportion of unemployed/underemployed people. The impact of this disproportion places an obligation on the organization to develop appropriate responses to issues of mental health and social inclusion. The organization feels strongly that this commitment to respond will result in healthier and safer communities.

The role that mental health issues play in the lives of these vulnerable tenants is significant. There are currently approximately 8,900 TCHC residents identified with mental health issues. I expect the actual number is much greater. This is a very real “vulnerability” that must be addressed in the arrears and eviction process. TCHC has recognized, in its written policies that it does not have the resources or expertise to deal with mental health and other issues. It must look elsewhere to get this help for its tenants if TCHC is to be true to its mandate.¹⁶

Consultations have identified the need to address the impact of social isolation and the lack of support for persons with mental health issues to be a priority for the tenants of Toronto Community Housing. The nature of mental health and social isolation makes it difficult for the organization to prepare a direct response given that the resources and expertise to address these issues are more suitably situated with community partners. It is these same community partners who have the responsibility for the provision of these services to the communities that Toronto Community Housing serves. This has turned the organization’s focus to the need to look for ways to better connect individuals to services. It also requires the organization to review and change its responses to better support individuals facing these challenges.

F. Mental Health Framework

The Community Management Plan’s identification of mental health as a very significant challenge facing TCHC tenants has led to the development of the Mental Health Framework.¹⁷

The Framework was designed to fill a specific gap:

¹⁶ CMP 2008-2010 at 38.

¹⁷ *Mental Health Framework Executive Summary* (Tab 2).

Tenants whose mental health is impaired in a way that affects them as tenants and neighbours. This impairment could be caused by either a mental illness or an addiction.

The Framework recommends that Toronto Community Housing's role includes three functions:

- To accommodate people with mental illness - a legal obligation under the *Ontario Human Rights Code*.
- To support successful tenancies, as defined by the *Residential Tenancies Act*.
- To foster an environment that promotes recovery and health.

A number of recommendations in the Framework encourage the use of available services and enhancing these services. These include a recognition that existing informal tenant networks such as family, friends, neighbours and other social connections within and outside the buildings, are equally or more important than mental health services. It is also recognized that many organizations with no formal mental health mandate can be crucial to the well-being of the tenants, including workplaces, faith groups, social and recreation programs, clubs, drop-ins, etc. The Framework recommends steps should be taken to enhance these linkages with family, friends and neighbourhood organizations.

The Framework places considerable emphasis on reliance upon existing resources in the community – whether they are support service agencies or the building neighbourhood. The strategies laid out to obtain assistance for these tenants are based on a recognition that TCHC is a social housing landlord and its staff must use all tools at their disposal to seek help for TCHC tenants where needed.

Given the significant percentage of people with mental health issues who reside at TCHC, it is imperative that all levels of government be involved to finance community supports required to assist these very vulnerable persons. This problem goes far beyond the funding TCHC has at its disposal. Mental health services must be properly funded and available to all who may benefit from them.

The 10 recommended strategies in the Framework identify many of the same issues that I have observed during these consultations:

1. Early identification and crisis prevention – use everyday management processes and practices to identify at-risk tenancies and establish supports before crises happen. Carrying out ordinary property management duties provides opportunities to spot emerging problems. Such opportunities include showing units to prospective applicants, the lease signing meeting, the annual Rent Review Process and the regular unit inspections, etc.
2. Access to supports – TCHC does not provide mental health supports nor are the frontline staff qualified to make mental health assessments. TCHC staff can, however, rally the mental health and addictions partners in the community to ensure that tenants have the supports they need to maintain successful tenancies.
3. Ensure tenants and staff know whom to call when problems arise.
4. Inspire hope among tenants and staff that recovery from mental illness is possible.
5. Entrench opportunities for self-determination. It is noted that the “duty to accommodate” – an important part of the *Ontario Human Rights Code* – has been a source of some confusion for frontline staff.
6. Increase opportunities for connection among tenants, engaging the power of tenants to help themselves and each other. This recognizes the importance of establishing connections within the community and tenants helping other tenants.
7. Invest in new resources and align existing resources to drive implementation of the Mental Health Framework.
8. Rally the mental health sector to advocate for increased resources and more effective service delivery for TCHC tenants.
9. Equip staff and tenants to fulfill their roles, and foster an environment that promotes recovery and health. This strategy involves the training of staff on preventing and de-

escalating crises, mental health supports, the duty to accommodate and other mental health related topics. There is also a recognition of the need for an “attitude shift” to yield more respect for tenants generally and attitudes toward mental illness in particular.

10. Monitor the implementation of the Mental Health Framework and evaluate outcomes.

TCHC’s written strategy for developing the building community – the Tenant Participation System – is in keeping with the spirit of these recommendations. During the consultations for this review, I heard much about the Tenant Participation System and the role played by elected tenant representatives. I believe that TCHC should refocus this system so that it builds social networks and tenants can spot problems with their fellow tenants and assist them in getting the help they need. There is tremendous energy, talent and goodwill within the TCHC tenant body that I believe could be much better utilized. A redefined Tenant Participation System could be integral to the success of the Mental Health Framework.

G. Promoting Successful Tenancies: Best Practices for When our Tenants are Vulnerable (Vulnerable Tenants Protocol)¹⁸

As part of the Mental Health Framework, TCHC has developed a protocol to guide staff when dealing with tenants facing mental health and other challenges – the “vulnerable” tenants.

This protocol defines a “vulnerable” tenant as:

... one who is having difficulties coping with the activities of daily living or meeting their obligations as tenant:

- because of a physical disability, mental illness, cognitive impairment, frailty or substance abuse...

and

- does not have the support they need to maintain their health or housing. This support can take many forms: a supportive neighbour, a caring friend, a supportive housing worker, case manager, etc.

¹⁸ Toronto Community Housing Corporation, *Promoting Successful Tenancies: Best Practices for when our Tenants are Vulnerable* (10 August 2009) [*Vulnerable Tenants Protocol*] (Tab 3).

Of particular interest to me is the statement that “being a senior in itself does not make one vulnerable, but it does put one at greater risk of becoming vulnerable.” This corresponds with my view as to the “vulnerability” of seniors as a group. Among other things, I heard much about the security concerns of seniors in TCHC buildings. This fear significantly contributes to our potential vulnerability. As “seniors” we also recognize that our physical and mental abilities are waning. We then focus on our vulnerabilities, which in turn creates greater vulnerability.

Another comment with which I concur is the following: “Staff’s respectful, courteous problem-solving attitude is the most important part of this protocol.” This is crucial when dealing with vulnerable tenants. Whoever the staff person, be it the Superintendent, Tenant Services Coordinator or Health Promotion Officer, they must help the tenant deal with the problem that results in them being in rent arrears. It is only if the staff has a respectful, courteous and problem-solving attitude that the problems will be resolved. They must deal with tenants with empathy and compassion.

The protocol outlines the roles that each member of the “team” plays in supporting successful tenancies. It also highlights the importance of community support workers and TCHC staff working together to help tenants keep their homes. There are directions and guidelines for staff encountering various situations, including “when a tenancy is at risk” which would include rent arrears.

The “Crisis Prevention Tools” identify the many opportunities staff has to prevent crisis by using “ordinary property management routines.” Opportunities for observation exist at the unit offer, the lease signing, the annual income review, routine unit inspections, or any time a contractor or staff person enters a unit. All of these occasions present a very significant opportunity for TCHC to make observations and intervene, if necessary, to assist a vulnerable tenant and prevent rent arrears and potential eviction.

The Protocol’s direction to staff to obtain emergency contact information, to update this information, and to follow up with the identified person when, and if, the need arises is critical. TCHC staff must reach out to assist a person so identified.

H. Summary

When considering the Eviction Prevention Policy and practices at TCHC, I have kept in mind TCHC's mandate and its priorities. I am heartened to see the strategies and priorities identified in the Community Management Plan, the Mental Health Framework and the Vulnerable Tenants Protocol. Many have stated during these consultations that they have no quarrel with these policies and strategies as written – they address all the issues. The real concern is whether they were implemented consistently, or at all. If followed and applied consistently, they will improve services for vulnerable tenants. These policies along with recommendations in this Report should help TCHC achieve its overarching mandate and objectives.

Section 3: Annual Review, Arrears Collection and Eviction Prevention Policies and Practices

When Al Gosling was evicted on May 28, 2009, TCHC had numerous policies and practices in place regarding calculation of subsidies, loss of subsidies, collection of arrears and a formal Eviction Prevention Policy. The eviction of tenants for rent arrears is frequently precipitated by loss of rent subsidy because of rent recalculation which results in an increased rent that the tenant is not able to pay. Arrears accumulate putting the tenancy at risk. As such, it is important to examine the processes by which the rent-geared-to-income subsidy is determined, how the subsidy can be lost, and how a tenant, like Mr. Gosling, could be evicted in the face of an established Eviction Prevention Policy.

A. Legislative Framework

The legislation governing social housing and the rules regarding rent calculation and subsidies are cumbersome and detailed. TCHC staff have little discretion in applying the rules. It is a complicated process that results in frequent errors. The confusion, upset and trauma for the tenants often leads to arrears and threats of eviction. I believe that the legislation must be amended to be simpler and more flexible if we are to prevent future tragedies resulting from avoidable evictions.

1. *Social Housing Reform Act, 2000*

The *Social Housing Reform Act, 2000* and its applicable regulations set out the rules for rent-geared-to-income assistance and how that eligibility is determined.¹⁹

Eligibility for rent-geared-to-income subsidy is primarily based on the tenant's citizenship status in Canada, not being in arrears to other social housing organizations, and whether the tenant has followed the rules governing rent review and rent payment. If a tenant follows the rules regarding reporting income, does not leave the unit for long periods of time, and sells any

¹⁹O. Reg. 298/01.

residences they owned prior to moving in, they will remain eligible for assistance. These rules allow housing providers some limited discretion.

If a tenant does not report household income as required, they will eventually lose eligibility for rent-geared-to-income assistance and will have to pay full market rent. This can be avoided by reporting income as required. Most housing providers will accept income reports even after the deadlines have passed.

Al Gosling failed to file his income form. He lost his subsidy and his rent was raised to market rent, which he did not pay. He was eventually evicted for non-payment of the increased rent and rent arrears.

2. Residential Tenancies Act, 2006

The *Residential Tenancies Act, 2006*²⁰ allows landlords to make application to the Landlord and Tenant Board to evict tenants who are not paying their rent in full. Non-payment of rent is a breach of the *Act* that can be remedied by payment. A tenant who cannot remedy the breach by paying the full rent deemed owing will likely be evicted.

B. Determining Rent Amounts

Determining the amount of rent-geared-to-income subsidy for a tenant is complicated. Not only are the formulae for calculating rent difficult to apply, the *Social Housing Reform Act, 2000* and its regulations also set out detailed requirements for communicating important information to tenants, which results in a large quantity of written notices flooding tenant mailboxes. To help Tenant Services Coordinators comply with the legislative and regulatory requirements, TCHC created two documents to guide staff: the Rent Review Process, and the Loss of Subsidy Process. These documents outline the main steps necessary for determining rent amounts but they are not comprehensive. As a result, there is considerable inconsistency amongst TSCs' implementation of these processes.

²⁰ *Residential Tenancies Act, 2006*, S.O. 2006, c. 17. [RTA]

1. Annual Review

TCHC sends each tenant an Annual Review Package six months before the date (anniversary) on which any newly calculated rent becomes effective.²¹

Staff have informed me that TCHC allows a tenant 30 days from receipt of the Package to submit a completed Household Income and Assets Review Form. The Form must be accompanied by any documents that support the income amounts shown on the Form. All of this documentation is to be submitted to the Tenant Services Coordinator. If there is missing documentation the TSC will send a Missing Information Letter to the tenant.

After receiving this statement of the tenant's income and assets, the TSC begins to calculate the tenant's rent-gear-to-income amount in accordance with the rules in the *Social Housing Reform Act, 2000* and its regulations. Depending on the circumstances, the TSC may have to send additional letters to the tenant requesting the tenant take further steps and supply additional documents.²²

During our consultations with tenants there were a myriad of issues raised with respect to the annual review process. These included the short time frame the tenant has to prepare and deliver the materials, the difficulty in obtaining acceptable documentation to support the statement of income and assets, and the difficulty in accessing assistance to complete and deliver the forms. A very significant issue that must also be addressed is literacy. Processes must be implemented to bring important information to the attention of tenants who cannot read. Other recurring issues were the distances tenants often have to travel to deliver the documentation to TSCs and the confusion since the reorganization of TCHC as to where they must deliver this material. The loss of documentation by TCHC was also an issue raised by a number of tenants.

²¹ The package contains a Household Income and Assets Review Form; instructions describing how to prove household income and assets; an Emergency Contact and Special Assistance Information Form; a Proof of Employment Form; and a warning that failing to complete the Package on time may result in rent increase. Contact information for a help line is also included in several languages.

²² If the tenant's income appears to change significantly from month to month, a Fluctuating Income Letter is sent asking the tenant to report income changes every three months for the first year. A Pursuit of Income Letter will be sent if a member of the household is eligible for additional income from certain government sources.

2. Opportunity to Comment

Under the *Social Housing Reform Act, 2000* TCHC “shall, subject to such restrictions and requirements as may be prescribed, give [the tenant] an opportunity to comment on any information that, in the opinion of the decision-maker, may form a significant basis for the [unfavourable] decision,” such as a rent increase.²³ The tenant has 30 days to make such comments.

If a tenant fails to return a complete Annual Review Package by the due date, the TSC will send an Opportunity to Comment letter with a Notice of Rent Increase (N2). The Opportunity to Comment letter includes the newly calculated rent and its effective date, the amount of market rent applicable, and the reasons for the rent increase. The letter advises the tenant of the date by which the comments must be received (30 days, plus five days for mailing, from the date the Opportunity to Comment letter is sent.)²⁴ In this standard letter the tenant is not usually provided with any information as to what they need to specifically address to satisfy TCHC that the higher rent is not justified.

3. Internal Review

When the deadline for comment expires and there has been no comment from the tenant or the comment does not change the TSC’s original position, the TSC sends a Notice of Decision to the tenant.²⁵ The Notice of Decision is accompanied by a Notice of Rent Increase (N2) which notifies the tenant of their right to an internal review of the rent increase decision.²⁶

TCHC staff informed us that if an internal review is requested, the review is conducted by another TSC or Operating Unit Manager. The calculation is reviewed to determine its accuracy and whether the rent-geared-to-income rules have been properly applied. A request for an internal review must be in writing and received within 10 business days (plus five business days

²³ O. Reg. 298/01, s. 55(4).

²⁴ O. Reg. 298/01, s. 55(4).

²⁵ The Rent Review Process Checklist is meant to remind TSCs of the steps in the rent review process.

²⁶ *SHRA*, s. 82; O. Reg. 298/01, s. 56(2)3.

for mailing) after the tenant received the Notice of Decision.²⁷ It became apparent during the consultations that most tenants were not aware of this right to an internal review.

There are no rules regarding how this review is to be conducted other than that it must be done by someone other than the original decision-maker.²⁸ TCHC staff have advised us that only one person performs the review. The regulation provides that the review must be completed within 10 business days after the request is received.²⁹ When the review is completed, the tenant must be notified of the result within five business days.³⁰ Other than these scant provisions, there are no other guidelines as to how the review is to be conducted, by whom, and what role the tenant can, should or could play in the process. It is apparent that this needs to be improved.

C. Arrears Collection Process³¹

In contrast to the lack of structure for the internal review process, there is a documented procedure for the steps TCHC staff are to follow to collect arrears. The Arrears Collection Process sets out the roles of the various Operating Unit staff, however, it fails to specify which staff are responsible and accountable for which particular task; i.e., is it the Tenant Services Coordinator, the Health Promotion Officer, the Superintendent?

1. Arrears Collection

Tenant rent payment information is kept in the Housing Management System (HMS), the computerized record keeping system. Each week, OU staff generate an updated Exception Rent Roll Report, listing the tenants in arrears and the outstanding amounts. Tenants who are three days late paying their rent are sent a letter with the following warning:

If you do not pay your rent, you could lose your unit. By law, Toronto Community Housing has the right to evict tenants for not paying rent.

²⁷ O. Reg. 298/01, ss. 57(2) & (4).

²⁸ *SHRA*, s. 83; O. Reg. 298/01, s. 58(2); Rent Review Process Checklist, at 3.

²⁹ O. Reg. 298/01, s. 58(4)(a).

³⁰ City of Toronto, Social Housing Unit, *Rent-Geared-to-Income Guide* (2008) at 98.

³¹ Toronto Community Housing Corporation, *The Arrears Collection Process: Helping Tenants Keep Their Housing* (2008) [*The Arrears Collection Process*].

The threat of eviction at such an early stage in the arrears process seems somewhat heavy-handed.

After sending this letter, the Operating Unit staff give the Superintendents a copy of the Exception Rent Roll Report so they can attempt personal contact with the tenants in arrears. The staff are also to schedule meetings with tenants at the office to discuss the arrears. They have the option of telephoning tenants at this point, but this is not required. All actual and attempted contact with tenants must be documented in the computer system.

One option available is to have the tenant enter into a Local Repayment Agreement. If such an agreement is signed, the tenant is then sent a letter which states:

If you do not make your scheduled agreed payments, Toronto Community Housing will take further action and you could lose your housing.

Once again, the threat of losing your home seems unnecessary.

A letter is also sent to all tenants with arrears greater than \$20.00. Is it necessary to send letters for such minor arrears? Would it not be better to fix a higher level before letters are sent?

For those tenants with arrears greater than \$85.00 a letter is sent stating “We are getting ready to take legal action to evict you” and is accompanied by the Notice of Termination for Non-Payment of Rent (N4). This letter is sent because there is rent owing, yet surprisingly the letter does not set out the outstanding amount.

At the tenant meetings I heard many accounts as to the consequences of such a letter. I heard from, and of, tenants whose blood pressure increased dramatically, of tenants who withdrew into a cocoon, of tenants who became paralyzed with fear and would not open their mail or answer their phone. This threat of eviction, this threat of putting tenants and their families “out on the street” was just more than many vulnerable tenants could mentally or emotionally handle. They were often understandably frozen with fear and unable to take steps on their own to deal with the crisis. To those of us who have always had a home to live in, or shelter to go to, it is difficult to appreciate the abject fear, the sense of total helplessness, that most, particularly vulnerable tenants, face when threatened with the loss of their home. This letter often has an effect opposite

to what, I am sure, was intended. There must be a better, less threatening way of handling this problem.

The Operating Unit staff also send a letter to tenants if there are “small balances” owing less than the monthly rent. At the same time, the TCHC office sends the tenant a Notice of Termination Letter stating that failure to pay may result in proceedings at the Landlord and Tenant Board. This letter has the words “Notice of Termination” displayed in **bold** type. In the first paragraph, the following words appear:

It is important that you understand that by not paying your rent,
you risk losing your housing.

The letter goes on to say that failure to pay may result in a hearing at the Landlord and Tenant Board, which may then lead to loss of housing.

These letters need review in terms of content and frequency. By my count, if a tenant is in arrears by \$20.00, they could receive at least five letters. All these letters and effort are wasted or even counter-productive to those tenants who, for one reason or another, are unable to appreciate the content of the letters.

2. Legal Eviction Process

After the Notice of Termination for Non-Payment of Rent (N4) is sent to the tenant, OU staff send another letter. The tenant files that do not have repayment agreements are then sent to the TCHC internal legal office. Staff will include a completed N4 Checklist which requires that they document three attempts at tenant contact and requires a staff signature.³² The legal office commences the legal process of eviction by filing an Application to Terminate (L1) with the Landlord and Tenant Board. OU staff then send the tenant the Landlord and Tenant Board Hearing Date and Legal Fee Letter which advises of the hearing date and the \$170.00 filing fee charged to their arrears account.

At our tenant consultations many comments were made about the burden caused by the \$170.00 filing fee being added to the tenant’s account. In some instances, this exceeds a month’s rent for the tenants. Many tenants as well as agencies, such as legal clinics, questioned the economics of

³² *Arrears Collection Process* at 6.

initiating the formal legal process in such a perfunctory fashion, without first ensuring all other attempts at resolution had been canvassed.

If at the hearing before the Landlord and Tenant Board an Eviction Order is granted, the policy provides that staff must make every effort to contact the tenant to discuss eviction prevention, even at this late stage. These efforts include telephone calls and door knocking. The eviction will be stopped if the tenant pays the arrears in full, including the filing fee, or enters into a repayment agreement. The period for repayment cannot exceed six months from the date of the Eviction Order. If such arrangements have not occurred, the Operating Unit Manager approves the eviction and the legal unit will file the Eviction Order with the Sheriff. The tenant again has an opportunity to stop the eviction if the arrears are paid in full, including the \$170.00 filing fee and the cost of filing the Eviction Order with the Sheriff.

I have attempted to summarize in the last several pages the arrears collection and rent review processes. I must admit I find these processes cumbersome, confusing and unnecessarily duplicative, even after they have been explained to me in some detail. I can only imagine the difficulty that many tenants and staff face in understanding this complex series of correspondence, especially if, as is usually the case, the tenant has no assistance.

D. Eviction Prevention Policy and Guidelines³³

The Arrears Collection Process and the Rent Review Process documents state what staff must do, and staff must, at the same time, abide by the principles set out in the Eviction Prevention Policy, which explain eviction must be “the very last resort.”

TCHC’s Eviction Prevention Policy is the foundation on which all arrears collection and eviction processes are, and must be, based. Its stated goal is minimizing evictions for non-payment of rent. The principles of the Policy attempt to balance the accommodation of tenants having difficulty paying rent, with the need for tenants to pay their rent in full and in a timely manner. The focus of the Policy is arrears-based evictions only and not evictions for other reasons. The Toronto Ombudsman in her recent report has recommended to TCHC that it extend its Eviction

³³ Toronto Community Housing Corporation, *Eviction Prevention Policy* (September 30, 2002) and *Eviction Prevention Policy and Guidelines* (2008) (Tab 4).

Prevention Policy to the non-arrears based evictions.³⁴ The Policy recognizes that many TCHC tenants have nowhere else to find housing.

The Policy recognizes that eviction prevention depends on clear communication: “Tenants have the right to a clear, complete explanation of their rent.” It is the responsibility of the Operating Unit Manager to educate, communicate with, and assist tenants with difficulties in paying rent. OUMs must ensure that there is “direct contact” with the tenant at a number of key points in the rent collection process:

- When sending a late payment notice to the tenant or when the tenant gives notice of problems paying rent;
- Before TCHC files an application to evict with the Landlord and Tenant Board; and
- When the Landlord and Tenant Board makes a decision.

All such contact or attempts at contact must be documented.

The Policy provides a range of rent payment options available to tenants, including pre-authorized payment, cash payment at banks, ATM payments, internet banking and rent paid directly from pension or social assistance providers.

The Policy requires “staff” to be available for face-to-face meetings well before filing an eviction application with the Landlord and Tenant Board. “Staff” must maintain clear records of rent calculation and payment histories and provide these records to the tenant. However, nowhere does the Policy state which staff position, i.e., Tenant Services Coordinator, Health Promotion Officer or Superintendent, is responsible and accountable for implementing its principles in practice.

The Eviction Prevention Policy Guidelines elaborate on the general principles set out in the Eviction Prevention Policy. The Guidelines require staff to make every effort to identify tenants who may need support to prevent eviction, e.g. tenants suffering from mental illness, cognitive or developmental disability, tenants with a complex rent or income profile or a history of arrears.

³⁴ Fiona Crean, Ombudsman, *Housing Matters: Investigation into the Toronto Community Housing Corporation’s Proposed Eviction of a Tenant*, (January, 2010).

The “direct contact” the Policy requires is defined in the Guidelines as including “a letter, phone call, visit or any other contact that gives the *specific* tenant household the chance to respond to the problem and discuss possible solutions” and all such contact or attempts at contact be documented [emphasis in original]. The Guidelines define the same three points of contact as set out in the Eviction Prevention Policy, and describe the steps to be taken at each point. The Guidelines however fail to indicate the specific staff position responsible and accountable for performing the various activities prescribed by the Policy.

Pursuant to the Guidelines, the legal unit may file an eviction application only after confirming that TCHC staff directly contacted or attempted to contact the tenant. Operating Units are permitted to begin eviction processes for tenants who are “persistently late” in paying rent.³⁵ At the Landlord and Tenant Board, TCHC must first attempt a mediated settlement. If an eviction order is issued, the legal unit will file the order with the Sheriff only after confirming that staff had directly contacted or attempted to contact the tenant to discuss solutions to stop eviction.

As written, the Policy and Guidelines set out a fair and reasonable approach to eviction prevention for arrears. The difficulty appears to be with their inconsistent application, which may not be surprising considering the lack of specificity as to who does what.

E. Human Rights, Harassment and Fair Access Policy³⁶

TCHC’s Human Rights, Harassment and Fair Access Policy has committed to providing “an inclusive housing and working environment in which all individuals are equally valued and fairly treated.” The Policy recognizes the diversity of the TCHC tenant population and commits TCHC to take “pro-active measures” to eliminate discrimination.

The Policy recognizes that TCHC has a duty to accommodate to achieve equal treatment:

³⁵ Persistent lateness is defined as: In at least 7 of the past 12 months, the tenant did not pay their full rent until after the 5th day of the month, and did not have an agreement to do so; the tenant was taken to the Landlord and Tenant Board at least once in the past 12 months; in at least two of the past 12 months, the tenant was sent a reminder letter saying that they were in breach of the lease and must pay on time; and, the OUM has reviewed the tenant’s file and approves eviction.

³⁶ Toronto Community Housing Corporation, *Human Rights, Harassment and Fair Access Policy* (Tab 5)

Equal treatment is treatment that brings about an equality of results. If applying a general rule has an adverse effect on an individual because he or she belongs to a group that is identifiable by a prohibited ground, TCHC has a duty to accommodate the individual. TCHC must re-examine the general rule to minimize or eliminate the adverse impact. In some instances, different approaches or an accommodation may be required to achieve equal access to goods, services and opportunities within TCHC. Accommodation could be an adjustment of TCHC rules to eliminate unequal effects, short of causing undue hardship to TCHC.

As set out in the draft Vulnerable Tenant Protocol the “duty to accommodate” tenants with disabilities, including mental illness, means, among other things, “tenants have the *right* to request support or other accommodations they need to meet their obligations under the lease...Toronto Community Housing *must work with* the tenant to find practical ways to meet these needs...” [Emphasis in original.]³⁷

The Human Rights, Harassment and Fair Access Policy, of course, applies to all policies and practices at TCHC. It is important that TCHC ensure all its staff are aware of and trained regarding this important policy which is so very relevant to its day-to-day operations.

F. 2006 Evaluation of Eviction Prevention Policy

In 2006, Paul Dowling Consulting was retained to study TCHC’s Eviction Prevention Policy.³⁸ I have summarized his report below.

- Compliance with Eviction Prevention Policy: The report found TCHC staff were not consistently complying with the Policy and not documenting all contacts with tenants.
- Stakeholder Understanding of the Policy: The report found, in general, TCHC frontline staff did not understand the Policy as requiring face-to-face contact with tenants. The consultants found tenants to be unfamiliar with the Eviction Prevention Policy despite being familiar with other TCHC policies.

³⁷ *Vulnerable Tenants Protocol* at 6 (Tab 3).

³⁸ Paul Dowling Consulting, *Evaluation of Eviction Prevention Policy for Toronto Community Housing Corporation* (2006) .

- **Difference Between Practice and Policy:** Most groups consulted in the study believed the Eviction Prevention Policy was well-written but required more consistent implementation. The study found the key areas in which practice differs from the Eviction Prevention Policy to be: (1) lack of face-to-face contact; (2) inconsistent documentation; and (3) most repayment agreements were negotiated only after formal eviction proceedings begin.
- **General Recommendations:** (1) all frontline staff should be trained in eviction prevention strategies; (2) written communications to tenants should be in plain language; (3) TCHC should no longer evict a tenant for persistent late payment of rent; and (4) TCHC should continuously monitor eviction prevention performance.
- **Need for Attitudinal Changes:** The study found some evidence that some TCHC staff think of tenants in arrears as engaging in morally suspect behaviour. The consultants suggested that a change in staff attitudes plays a major role in preventing evictions.
- **Morale and Job Satisfaction:** The Dowling study found that frontline workers feel overworked, overwhelmed, and demoralized. The report suggested that managers should encourage staff to work as a team through regular meetings and informal gatherings.
- **Repayment Agreements:** The report found that TSCs were at times reluctant to negotiate informal repayment agreements with tenants before formal eviction proceedings were initiated. The consultants recommended that TSCs be trained in negotiating such agreements with a view to the tenants' circumstances. The consultants also suggested that Litigation Clerks from TCHC's legal unit be responsible for negotiating repayment agreements, which would make such agreements appear more formal and would alleviate the TSCs' workload. The report recommended that arrears amounts for which there is a repayment agreement should be subtracted from the Operating Unit's total arrears count, thus creating an incentive for staff to pursue such agreements.

- Quality of Communication with Tenants: The report found that TCHC staff do comply with the “three points of contact,” as set out in the Eviction Prevention Policy and Guidelines, but they fail to see that the number of contacts is not as important as the quality of contact. The consultants recommended that: (1) staff make themselves more available for face-to-face meetings; and (2) staff should inform tenants about the Policy as well as how rent is calculated.
- Linkages with Community Support Services: The Dowling report found that tenants are not always successfully linked with appropriate support resources outside TCHC. The report recommended that staff be trained to ensure that tenants are effectively connected to community agencies. It also recommended that TCHC establish formal channels of communication with community agencies to better assist tenants facing the threat of eviction.
- Clarity of Staff Roles: The report noted that TCHC staff roles need to be clarified. The consultants recognized that compliance with the Eviction Prevention Policy may require some redistribution of staff responsibilities to ensure accountability and to balance workloads among frontline staff.

Many of the issues addressed in the Dowling report are still problems today. The recommendations from this review will include some of the same recommendations made by Mr. Dowling. TCHC must take action on these matters or risk losing credibility with its tenants and the community at large.

G. Tenant Contact Policy in Seniors Unit

As recommended by Mr. Dowling, the issue of direct contact and personal visits was more recently addressed in a tenant contact policy for the seniors units.

In early 2009, the two seniors operating units developed a written policy of having Tenant Services Coordinators visit buildings.³⁹ The policy had the goal of achieving a high quality of service to tenants through regular visits. According to this policy, there needs to be one TSC visit

³⁹ Seniors Unit, OUA/OUB: TSC Visits to Buildings (2009) (Tab 6).

to every seniors building every month. This practice was expected to begin no later than May 2009. Unfortunately, regular monthly attendance at Arleta Manor – Mr. Gosling’s building – did not occur until approximately September 2009.

The policy provides that during these visits Tenant Service Coordinators will address issues regarding rent reviews, arrears, transfer requests, complaints, and other general tenancy related questions. To assist in this process, staff should ensure that forms are on site for rent review, pre-authorized payment, notices to vacate, tenant complaints and transfer requests.

H. Summary

There are many policies and procedures in place at TCHC regarding rent arrears, rent subsidies and eviction prevention. These policies, however, do not appear to be well-understood, or even known of, by many tenants, staff and community agencies. The legislated rules regarding rent and subsidy calculations are too complicated. The mandated letters are confusing, and excessive in number and tone. The Human Rights, Harassment and Fair Access Policy and the Eviction Prevention Policy are applied unevenly. There is a system in place to assist vulnerable tenants, but it appears clear it is not being utilized to its full potential.

Section 4: Eviction Prevention Reports from other Jurisdictions

In reviewing the adequacy of current TCHC practices and policies relating to eviction prevention, it is instructive to look at studies done elsewhere and practices that have been implemented.

A. U.K. Rent Arrears Guide⁴⁰

The U.K. Department for Communities and Local Government published a “Guide on Effecting Rent Arrears Management” containing findings of research carried out on the use of “possession actions” and evictions by social landlords. The Guide comments on the role of social landlords:

... social landlords should seek to maintain and sustain tenancies, rather than terminate them and that eviction should be used as a last resort.

The significant damage caused by the eviction process is noted:

Eviction has high social and economic costs. Landlords should, therefore, place increasing emphasis on alternative approaches with a focus on preventative, rather than reactive strategies. Vulnerable tenants (eg, those with mental-health or alcohol and drug misuse problems) may be particularly liable to accumulate arrears if not given appropriate support. The impact of eviction can be major, as once evicted, former tenants are often disqualified from social housing. Landlords can do a great deal to help such individuals...

The cost effectiveness of a proactive preventative approach is discussed in the Guide. There is a recognition that the cost of rent arrears falls not only on the landlord and on other tenants but also on the “indebted tenants” in terms of social and health consequences and that such costs are also borne by social service departments and other welfare agencies. Included in the cost of arrears management is the cost of IT software and hardware, letters and telephone calls, staff time, legal costs, etc. It is recognized that landlords tend to understate the costs of eviction which make the alternatives appear relatively expensive. It is recommended, however, that a

⁴⁰ U.K. Department for Communities and Local Governments, *Guide on Effective Rent Arrears Management* (August 2006).

greater investment be made in incentive schemes and enhanced welfare benefits advice or debt counseling.

The Guide advocates a strategic approach to prevent and manage rent arrears which should include proper training and guidelines for the frontline staff and allow them to exercise discretion when appropriate. It states that there should be a range of options for making rent payments which must be flexible, accessible and convenient to use. The recommended guidelines should encourage pre-action contact between the parties and provide a process to be followed by landlords considering issuing court proceedings. It states that there ought to be effective collection, storage and use of information about tenants, including contact details and support received. This information should be used to provide service tailored to individual needs and circumstances and should be updated throughout the life of the tenancy.

The Guide suggests landlords use the opportunity when meeting with new tenants to provide clear and complete information regarding tenants' obligations and to identify tenants who may be vulnerable. The Guide strongly recommends "settling-in visits" which would take place one month into a new tenancy.

There is a discussion in the Guide of the "generalist" versus "specialist" model of approach for managing rent arrears. It states that the majority of social landlords are moving towards a more specialist model which would include a more consistent and professional approach as well as building better relationships with the courts and with other key stakeholder agencies. The generalist approach is described as more "holistic." There does not appear to be a recommendation to proceed one way or the other, however, landlords should ensure that "communication between relevant staff is robust, and should attribute responsibility for elements of the rent arrears recovery process clearly." The staff must be well trained in a range of areas including welfare benefits regulations, the legal framework for rent recovery and sensitive approaches to debt collection.

The importance of early contact with tenants in arrears is emphasized in the Guide. When communicating with the tenants regarding the arrears, the landlord should emphasize direct personal contact rather than correspondence, "particularly where this involves written correspondence through standard, system-generated, letters." It is recognized that personal

contact helps the staff to understand the reasons for arrears and provides an opportunity for negotiation. A variety of methods of personal contact are encouraged, including office interviews, home visits, and telephone contact. The Guide recognizes the importance of continuing to negotiate arrears repayment agreements right up until the time of the bailiff's visit.

With respect to instituting court proceedings, the Guide strongly recommends that tenants should not be served with any notices until the landlord has established personal contact or has exhausted all possible means of doing so. Eviction must be the last resort. It is recommended that prior to instituting court action, the landlord should seek a meeting with the tenant and agency supporting them, if appropriate, while also reviewing the tenants' personal circumstances and actions taken.

I find these observations to be highly constructive and I strongly encourage TCHC to consider the approaches advocated in this Guide.

B. Canadian Study

Another study closer to home is the March 2006 Acacia Consulting and Research study entitled "Cycles of Homelessness: Understanding Eviction Prevention and its Relationship to Homelessness".⁴¹ The study took place in Greater Vancouver, Ottawa, and Halifax.

One of the most significant themes that emerged from the focus groups and interviews was the deteriorating, poorly maintained and substandard nature of the housing situation. Satisfaction with housing was found to be closely tied to vulnerability to the risk of eviction and homelessness.

The importance of assisting tenants before the formal eviction process begins was stressed in the study. Many tenants decided to accept their eviction and not fight it since the housing was not worth keeping. Tenants not already connected to the social services network were often not aware of their rights or that eviction prevention services existed. The need to build partnerships for early identification of households at risk was identified.

⁴¹ Acacia Consulting and Research, *Cycles of Homelessness: Understanding Eviction Prevention and its Relation to Homelessness* (March 2006). The report was funded from the National Research Program of the Government of Canada's National Homelessness Initiative.

The study provides a comparison of the differences between the provincial residential tenancy laws in Ontario, British Columbia and Nova Scotia. Ontario's system is described as complicated with numerous steps and documents flowing between the landlord, tenant and tribunal. The study notes that there are very tight time restrictions which require tenants to understand and react quickly to any notice they receive. In contrast, British Columbia's eviction process is described as a more simple process. Nova Scotia's system "stands out" as offering tenants more time to pay their rent before a notice of eviction can be served. The system builds in extra protection for tenants who have occupied their unit for five years or more. British Columbia's process allows the landlord to give 10 days notice the first day a tenant is late with the rent. Both British Columbia and Ontario give tenants as little as five days notice to file their intention to dispute their eviction. Nova Scotia's system also incorporates contact to encourage mediation and a hearing is scheduled only if mediation fails. This option is not available in British Columbia, while in Ontario tribunal staff members encourage mediation. In both British Columbia and Ontario, however, a tribunal or arbitration hearing is the norm. The study identifies best practices, such as services that provide information and advice, legal representation, conflict resolution and mediation, emergency financial assistance and third party financial management.

The study indicates that the current programs generally do not target groups considered to be "at risk." Insufficient resources results in services that are often limited and those clients who most need the services often face barriers to access them. In addition, those who provide the services are often frequently too overworked to do targeted outreach. Referral to other services was a common strategy in all the jurisdictions. There was a consensus in all jurisdictions of the importance of intervention before the formal eviction process begins, however, it was noted that intervention typically occurs once the eviction process is well underway and commonly only once it is over. While there was a recognition of the complexity of the eviction experiences and the need to address other factors affecting the housing stability of tenants, some of the housing providers felt constrained by the narrow focus on eviction prevention.

C. Summary

A common theme emerges from these studies of the social housing sector in Canada and in the U.K.: effective communication and assistance for vulnerable tenants through personal contact at

an early stage in the arrears process is critical. Those jurisdictions that take steps to accomplish this are the most effective in ensuring that their residents maintain successful tenancies while the corporation/landlord remains a financially viable entity. This very theme emerged quite clearly during the consultations for this review.

Section 5: Issues that have Emerged

A. Mandate of TCHC

TCHC has identified its mandate as providing “quality housing for low and moderate income households and to create community conditions that minimize risk and promote resiliency.”⁴²

There has been much confusion regarding the role that TCHC ought to play given the potential conflict between its role as a social housing provider and its obligation to be a financially viable corporation. It is recognized that TCHC “is a corporation that has to be run in a businesslike manner, in order to keep operating, nevertheless, it is different in its scope from that of a commercial Landlord.”⁴³

In the past, predecessor corporations of TCHC have employed social workers to assist tenants. However, given the funds available under the municipal structure, that can no longer be done. TCHC must state unequivocally what it can and cannot do. It should clarify that first and foremost it is a landlord, albeit one with the added responsibility set forth in its mandate to “create community conditions that minimize risk and promote resiliency.” Its mandate must include linking tenants with existing community agencies that provide support services.

The City of Peterborough’s Eviction Prevention Protocol expresses this concept as follows:⁴⁴

Social housing landlords play a key role in establishing and maintaining relationships with community agencies. Often landlords – including social housing landlords – are viewed as adversarial to the tenant population. There is need to work hard to establish and maintain relationships and to establish in the community that social housing providers are compassionate and responsible, able to maintain a balance between human service and ‘landlording’.

There exists throughout the TCHC community an element of confusion over the role of staff and the scope of services to be offered to tenants given the lack of clarity regarding its mandate.

⁴² TCHC Mandate.

⁴³ *Toronto Community Housing Corp. v. Nadine Logan* (LTB Reasons for Decision, TNL-63922; April 8, 2005; Alan Marvin, Member)

⁴⁴ City of Peterborough, *Eviction Prevention Protocol: A Guide for Housing Providers* (2005) at 6.

Providing specific direction on these issues will help the organization focus on what it can achieve and to know when outside assistance is required.

Recommendations:

- **TCHC must better communicate its mandate. It is a landlord, not a direct provider of social work services, but it must assist tenants to identify, locate and contact appropriate support services.**
- **TCHC must clearly communicate this mandate to tenants and staff.**

B. Communication with Tenants

Effective communication with tenants, particularly vulnerable tenants, is essential to preventing arrears-based evictions, thus helping TCHC fulfill its mandate to provide quality housing to low and moderate income households while promoting resiliency.

The following are some of the communication issues identified during our consultations with tenants, staff and other agencies.

1. Personal Contact

Direct personal contact with tenants is perhaps the most important element of a successful eviction prevention program, as was discussed in the various U.K. and Canadian studies we reviewed. TCHC must place greater emphasis on direct personal contact with tenants during the rent arrears process. While written communications are necessary, particularly for audit trail purposes, personal contact will assist TCHC, and often times the tenant, to identify the reason for the rent arrears. Personal contact will also often provide an opportunity to rectify the situation or, at the very least, help both parties to move forward. As already mentioned, sending repeated letters to people, some of whom cannot read due to literacy, language, eyesight or other issues, seems to be fruitless. These people need to be spoken to directly and preferably in person. Since many tenants have no telephone, if no one knocks on the door it will be impossible to communicate directly with them. These are tenants who must be seen. Personal contact provides an opportunity for negotiation and empowers a tenant, sometimes with assistance from an

outside social agency, to participate in reaching a mutually agreeable solution. In my view, personal contacts will usually have the important outcome of strengthening the long-term relationship between TCHC and its tenants.

Since the definition of “direct contact” in the Eviction Prevention Policy Guidelines currently allows staff to satisfy the “direct contact” requirements merely by sending letters, the Guidelines should be amended to define “direct contact” as requiring, at the very least, one face-to-face meeting, absent exceptional circumstances.⁴⁵

2. Lease Signing Process

At the commencement of the tenancy, TCHC should ensure that tenants are aware of the importance of making rental payments and completing the Annual Review Form in a timely manner. They should also be informed of TCHC policies and practices regarding eviction prevention. A copy of the policies and practices, including the Eviction Prevention Policy and Guidelines, should be provided to the tenant at this time, preferably contained in a Handbook. Additional copies should be available in each community, and easily available on TCHC’s website. Given the fundamental importance of these documents, they should be available in many different languages.

We were led to conclude that there are inconsistent practices in providing tenants with a Tenant Handbook at the time they commence their tenancy. A handbook is a most helpful tool for the tenants. TCHC must ensure that all tenants receive the handbook upon signing a lease. As part of this Handbook, TCHC should include contact information for the community agencies in proximity to each building.

A checklist of matters to be covered in this initial discussion with the tenant is imperative. Staff should satisfy themselves that the tenant understands TCHC policies and practices, and the tenant should sign the checklist accordingly. During the initial consultation, staff should, in all appropriate cases, identify and document risk factors that may indicate vulnerability of the tenant. While TCHC staff are not trained to identify specific health issues or capacity concerns, staff are well positioned to identify factors that may impact upon vulnerability. This is an

⁴⁵ Toronto Community Housing Corporation, *Eviction Prevention Policy Guidelines* (2008) at 2-3 (Tab 4).

important “opportunity” highlighted in the Vulnerable Tenants Protocol. This written information should be maintained in the tenant’s file.

3. Exception Rent Roll Report

The most obvious opportunity for direct personal contact is probably when the Exception Rent Roll Report is sent by the Tenant Services Coordinator to the building Superintendent. It is the TSC’s responsibility to ensure that personal contact is made with tenants listed on the report. To achieve that personal contact the TSC may avail him/herself of the assistance of either the Superintendent or the Health Promotion Officer. This contact should provide an opportunity for TCHC to seek a solution early on. The TSC should document efforts made to communicate with the tenant, and the results of those efforts. While personal contact at this stage should not be an absolute prerequisite, every reasonable effort must be made to achieve this most important step.

If the arrears issue cannot be resolved in the early stages, the procedure set out in the Eviction Prevention Policy Guidelines provides that contact with a tenant should be made prior to sending a request to file an Application (to the Landlord and Tenant Board) to Evict a Tenant for Non-payment of Rent (L1). The Guidelines also provide for contact subsequent to the Landlord and Tenant Board issuing an Order to Evict. In my view, face-to-face contact at these two stages should be considered mandatory by TCHC. If this is not feasible, then telephone contact should remain as the less desirable alternative to facilitate contact. TCHC staff must carefully document the results of their contact and attempted contact.

4. Annual Inspection

The annual unit inspection presents an opportunity to identify and update notes of tenants who may be exhibiting signs of vulnerability, e.g. old age, obvious signs of health deterioration, poor condition of the unit, etc. We are alive to privacy concerns on the part of tenants but nevertheless, because of the benefit that can accrue to tenants, we encourage the use of the annual inspection process to identify potential issues. Staff involved with filling the work orders issued from the annual unit inspection process should also note and record obvious risk factors of vulnerability. This is one of the opportunities identified in the Vulnerable Tenants Protocol. Information relating to vulnerability should be forwarded to the TSC, as they are ultimately

responsible for administering each tenant's file. Where appropriate, the TSC should engage the services of the HPO.

5. Facilitating Contact

A broad cross-section of tenants expressed concerns about difficulties experienced contacting staff by telephone and the futility of their attempts to attend at TCHC offices. Given that Tenant Services Coordinators often attend only once per month in the tenant buildings for which they are responsible, it may be difficult for tenants to meet with them.

To improve the ability of tenants to contact their TSC, TCHC should implement set office hours when TSCs must be available in their office to respond to both telephone contacts and in-person visits from tenants relating to rent arrears, loss of subsidy or Annual Review Form matters. TCHC must take steps to set pre-announced regularly scheduled attendances by TSCs at each of the communities. Set office hours and routine building attendances are particularly important in light of the often substantial physical distances that separate many TCHC communities from their staff office locations. This is especially challenging for elderly and many other vulnerable tenants. For example, one of the offices for the Seniors Unit is located on Carlton Street, many kilometres away for many of those seniors. While I understand that some measures may already be occurring in some areas, it is important for TCHC to ensure consistency in these practices. Even though not all tenants will choose to take advantage of these opportunities, these practices will provide some necessary routine and structure to help TCHC communicate with its tenants and, equally important, to give the tenants an opportunity to communicate with TCHC.

Many tenants expressed frustration with the Call Centre which they are encouraged to contact when questions or issues arise. Their concerns relate to the shortage of staff available to respond to the calls, lengthy wait times and the limited ability of the Call Centre staff to help resolve their concerns. There are many reasons why an organization may rely on a Call Centre, including the ability to streamline calls that can then be forwarded to various frontline staff, and to be able to respond to standard questions relating to a tenant's account or their building. Given the number of tenants that live within TCHC communities, the use of a Call Centre likely does satisfy an important role within the organization; yet it must be staffed appropriately according to the volume and nature of intake calls. However, use of a Call Centre is not a replacement for

personal contact, particularly when it relates to vulnerable tenants and issues as fundamental as whether they may lose the home in which they live. A balance must be struck between realizing the potential efficiencies of using a Call Centre, and ensuring that tenant questions and concerns relating to the rent arrears and the eviction process are being answered effectively and within a reasonable timeframe.

6. Written Communications

With respect to the written communication tenants receive relating to the Annual Review Form, rent arrears, loss of subsidy and eviction, four general areas of concern were identified by tenants and others:

- context and meaning of each document;
- volume of correspondence received;
- inconsistent, inaccurate or duplicative information; and
- inflexibility in the documents received, regardless of the amount of rent arrears.

Some tenants told us they are unable to appreciate the context of the documents they receive from TCHC. For example, some tenants explained that they misinterpret the Notice to Terminate as representing an actual notice to evict. This instils feelings of stress, fear and anxiety. In fact, many tenants recounted to us feelings of “paralysis” when faced with the word “eviction.” This is entirely counterproductive to the goals to which TCHC aspires.

The threat of eviction is one of the issues that the Ombudsman referred to in her report when she stated:⁴⁶

The reality, however, is that the TCHC manages the tenancies of thousands of vulnerable persons, many of whom have mental health challenges and/or a range of disabilities. These factors are compounded by economic disadvantage, leaving many tenants powerless and often without the requisite skills to negotiate and respond effectively. For them, the threat of eviction is a traumatic experience that may result in homelessness.

⁴⁶ Fiona Crean, Ombudsman, *Housing Matters: Investigation into the Toronto Community Housing Corporation's Proposed Eviction of a Tenant*, (January, 2010) at 22.

While TCHC needs to be clear in its written communications to tenants regarding the consequences if rent arrears are not remedied, in-person contact with tenants (or at a minimum telephone contact) will help alleviate some of the resulting fear and anxiety.

TCHC staff should ensure that tenants understand all communications from staff, both written and oral. Staff should also make reasonable efforts to determine the language preferences of tenants. Where it can be achieved without major disruption to TCHC operations, staff with the language capabilities appropriate to particular communities should be located in those communities. Given the importance of written communications that may have serious consequences for the tenant's ability to stay housed, the Eviction Prevention Policy should require that language translation/interpretation services be made available if needed.

The Eviction Prevention Policy of CityHousing Hamilton, the social housing provider owned and operated by the City of Hamilton, expressly states that, upon commencement of tenancy, tenants should be informed about language translation services. It also states that, in general, language accommodation should be provided if required.⁴⁷ In contrast, the TCHC Eviction Prevention Policy makes no mention of language services. Given the large numbers of TCHC tenants whose first language is not English, it is important that the Eviction Prevention Policy state that, as a basic principle underlying eviction prevention practices, language translation be available for key communications with tenants.

Tenants and staff both raised concerns with respect to the volume of written correspondence that a tenant in rent arrears may receive. Although the intent of TCHC is to provide the tenant with as much opportunity as possible to remedy a rent arrears issue, inundating a tenant with multiple written documents per month relating to the same issue, will most likely yield diminishing, if not negative, returns. There needs to be more productive and effective ways to address the matter.

One of the other concerns raised by both tenants and TCHC staff relate to the quality of the written communications sent to tenants. Some of the correspondence received by tenants from TCHC is inconsistent, confusing or duplicative. To illustrate this point, one needs to look no further than to some of the documentation that was sent by TCHC to Mr. Gosling:

⁴⁷ City of Hamilton, Community Services, Housing Division, *Eviction Prevention Policy* at 2.

Example 1

- January 1, 2006: TCHC establishes Mr. Gosling's monthly rent as being **\$440.50**
- May 26, 2006: Notice of Decision letter was sent to Mr. Gosling to advise him of a proposed loss of subsidy and increase in rent to **\$555.50**, due to non-return of the Household Income and Asset Review Form.
- August 8, 2006: Notice of Rent Increase (N2) was sent to Mr. Gosling. The document advises that beginning on **September 1, 2006**, his rent will increase to **\$555.50**.
- August 14, 2006: Notice of Decision was sent to Mr. Gosling. It states that, effective **September 1, 2006**, his rent will be **\$469.50**. The letter further states that the market rent for his unit is **\$532.00**

Example 2

- **January 1, 2008**: TCHC establishes Mr. Gosling's rent as being \$532.00 per month.
- February 26, 2008: Notice of Rent Increase (N2) was sent to Mr. Gosling. The new rent to become effective on **March 1, 2009** was \$532.00 per month.
- October 27, 2008: Notice of Rent Increase (N2) is sent to Mr. Gosling. The new rent to become effective on **March 1, 2009** was \$532.00 per month.
- December 14, 2008: Notice of Rent Increase (N2) is sent to Mr. Gosling. The new rent to become effective on **January 1, 2009** was \$532.00 per month.

These are but two examples to illustrate the confusion a tenant would most likely experience when the correspondence they receive is inconsistent, inaccurate or duplicative. This is compounded if it is unclear who the actual author of the document is, as was the case with some correspondence to Mr. Gosling. This confusion creates barriers to resolving rent arrears.

It is difficult to know whether improving the quality of the written communications to Mr. Gosling would have remedied the problems he experienced with TCHC, given his continued failure to provide the necessary information to complete the Annual Review Form. However,

given that this review goes beyond reviewing the circumstances of only Mr. Gosling's tenancy, it is clear there are meaningful improvements that must be made in the manner TCHC communicates with tenants.

Rent calculations should be included in letters to tenants. Providing this transparency will allow the tenants to more fully understand the complexities of the process and the rigours of the statutory framework. In addition, all letters from TCHC should be signed in a manner that makes clear the identity of the author of the documents. Both tenants and staff must be clear from whom and from where the written document originated. TCHC must possess the ability to track each piece of correspondence that is sent to a tenant with a view to (1) reducing duplication; (2) reducing the likelihood that correspondence will contain inaccurate or contradictory information; and (3) increasing the transparency of all documentation sent to the tenant.

The Tenant Services Coordinator (or if that is not administratively feasible, another clearly identifiable qualified person) needs to be assigned responsibility to manage all correspondence sent to a tenant in rent arrears and related matters. A copy of all written correspondence, including those letters sent directly by an automated system, should be sent to the TSC so that the tenant file accurately reflects each communication. This will reduce the problem of multiple parties sending inaccurate, contradictory or duplicative information. Further, a tenant should not, in the normal course, receive a Notice to Terminate (N4) during the first month of rental delinquency. We recommend this approach, especially for vulnerable tenants, because we believe this initial period following arrears (usually no more than 20 – 25 days) is better spent on efforts to resolve the problem by personal contact, in addition to the standard rent arrears letter.

Another important part of the process of communicating with tenants involves the computer system that houses and, in some instances, disseminates information. It is crucial that TCHC reconfigure its computer system. It must use a fully-integrated system where all information relating to a tenant can be stored and readily accessed by staff. This will allow staff to see a tenant's risk factors relating to vulnerability and will reinforce that it is a significant issue relating to that tenancy. When Mr. Gosling did complete his Annual Review Form (which was not often) he listed his "Emergency Contact" as himself. I have been told by staff at the Office of the Public Guardian and Trustee that this is a "big red flag." If all information was entered into a

single computer system, this should have been noticed and acted upon. I understand that TCHC is in the process of improving and integrating its computer systems and I encourage them to proceed with this endeavour as expeditiously as possible.

All written communications relating to eviction matters should be written in plain non-threatening language that will be understandable and which will not unnecessarily raise the level of stress and anxiety. The letter accompanying the Notice to Terminate (N4) is an example that should use significantly less threatening language. While it is essential to make tenants aware at an early stage that a rent arrears delinquency has arisen, that notification should not incite fear and anxiety. However, we recognize that some documents, such as the Application to Evict (L1), are legal documents that will contain specific legal language.

Many tenants expressed frustration that the same form letters and processes are used by TCHC irrespective of whether a tenant is in arrears by \$80.00 or \$800.00. Incidentally, we were given a letter by a tenant where the arrears were only \$8.00. The process should provide for some discretion and flexibility, however, it is important for TCHC to establish one system of written communication with its tenants once a rent arrears issue reaches a certain threshold. While there should always be some flexibility in the system, particularly as to when the actual eviction process is initiated, in-person contact or telephone communication at the earliest stage of arrears provides the greatest opportunity for creating a tailor-made solution that satisfies both the tenant and TCHC.

I am advised that changes have recently been made to the various letters and notices that are sent to tenants. TCHC is to be commended for taking steps to change these documents. Hopefully my comments will be of assistance when reviewing the documents.

Recommendations:

- **The Eviction Prevention Policy Guidelines should define “direct contact” as requiring at least one face-to-face meeting.**
- **TCHC must place a greater emphasis on direct personal contact with tenants.**

- **At the commencement of the tenancy, TCHC should ensure that tenants are aware of TCHC policies and practices regarding expectations and the payment options available, eviction prevention and the importance of making rental payments and completing the Annual Review Form in a timely manner.**
- **A copy of the relevant policies and practices, including a copy of the Eviction Prevention Policy and Guideline, should be provided to the tenant at the time the lease is signed. Furthermore, given the fundamental importance of these documents, they should, to the extent possible, be made available in different languages.**
- **All tenants should receive a tenant handbook at the commencement of their tenancy. TCHC should include information in the tenant handbook relating to the mandate of TCHC, the importance of the annual review process and eviction prevention. The handbook should also include contact information for the community agencies in proximity to the tenant's building.**
- **The relevant policies and practices, including the Eviction Prevention Policy and Guidelines, should be available in each of the communities, and available on TCHC's website.**
- **Staff should create a checklist setting out the matters to be covered with the tenant at the commencement of the tenancy. Staff should take steps to ensure that the tenant understands TCHC policies and practices, and the tenant should sign the checklist accordingly.**
- **During the initial consultation or follow-up interactions with tenants, staff should be prepared to identify and document factors that may indicate tenant vulnerability. This written information should then be forwarded to the TSC to be maintained in the tenant's file.**
- **TSCs should document efforts made to communicate with tenants as well as the results of those efforts. Every reasonable effort must be made to achieve**

personal contact with the tenant. The TSC should be responsible to ensure that personal contact is made with tenants listed in the Exception Rent Roll Report.

- The Eviction Prevention Policy Guidelines should be amended to make face-to-face contact with the tenant mandatory prior to sending a request to file an Application to Evict and after the Landlord and Tenant Board issues an Order to Evict.
- During annual inspections and when performing work orders, TCHC staff should be sensitive to tenants who may be exhibiting signs of vulnerability. Staff should document such indicators for the TSC's review. Where appropriate, the TSC should engage the services of the HPO.
- TSCs should have set office hours and routine building attendances to address tenant questions. TCHC should ensure that tenants are aware of this.
- TCHC must ensure that tenant questions relating to arrears and the eviction process are being answered by the Call Centre effectively and within a reasonable timeframe.
- The Eviction Prevention Policy should state that language translation/interpretation/literacy services will be made available, if needed, for communication with tenants.
- All letters from TCHC should be signed in a manner that clearly identifies the author.
- TCHC needs to improve the written communications with tenants, so as to: (1) reduce duplication; (2) reduce the likelihood that correspondence will contain inaccurate or contradictory information; and (3) increase the transparency of all documentation sent to the tenant.
- Staff should make reasonable efforts to determine the language preferences of tenants. Staff with language capabilities appropriate to particular communities should be located in those communities if it can be achieved without major

disruption to TCHC operations. The Eviction Prevention Policy should require that language translation/interpretation services be made available if needed.

- **TCHC should provide tenants, on an annual basis, or as frequently as their rent changes, with a letter that provides transparency as to how their rent has been calculated.**
- **TSCs should administer the tenant file and manage all correspondence that is sent to a tenant with respect to rent arrears matters. This should reduce the likelihood of multiple parties sending inaccurate, contradictory or duplicative information.**
- **TCHC must integrate and update its computer system for maintaining tenant records and information.**
- **In the normal course, a tenant should not receive a Notice to Terminate during the first month that they are in rental delinquency. However, steps should be taken by TCHC to remedy the rent arrears, including establishing personal contact and sending a rent arrears letter.**
- **All written communications from TCHC relating to arrears and eviction prevention matters should be written using plain, non-threatening language. However, tenants must be aware that some documents, such as the Application to Evict (L1), will contain specific legal language.**

C. TCHC Staff and Community Agencies

During consultations with tenants, staff and various public and private sector agencies it became apparent that TCHC has capable and committed staff. I was encouraged by their level of expertise and enthusiasm which is critical to effecting TCHC's mandate and responsibilities. However, to better assist its tenants, TCHC should seek to improve in several key areas, including staff training, job clarity and accountability, and relationships with community agencies.

1. Role and Responsibilities of Tenant Services Coordinator

TSCs play a crucial role within the organization as they are responsible for administering the tenant files.

One of the primary concerns expressed about TSCs is that they are overworked and their job responsibilities are too all-encompassing, considering the number of tenants for whom they are responsible. A TSC may be responsible for more than a thousand tenants. There is confusion over precisely what responsibilities fall within the scope of a TSC. While there will always be an element of flexibility and uncertainty associated with some tasks, further clarity of the role of the TSC needs to be provided.

TSCs should continue to be responsible for the overall administration of the tenant file including rent calculations, rent arrears, eviction prevention and the eviction process. TSCs are responsible for ensuring that each of the necessary points of contact occur prior to advancing to the next stage of the eviction process. While the Health Promotion Officer or Superintendent may engage in some of the direct communications with tenants, the TSC must ensure that the file reflects when and with whom these contacts occurred. Because TSCs are also responsible for responding to tenant inquiries relating to rent arrears or issues relating to the Annual Review Form, they should have set office hours when they are available to respond to tenant inquiries.

Throughout this review, it became apparent there exists a tension between some of the responsibilities of the TSC and the spirit of the Eviction Prevention Policy and Guidelines. In particular, TSCs have been instructed to focus on (1) reducing vacancies (in March 2009 the target was 1.27%); (2) reducing the number of tenants in rent arrears (in March 2009 the target was 3.15%);⁴⁸ and (3) reducing the number of tenants with an outstanding Annual Review Form. Some of these initiatives may, at times, clash with the concept of flexibility in finding ways to assist tenants to remain in their units when they are in arrears. Clearly there are business reasons for establishing targets for rent arrears and vacancies. Indeed, given the subsidized rent paid by many TCHC residents, it is important to keep in mind that collecting monthly revenues is essential in order for TCHC to provide the services it does to its tenants. In order to give effect to

⁴⁸ These targets are for one Operating Unit, not organization-wide.

the Eviction Prevention Policy and Guidelines, supervision of the work carried out by the TSCs must occur in order to ensure compliance with the Policy and Guidelines.

I understand there is now an “Eviction Prevention Checklist” the TSC must complete prior to a tenant being evicted. This is a helpful development because it provides a detailed summary of steps to be completed prior to an eviction actually occurring. The process also currently requires the Operating Unit Director and the Operating Unit Manager to review the tenant file prior to an Eviction Order proceeding. This is too cumbersome a process. The Operating Unit Director should not be required to review the tenant file in order to confirm when each eviction should occur. Their role is to provide structure, vision and leadership. The TSC working with their OUM are well-positioned to manage the Eviction Prevention Checklist. Having said that, I believe it appropriate for the Director to carry out a periodic audit of tenant files to ensure compliance with the Eviction Prevention Checklist.

To enhance accountability, the Eviction Prevention Policy and Guidelines should expressly set out the TSC’s responsibility for administering the tenant’s file, including responsibility for implementing the annual review and arrears collection processes. There should be meaningful consequences for non-compliance with the Policy and Guidelines.

2. Role and Responsibilities of Health Promotion Officer

The responsibilities of the Health Promotion Officers are, not surprisingly, frequently misunderstood. Their defined role includes the following:

...working with TCHC communities, tenant groups, local agencies, civic groups, policy makers and Municipal and Provincial bodies to initiate, promote and implement a range of community building initiatives that contribute to the creation of healthy, engaged and inclusive communities.⁴⁹

Promoting tenant engagement and participation and supporting other TCHC staff are some of the key components of the HPOs current responsibilities. Because HPOs are responsible for an

⁴⁹ Toronto Community Housing Corporation, Internal Permanent Opportunity for a Health Promotion Officer.

average of 15 communities they have limited availability to attend in each of their communities, or engage in one-on-one meetings or interventions with tenants.⁵⁰

Throughout the review process it became apparent that the role of the HPO is not well understood by TCHC staff or tenants. Some have suggested that the current role of the HPO is not reaching its full potential. At a minimum, the role of the HPO does not appear to be utilized as well as it might be.

In order to fully embrace the spirit of the Eviction Prevention Policy, TCHC should consider developing the role of the HPO to interact more closely with both the Superintendents and TSCs, and to act as a resource to them when an issue arises with a vulnerable tenant, especially once TCHC has initiated eviction proceedings. The role of the HPO should be expanded to include acting as a liaison between vulnerable tenants and community agencies, raising awareness of the types of services available and making referrals to agencies where appropriate.

TCHC should, consistent with its current hiring practice, hire persons with a post-secondary degree in advocacy, social work, counselling or community development, or with extensive relevant work experience in those fields, to fill HPO vacancies as they arise.

The role of the HPO should be clearly explained so that the services they provide are well understood throughout TCHC and by the tenants. To the extent they will be involved, the HPO's responsibilities should be expressly set out in the Eviction Prevention Policy and Guidelines.

3. Training

TCHC has invested significant resources to create the Eviction Prevention Policy and Guidelines, the Mental Health Framework and the Vulnerable Tenants Protocol. TCHC should be commended for providing training to many of its staff to improve awareness and compliance with these policies. While training has become mandatory for some within the organization, including the TSCs, it has been optional for others. Training for all staff, including Superintendents, Operating Unit Managers and Litigation Clerks should be compulsory.

⁵⁰ A "community" can consist of one or many buildings, with one or many units, that have the same or consecutive municipal addresses.

Concerns were expressed that not all frontline staff had received training in the complex requirements of the *Social Housing Reform Act, 2000* and its regulations. All frontline staff, including TSCs and Litigation Clerks, should receive this training and on-going professional development should occur including relevant legislative updates.

4. Supervision

Supervision of staff is an important element to ensure TCHC is able to fulfill its mandate and promote eviction prevention. Supervision provides an element of quality control and oversight necessary to ensure that policies such as the Eviction Prevention Policy are adhered to and respected.

Some TCHC staff spoke of the 2008 corporate reorganization as creating a work environment that was at times chaotic and made supervision difficult. A review of the circumstances surrounding the Operating Unit that managed the seniors communities in the western corridor of the City, including the community in which Mr. Gosling resided, provides some insight into the challenges associated with the last corporate reorganization. Temporarily, from July 2008 until September 2009, staff assigned to this Operating Unit were spread across three separate office locations, and their physical files were located in a larger number of office locations. Although the staff was responsible for the western region, one of the three offices was located outside the region. These logistical challenges were compounded when the Operating Units were reduced from 27 to 13, thereby increasing the number of apartment buildings for which an Operating Unit Manager became responsible. The OUM for Mr. Gosling's region now had approximately 6000 units to manage, an increase of 4000 units. This resulted in the OUM not being able to regularly assess how effectively the TSCs were fulfilling their responsibilities.

When examining the circumstances surrounding Mr. Gosling's tenancy and subsequent eviction, there were instances where guidelines and protocols were not followed. For example, it does not appear the staff forwarded Exception Rent Roll Reports to the Superintendent on a regular basis. Neither the TSC, the HPO, nor any other staff spoke with Mr. Gosling in person or by telephone after the Landlord and Tenant Board granted an Order to Evict, to advise him that the eviction could still be prevented. The TSC who was responsible for Arleta Manor did not make contact,

nor did anyone else from TCHC. At no time did anyone within TCHC engage the services of the HPO to assist Mr. Gosling.

In May 2009 a tenant contact policy for the Seniors Units was developed.⁵¹ Mr. Gosling was evicted on the 28th of May. Contrary to this expectation, TCHC staff did not attend at his building on any regular basis in the month of May.

To ensure its policies and protocols are being adhered to, TCHC should consider implementing a system requiring TSCs to confirm, in writing, to their OUM, that: (1) the Exception Rent Roll Reports have been forwarded to the Superintendent; (2) either the TSC, Superintendent or HPO have spoken with or, at the very least, have knocked on the doors of each tenant in rent arrears; and (3) they have complied with the expectation regarding regular building attendances.

The OUM is ultimately responsible for their staff and must establish a structure that ensures the Arrears Collection Process and the Eviction Prevention Policy have been correctly followed. This is particularly important prior to a Notice of Eviction or an Application to Evict being served upon a tenant. I do not believe this requires the OUM to review each file before a Notice or Application is served, but the OUM should carry out appropriate supervision, including audit checks. However, where the Landlord and Tenant Board has issued an Eviction Order and a tenant is facing an actual eviction, the OUM should become engaged to review the tenant file, prior to the Eviction Order being enforced. This level of oversight is prudent given the consequences of eviction. There is a great responsibility placed upon TSCs to administer tenant files. An equal responsibility rests with the OUM to ensure the timeliness and accuracy of communications sent by his/her staff.

The Community Health Manager, as well, must ensure that the HPOs are fulfilling their responsibilities, and liaising appropriately with vulnerable tenants and community agencies. Audit checks should be undertaken by the Community Health Manager to review the work of HPOs.

⁵¹ Seniors Unit OUA/OUB TSC Visits to Buildings (2009) (Tab 6).

5. Managing the Relationship with Community Agencies

As previously stated, TCHC is not a supportive housing agency. It is a social housing landlord with the unique mandate to provide quality housing for low and moderate income households. TCHC simply does not possess the necessary resources to provide support services directly to tenants. However, it does have the ability to facilitate referrals to community agencies that provide these services. TCHC should create a system to engage the services of such agencies, particularly for its seniors portfolio. Referrals to these agencies should be facilitated by the Health Promotion Officer who, as a trained professional, would be well positioned to assist in making the appropriate referrals in each case. Staff and tenants should be made aware of the HPO's role of linking tenants with community agencies.

Community agencies play a vital role in the lives of many people, including the tenants at TCHC. Governments of all levels must provide financial support for these agencies, without which our social fabric is greatly endangered. Without agency support, more vulnerable tenants, like Mr. Gosling, risk the unfortunate circumstances that follow from losing one's home.

The report of the 2006 TCHC Tenant Survey highlights the importance of accessing community services and supports:⁵²

Access to this wider network plays a significant role in the quality of life for tenants who are elderly, physically disabled, or single parents. By continuing to actively promote and communicate available community services and supports, TCHC play an important supportive role in helping improve tenants' quality of life.

Despite the recognition in the Tenant Survey of the integral role of these agencies, many tenants expressed concern that they were unaware of the availability of such agencies in their community. TCHC should take steps to post in each of their buildings a list of all agencies within the geographic region of that building. TCHC should also arrange for meetings with tenants and agencies for the purpose of advising tenants about the agencies that exist locally and the services they provide. This list must be regularly updated, at least every six months.

⁵² Toronto Community Housing Corporation, Decima Research, *Toronto Community Housing 2006 Tenant Survey: Executive Summary* (October 2006) at 5.

CityHousing Hamilton's experience in this area is instructive. It has established a number of partnerships with community support agencies, including organizations providing support workers, internet access, mental health services, and services for seniors.⁵³ CityHousing Hamilton's motivation for establishing such partnerships is that tenants who have support are better able to meet their tenancy obligations. TCHC should consider establishing such partnerships, and each Operating Unit should schedule regular meetings between TCHC and the agencies.

There are presently significant legislative constraints restricting the information that can be shared between TCHC and a community agency in relation to a particular tenant. The *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") places restrictions on how the use of personal information held by an institution can be used and shared in the absence of consent from the person from whom the information was obtained.⁵⁴ MFIPPA is sound legislation. There are good reasons why MFIPPA exists. This legislation was intended to protect privacy, not to prevent tenants from receiving the care they require. While a balance must be struck between respecting the parameters of privacy legislation and caring for tenants, it should be recognized that promoting the well-being of tenants should be the primary concern for both TCHC and the community agencies.

The preferred approach for TCHC and community agencies would be to obtain the consent of the tenant prior to disclosing relevant information about the tenant. There will, however, be limited circumstances when this is not possible due to the vulnerability of the tenant. When a vulnerable tenant is facing some significant risk, disclosure should be considered in order to improve the ability of community agencies to assist absent the consent of the vulnerable tenant.

I recommend that government consider an amendment to the MFIPPA and other relevant privacy legislation that would enable the disclosure of information without consent where a social housing tenant is vulnerable and risks suffering serious personal or financial harm which might be alleviated if relevant information is provided. Irrespective of the outcome of this

⁵³ City Housing Hamilton, *Housing Support Programs for CityHousing Hamilton Tenants*, online: <http://www.cityhousinghamilton.com/page1_print.aspx?page-housing_supports>

⁵⁴ *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.

recommendation, efforts should be made to educate and train staff with respect to what information can be shared about a tenant with a community agency absent consent.

A protocol should be developed by TCHC with each of the community agencies and medical care providers who can provide services to the TCHC tenants, including mental health providers. This protocol should establish when a community agency should inform TCHC about a tenant who has contacted the agency without a TCHC referral. The purpose of such a protocol would be to make TCHC aware of an element of risk or vulnerability. Such a protocol would need to carefully weigh the privacy concerns of the tenant as well as legislative restrictions. A protocol could establish how and to whom any disclosure would be received at TCHC, with a view that the information be used to assist the tenant.

The Office of the Public Guardian and Trustee is a valuable resource to be engaged when required by TCHC and its tenants. The mandate of the Public Guardian, pursuant to the *Substitute Decisions Act*, includes investigating incidents where an individual appears to be incapable of managing their property and/or personal care.⁵⁵ The mandate also includes providing assistance to that individual if an incapacity is identified.

It may be that TCHC should refer more vulnerable tenants to the Public Guardian than heretofore has occurred where it appears the tenant may fall within the Public Guardian's mandate. The Public Guardian's mandate permits it to provide meaningful assistance to TCHC and its tenants. I know TCHC and the Public Guardian have been in communication so TCHC will now have a better understanding of the services the Public Guardian can provide. This dialogue should continue and TCHC ought to make efforts to better educate its staff, and in particular Health Promotion Officers, about the resources available through the Public Guardian.

TCHC should also engage in dialogue with the local legal aid clinics. Legal clinics can provide valuable assistance long before eviction is triggered. TCHC must assist tenants to engage with legal aid clinics.

Despite the best intentions, the practical realities of our society are such that even when referrals are made by trained professionals, the agencies may not always have the ability to take on new

⁵⁵ *Substitute Decisions Act*, S.O. 1992, c. 30.

files or possess the expertise necessary to address specific tenant issues. We must all be mindful that there is no process that will resolve all tenant issues that arise. The ultimate goal is for TCHC to provide the best service possible, bearing in mind its mandate, and the availability of resources within TCHC and the community.

Recommendations:

Role and Responsibilities of Tenant Services Coordinator

- **TSCs must have set office hours when they are available to respond to tenant inquiries, either in person, by telephone or e-mail.**
- **TSCs must take overall responsibility for administering the tenant file, particularly as it relates to rent arrears and rent review matters. The Eviction Prevention Policy and Guidelines should expressly set out the TSC's overall responsibility.**
- **The responsibilities of the TSC should be clarified for staff and tenants. For example, TCHC should confirm whether door knocking is a responsibility of the TSC, or whether the TSC can delegate this responsibility to the Superintendent or the HPO.**
- **TSCs must be held accountable to ensure compliance with the Eviction Prevention Policy, the Arrears Collection Process and the Eviction Prevention Checklist. There should exist meaningful consequences for failing to abide by these standards.**
- **TSCs should continue to complete the Eviction Prevention Checklist with oversight from the OUM.**

Role and Responsibilities of Health Promotion Officer

- **The responsibilities of the HPO should include acting as a liaison between tenants and community support agencies. The HPO should assist in making referrals, where appropriate, to these agencies.**

- The responsibilities of the HPO should include their involvement once TCHC has initiated eviction proceedings. Ultimately, the HPO should be more closely intertwined with the TSCs and Superintendents with whom they work.
- TCHC should engage in an awareness campaign for the purpose of carefully explaining the role of the HPO to all staff and tenants. The HPO's responsibilities should be expressly set out in the Eviction Prevention Policy and Guidelines.
- TCHC should consider hiring only individuals with relevant post-secondary education or equivalent experience to fill future HPO positions.

Training

- TCHC should conduct mandatory training with respect to the Eviction Prevention Policy and Guidelines for every staff member who may deal directly or indirectly with a tenant, including Superintendents, Operating Unit Managers and Litigation Clerks.
- TCHC should take steps to ensure that all frontline staff receive training relating to the *Social Housing Reform Act, 2000*. TCHC should ensure that relevant updates and amendments to this legislation are disseminated, with training, to all frontline staff in a timely manner.

Supervision

- All staff assigned to an Operating Unit should have their offices located in one location in that region. This will ensure appropriate staff oversight and provide staff with the benefit of being able to troubleshoot with their fellow staff members.
- TSCs should be required to report, in writing, to their OUM, that they have (1) forwarded the monthly arrears report to the Superintendent; (2) they have

arranged for face-to-face contact with tenants in arrears; and (3) complied with the expectation regarding regular building attendances.

- Each direct contact with a tenant, as outlined in the Eviction Prevention Policy and Guidelines, should be carefully documented. An attempt at making contact should be distinguished from actual in-person or telephone contact.
- OUMs should undertake a periodic audit review of the tenant files managed by the TSCs, to ensure a level of quality control. This must include tenant files where the eviction process has been initiated.
- The Community Health Manager should undertake a periodic audit review of the work carried out by the HPOs.

Managing the Relationship with Community Agencies

- TCHC must reaffirm to its tenants that it does not provide supportive housing assistance.
- TCHC should educate its tenants and staff that the HPO can be engaged to assist in making a referral to a community agency.
- TCHC should actively recruit agencies to offer services for each of its communities.
- Each tenant building should post an up-to-date list of agencies that are within close proximity of the building. This list should be regularly updated, at least every six months.
- TCHC should arrange meetings within each of its communities to describe the types of community assistance that may be available within close geographic proximity.

- TCHC should continue fostering its relationship with the Public Guardian, and refer to the Public Guardian tenants who may fall within the Public Guardian’s mandate.
- TCHC should contact the appropriate government authorities with a view to recommending amendments to the *Municipal Freedom of Information and Protection of Privacy Act* and other privacy legislation to allow information to be disclosed where a vulnerable tenant faces serious financial, physical or health hardship if information is not disclosed.
- TCHC should work toward establishing a protocol to manage the exchange of information between TCHC and community agencies.
- TCHC should assist tenants to engage with the local legal aid clinics early in the rent arrears process.

D. Rent Review Process

1. Annual Review Process

The *Social Housing Reform Act, 2000* and its regulations contain rules governing who is eligible for RGI assistance and the process for quantifying the subsidy a tenant may be entitled to receive. TCHC is bound by this regime in the calculation of a tenant’s annual income and assets. It is a complicated process and TCHC relies upon the Annual Review Package that it sends to tenants to assist in capturing all the necessary information. The Annual Review Package contains the following information:

- Household Income and Asset Review Form (“Annual Review Form”);
- Instructions describing the method to prove household income and assets;
- Emergency Contact and Special Assistance Information Form;
- Proof of Employment Form;
- Contact information for a Help Line (available in several languages);

- A warning that failing to complete the Package on time may result in rent increase.

There is a significant disconnect between the expectations set by the *Social Housing Reform Act, 2000* and imposed on TCHC to capture a tenant's annual income and assets, and the ability of tenants to satisfy the requirements of the Annual Review Form.

Every month approximately 3000 Annual Review Forms are either incomplete or not returned on time. This high volume of incomplete or unreturned forms reflects systemic problems with the annual review process. These problems include (1) a lack of clarity as to what must be disclosed to satisfy the Annual Review Form; (2) uncertainty or lack of flexibility regarding the types of documentation that are required from the tenant; and (3) the limited ability of some or many TCHC tenants to satisfy these requirements given their level of vulnerability.

It is important to highlight the hurdles that tenants experience in the process because only when these issues are understood and rectified will the process improve. This is just one story told to me by a tenant of the time he invested and the difficulties he experienced in trying to satisfy the requirements of the Annual Review Form, as documented and described in his own words:

- Tuesday, December 15 – Obtained Annual Review Package from TCHC. Booked an appointment with social worker and left message with Area Co-ordinator.
- Wednesday, December 16 – Went to meet with Housing Co-ordinator at Evangel Hall Mission for help.
- Thursday, December 17 – Went to the bank to have paperwork filled out and signed by the bank manager.
- Friday, December 18 – CCAC Co-ordinator visits my home to look over my paperwork. After reviewing my materials, it was discovered that my tax assessment was missing.
- Monday, December 21 – Went back to Housing Co-ordinator at Evangel Hall to get copies of all documents, including 2008 tax assessment.
- Tuesday, December 22 – Was exhausted mentally, had trouble sleeping, high blood pressure due to stress. Visited Registered Nurse. Taking one week off and resting.

- Tuesday December 29 – Attend at TCHC’s head office at 931 Yonge Street. The office was full. Asked for assistance from someone to look over paperwork but the receptionist says there is nobody available to help me. Asked about Eviction Prevention Program and was told it is in the process of being implemented. Was advised my completed forms should be sent to Operating Unit at 155 Sherbourne Street.
- Wednesday, December 30 – Went to Operating Unit at 155 Sherbourne Street and was told that my paperwork should not be submitted to this office and that head office made a mistake and it should really go to 325 Bleecker Greenwin Management Co. (Agent for TCHC). Also told a letter must be submitted stating that I am currently not employed which is very important. Even though I have a photo ID Drug Card, Income Statement from ODSP, advised that I must provide a written letter or I would lose my subsidy.
- Monday, January 4 – Went back to the Housing Co-ordinator at Evangel Hall Mission where they typed out a letter for me stating I was currently unemployed. I signed it and we reviewed the paperwork again and made copies of the materials.
- Tuesday, January 5 – Handed in my paperwork at 9:30 a.m. at 325 Bleecker Greenwin Management. I was asked if all signatures were mine and I said yes except for witness signatures. It seemed everything was in order and she took down my cell number should there be any problems. I asked for a copy with a received stamp. She copied only the first page for me and put a received stamp which gives a date but no signature.

Fortunately, the tenant was a “young” senior, i.e. less than age 75, and was physically able to travel on public transit to the locations mentioned, unlike many seniors and other vulnerable tenants. While this is just one tenant’s experience, it is representative of the various struggles that tenants shared with me. There is no question this process is daunting and overly complicated. It must be simplified.

One step that can be taken is to have staff regularly attend tenant buildings for the purpose of assisting tenants to complete the Annual Review Form. Vulnerable tenants, and even many who

would not be considered vulnerable, are simply unable to collect and marshal all the necessary information without assistance.

It is imperative during this process that the Emergency Contact information be updated. Tenants should provide names of family members and friends in addition to the Emergency Contact. The TSCs and HPOs will then have people to reach out to in order to get assistance for tenants, if and when necessary.

While TCHC is not a provider of supportive housing assistance, TCHC cannot fulfill its mandate if it is unable to provide assistance to tenants to navigate this complex process more efficiently. In addition to assistance from staff, TCHC should also provide space in each building and organize agencies and volunteers to meet with tenants to help them with the annual review process. This, of course, is consistent with the earlier mentioned relationship-building with community agencies. It would not only assist TCHC to better fulfill its mandate but would also foster a sense of community within the neighbourhoods of each of the tenant buildings.

Improvement must also be made in the accuracy and transparency of rent and subsidy calculations. Staff must be trained to accurately calculate a tenant's rent, and to succinctly explain to tenants how the result was achieved. Tenants are entitled to know the factors considered in calculating their rent. Some tenants expressed frustration that staff were unable to communicate this information to them. As I discussed previously, much of the correspondence sent to Mr. Gosling relating to his applicable rent at a given point in time was confusing, to say the least. Ultimately, staff are accountable to provide transparent and accurate information to tenants concerning their rent calculations. While no system will ever be free from flaws or human error, appropriate oversight must ensure clarity and transparency.

In addition to attending on site and improving staff training, TCHC can improve communication by providing tenants at the beginning of the tenancy with a list of all documents required to complete the Annual Review Form. This would provide tenants, and those who might assist them, with an awareness of what the expectations will be.

The Annual Review Form is submitted to tenants in writing, usually in English, which creates a potential barrier for those tenants who have limited understanding of the English language.

Instructions and warnings should be provided in as many languages as is reasonably feasible. In order to improve the understanding of tenants as to what constitutes income and assets for the purpose of the Annual Review Form, TCHC should include in the Annual Review Package a notice that translation/interpretation services are available if needed. This notice should be written in as many languages as is reasonably feasible. For those tenants who are still unable to read the contents of the Annual Review Package due to a visual impairment or other limitation, the HPO should become engaged to contact that tenant's emergency contact or a community agency for assistance.

Practically speaking, TCHC should consider sending the Annual Review Package at a point much closer to the required date of return than the current 180 days (six months). It is often a natural reaction to "put out of sight" which means "out of mind" something that needs not be done until many weeks in the future. This may reduce the burden on both tenants and Tenant Services Coordinators from gathering and administering this information long before it is required. TCHC should also consider sending to tenants a 30-day reminder notice prior to their Annual Review Form deadline.

Some tenants expressed concern that TCHC staff either lost or misplaced client documentation necessary to complete the Annual Review Form. In order to remedy these errors, to the extent they occur, and to provide some additional structure, TCHC should provide tenants with an acknowledgement of receipt when a tenant submits their Annual Review Form.

There are also opportunities for TCHC to streamline the process to receive tenant information. For example, we encourage tenants to provide TCHC with the authority/consent to receive a copy of the tenant's Notice of Assessment directly from the Canada Revenue Agency ("CRA"). TCHC has included a consent that can be completed by tenants within the Annual Review Form allowing TCHC to receive a copy of that tenant's Notice of Assessment from CRA. TCHC must confirm with CRA that completing this consent is sufficient to receive a copy of the Notice of Assessment. This information being sent directly from CRA to TCHC should alleviate some of the burden associated with the tenant providing much of the required information about their annual income. Although it has been suggested that Mr. Gosling signed such a consent, I have seen no evidence of it in the documents provided to me.

It should be clear from my comments on the complexity of the legislative regime governing rent and subsidy calculations and the arrears process that there needs to be significant legislative amendments. The current process is extremely challenging for staff and for the tenants. It has resulted in untold expense and burden to the system. To simplify rent-geared-to-income calculations and relieve tenants from the duty to report their income every year, the legislation should be amended to allow TCHC to:

- base rent-geared-to-income calculations on a household's Total Income, as reported on the Canada Revenue Agency's Notice of Assessment for each resident
- receive this Total Income figure automatically through Canada Revenue Agency.

This proposal would allow the tenants to meet their reporting obligations under the *Social Housing Reform Act, 2000* without having to compile documents or file reports each year. There would be timely and accurate reporting. The calculations would now be based on an easily defined number instead of a complicated definition of income. It would mean that a government agency, equipped with the expertise, would be doing the calculations and TCHC, in particular the TSC, would now have more time to engage in that very important direct, face-to-face contact. Ultimately, it would mean that tenants such as Mr. Gosling would be less likely to fall into arrears for failure to report their income.

2. Paying Rent

Some tenants expressed frustration relating to what they see as the inflexibility associated with the due date for rent payments.

Presently, it is TCHC policy to require tenants to pay their rent on the first of the month. This system will often cause a tenant to be unnecessarily identified as being in arrears. For example, those tenants who do not receive their paycheque and/or their government pensions on the first of the month may find themselves in ongoing rent arrears. If TCHC could be more flexible as to the day of the month a rental payment can be made, it is likely that fewer resources would be dedicated to tracking and administering these rent arrears caused by, what is sometimes, a few days delay, and fewer tenants would be burdened with these concerns.

Some TCHC staff have informed me that the *Social Housing Reform Act 2000* requires rent to be due on the first of the month and that TCHC has no discretion to change this. I do not agree. The *Act* and its regulations are silent on the matter. I see no impediment to adopting a more flexible approach to rent due dates.

Recommendations:

- **At the commencement of a tenancy, TCHC should provide tenants with a list of all documents that will be required to complete the Annual Review Form.**
- **Tenants should be provided with a clear and transparent document explaining how their rent has been calculated.**
- **TCHC staff must be trained in the legislative rules governing rent and subsidy calculations, rent payment and rent arrears. Staff should be able to explain rent calculations to tenants succinctly.**
- **TCHC should provide the instructions and warnings that form part of the Annual Review Package in as many languages as reasonably feasible.**
- **TCHC staff should include a multilingual notice in the Annual Review Package that informs the tenants of translation/interpretation services.**
- **TCHC staff must attend regularly in tenant buildings for the purpose of meeting with tenants regarding the requirements of the annual review process.**
- **Where TCHC is dealing with a vulnerable tenant, the Tenant Services Coordinator or Health Promotion Officer may wish to contact the emergency contact for that particular tenant in an effort to explore whether the emergency contact can assist with the annual review process.**
- **TCHC should make efforts to provide space in its buildings where volunteers and agencies can meet with tenants to assist them in completing the Annual Review Form.**

- **TCHC should consider providing tenants with the Annual Review Package only 90 days prior to when the information must be obtained.**
- **Tenants should be provided with an acknowledgement receipt when their annual review materials are received by TCHC.**
- **TCHC should encourage tenants to provide TCHC with the authority to receive a copy of a tenant's Notice of Assessment directly from the Canada Revenue Agency.**
- **TCHC should confirm with the CRA that the consent form currently available to tenants is sufficient for TCHC to directly obtain a copy of a tenant's Notice of Assessment.**
- **TCHC should be flexible as to the day of the month when rent payments are due from tenants.**
- **TCHC should contact the appropriate provincial ministry and engage in discussions with a view to developing legislative amendments to the *Social Housing Reform Act, 2000*.**

E. Internal Review Process

The *Social Housing Reform Act, 2000* provides that, upon request, landlords must internally review decisions to increase rent-geared-to-income amounts.⁵⁶ The process that TCHC has established for internal reviews involves having either a Tenant Services Coordinator or Operating Unit Manager review whether the TSC who made the initial decision complied with the legislative procedural requirements, and whether the rent-geared-to-income determination was correct, given the tenant's circumstances and the legislative formulae for calculating subsidy.⁵⁷

1. Tenant Awareness of Internal Review

Community legal clinics have informed us that many tenants are unaware they have this right. Although the Notice of Decision letter states the tenant may ask for an internal review, this information appears near the end of a lengthy letter.

Given the complex language in the Notice of Decision, it is understandable that vulnerable tenants would have difficulty understanding that they have a right to request an internal review. The language of the Notice of Decision should be simplified.

Further, the Notice of Decision offers no guidance to tenants as to how and to whom they would make a request for internal review. TCHC should consider including with the Notice of Decision a simple form asking the tenant to indicate (either "yes" or "no") whether the tenant wishes to request a review of the decision, and requiring them to sign the form. This form should indicate that the request is to be given to the TSC. TCHC should also consider extending the time for submitting a request for internal review.⁵⁸

The Notice of Decision should be sufficiently detailed to explain the adverse decision in a comprehensive manner. TCHC should include the rent review calculations, the applicable supporting documentation, and the name and contact information of the TSC who made the

⁵⁶ *SHRA*, s. 82.

⁵⁷ Rent Review Process Checklist at 3.

⁵⁸ O. Reg. 298/01, ss. 57(4) & (5) permit the housing provider to extend this deadline beyond the 10 days usually given to the tenant.

decision. Such detail in the Notice of Decision is appropriate due to the serious consequences that can result from an incorrect rent increase.

2. Conduct of Internal Review

The legal clinics have expressed concerns that the conduct of the internal reviews lacks the appearance of impartiality. Internal reviews of a TSC's rent determination are usually conducted by another TSC working in the same Operating Unit office or the TSC's immediate supervisor, which would be the Operating Unit Manager of the office. We have heard reports of internal reviews being done by the same person who made the initial decision. Clearly, such a practice would contravene natural justice, fairness and the requirement of the regulation that internal reviews must be performed by someone other than the original decision maker.⁵⁹ In general, the legal clinics are concerned that the internal review process fails to meet the test of procedural fairness protections for the tenant.

Although the regulation does not require an oral tribunal hearing for internal review decisions, I strongly recommend that TCHC study the internal review process currently used by the Ottawa Housing Authority which involves an oral tribunal hearing.⁶⁰ The Ottawa internal review process may be simply described as follows: when an internal review is requested, an *ad hoc* review panel is formed consisting of three members. One member is a tenant advocate, i.e. this member may be a tenant, a tenants' association representative, or a representative appointed by the tenant seeking internal review. One member represents the organization responsible for maintaining the waiting list for rent-geared-to-income applicants. The final member of the panel represents the social housing provider community. All panel members are selected from a pool of volunteers from each of the three categories. As required by the regulation, no person involved in the decision under review may sit on the panel. Furthermore, the tenant advocate and the social housing provider representative cannot be connected to the specific building in which the tenant seeking review lives.

⁵⁹ O. Reg. 298/01, s. 58(2).

⁶⁰ In *Courtland Mews Co-operative Homes Inc. v. McKay*, [2007] O.J. No. 360 at para. 56 (S.C.J.), Brown J. observed that “[i]n the case of the RGI assistance review process, the Legislature decided not to adopt the procedural requirements of the *Statutory Powers Procedure Act* but, instead, to create through the *SHRA Regulation* a process tailored to the particular circumstances of RGI assistance.”

CityHousing Hamilton’s Eviction Prevention Policy expressly states that CityHousing Hamilton will make every effort to protect tenant rights to “natural justice and procedural fairness with regard to their tenancy and their right to be heard.” With respect to the internal review process in particular, it states that CityHousing will make every effort to involve the tenant in the process upon an appeal of a rent determination.⁶¹

Internal reviews are very important because the decision to reduce or remove rent subsidy is usually extremely serious for vulnerable tenants. Usually (but not always) TCHC tenants are already living in social housing out of necessity and struggling to pay even rent-geared-to-income amounts. If the reason for the increase occurs solely because the tenant failed to file appropriate material or failed to return their annual review documents, it would be highly unlikely that they would be able to afford market rent or higher rent amounts. Increases or evictions in such circumstances are usually counter-productive. As such, the decisions of TSCs and OUMs fundamentally affect the lives of these tenants. It is imperative that TSCs and OUMs be aware of the requirements of the Ontario *Human Rights Code* and TCHC’s own Human Rights, Harassment and Fair Access Policy and apply these principles as they conduct internal reviews of such important decisions.⁶²

Because an unfavourable rent-geared-to-income decision can seriously impact a vulnerable tenant, TCHC should consider including a commitment to natural justice and procedural fairness in its statement of principles in the Eviction Prevention Policy.

Recommendations:

- **The language of the Notice of Decision should be simplified, especially the language advising tenants about an internal review.**
- **TCHC should include with the Notice of Decision a simple form asking the tenant whether they wish to pursue an internal review. The form should include “yes” and “no” checkboxes, as well as instructions to the tenant to sign the form and give it to the TSC.**

⁶¹ City of Hamilton, Community Services, Housing Division, *Eviction Prevention Policy*.

⁶² *Human Rights Code*, R.S.O. 1990, c. H.19.

- **TCHC should consider extending the time for submitting a request for internal review.**
- **TCHC should set minimum standards for what constitutes a valid Notice of Decision. A valid Notice of Decision would have the following features:**
 - **Sufficiently detailed reasons and supporting documentation to justify and explain the decision;**
 - **Rent review calculations and supporting documentation;**
 - **Name and contact information for the TSC who made the decision.**
- **TCHC should adopt an internal review process that applies all, or at least some, of the features of the Ottawa Housing Authority internal review process:**
 - **The hearing should be an oral hearing before a panel;**
 - **The panel should consist of members representing tenants at large as well as members representing the social housing provider;**
 - **The member representing tenants and the social housing provider representative may not be connected to the building in which the tenant seeking review resides;**
 - **No person involved in the decision under review may sit on the panel.**
- **The Ontario *Human Rights Code* and TCHC's own Human Rights, Harassment and Fair Access Policy must be applied to the internal review process.**
- **TCHC should include a statement of its commitment to natural justice and procedural fairness in the Eviction Prevention Policy.**

F. Eviction Proceedings

Each month, TCHC sends out approximately 5000 Notices of Termination (N4) to tenants. However, only approximately 40 evictions occur each month, 25 of which relate to rent arrears. Based upon these figures, it is apparent that TCHC does a good job preventing evictions from occurring, given that less than 1% of those tenants who receive a Notice of Termination (N4) are actually evicted from their unit. However, these 40 evictions per month do not include those tenants who leave their unit “voluntarily” prior to an eviction order being obtained, and in some cases, as a result of the fear that a Notice of Termination (N4) instils in them. We must be mindful of these “phantom evictions” that result in a unit being vacated upon the tenant receiving a Notice of Termination (N4).

There is considerable progress to be made, particularly in relation to the mechanics of the eviction process and the quality and tone of communications from TCHC to its tenants when dealing with rent arrears and evictions.

1. Initiating Proceedings

A Notice of Termination (N4) and the cover letter that accompanies it are one of the first documents a tenant receives when in arrears. This cover letter includes the following language:

We are getting ready to take legal action to evict you.

As I have already said, this letter is not a measured first response to every tenant who finds themselves in arrears and for what is sometimes an amount as low as \$8.00. This is particularly so considering the fear, anxiety and stress it causes tenants, and also given that the rent arrears may only have existed for a short period of time. While TCHC must be candid with its tenants about the eviction process, a more helpful, less threatening response should be prepared. This recommendation is consistent with the findings of the Toronto Ombudsman who stated:

Threatening to deprive a long-time tenant of his home should be an absolute last resort, following extremely careful consideration.⁶³

A Notice of Termination (N4) should not be served upon a tenant during the first month they are in arrears. This is far too harsh a step, particularly for aged seniors and other vulnerable tenants. However, as I have previously commented, TCHC should take steps to contact the tenant quickly to remedy the matter.

The Notice of Termination (N4) is a standard form document that has been approved by the Landlord and Tenant Board. TCHC should use this document as is necessary but it must be balanced with a cover letter that invites the tenant to work with their TSC to find a solution. Such an approach would be consistent with the Eviction Prevention Policy and Guidelines' focus of keeping tenants in their homes. Whenever a Notice of Termination (N4) or Application to Evict (L1) is served upon a tenant, these documents must also be accompanied by information about and methods of contacting the legal clinics that operate in close proximity to the tenant's building.

Staff have discretion to arrange a repayment agreement with tenants in arrears. However, some staff feel compelled to require full repayment by the tenant within three months. While TCHC is a landlord with a business to operate and is dependent upon tenant rents as its source of revenue, flexibility is very important when negotiating repayment agreements with tenants, particularly vulnerable tenants. Where it is appropriate to do so, TSCs should have the discretion to negotiate repayment agreements with tenants that extend beyond three months. TCHC should ensure that all repayment agreements are reasonable and achievable.

2. Landlord and Tenant Board Proceedings

Pursuant to the Eviction Prevention Policy Guidelines, Litigation Clerks are required to attempt to negotiate a mediated settlement prior to the commencement of an eviction hearing. This takes

⁶³ Fiona Crean, Ombudsman, *Housing Matters: Investigation into the Toronto Community Housing Corporation's Proposed Eviction of a Tenant* (January 2010) at 21.

place at the Landlord and Tenant Board. In order to give effect to the Eviction Prevention Policy and Guidelines, Litigation Clerks should be required to document these efforts to mediate, and this documentation should be maintained in the litigation file.

(a) Importance of Legal Representation for Tenant

The Landlord and Tenant Board is to be commended for the steps they have taken to provide duty counsel for tenants. They recognize that duty counsel service is essential to the fairness and integrity of their process. It must be recognized, however, that the mandate of the tenant duty counsel program is limited to giving summary advice and referring tenants out to local legal aid clinics. They are authorized to represent the tenants in the hearing room only to the extent of requesting adjournments. If a tenant has a case to present, they must get some other form of legal representation.

There may be circumstances when unrepresented tenants refuse to take advantage of the resources provided by duty counsel. When this occurs, the Landlord and Tenant Board and the TCHC Litigation Clerks should continue to encourage tenants to take advantage of the legal resources available.

Mr. Gosling’s attendance before the Landlord and Tenant Board on April 1, 2009, is a good example of the direction the Board can give. The adjudicative Board member was patient and generous in her very real efforts to assist Mr. Gosling. As is evident in the excerpts below, Mr. Gosling was steadfast in his refusal to seek assistance from duty counsel, since he had “paid a lawyer to handle this”. But unfortunately for him, his “lawyer” did not show up. It should be noted that although Mr. Gosling refers to Mr. Harry Kopyto as his “lawyer,” Mr. Kopyto is not a lawyer.

Board: Have you spoken to duty counsel? I’m sure that they would tell you that it’s quite legal to do that.

Gosling: No, no... I’ve paid him, a lawyer to do it. He didn’t show up today.

...

Board: I would like him to have a duty counsel talk to him. Maybe you would believe duty counsel.

Gosling: I'm not going to no duty counsel. I've paid a lawyer to handle this.

Board: You've got a lawyer to handle this?

Gosling: Yes.

Board: Well, where is he?

Gosling: [inaudible] by himself.

...

Board: What's the name of your lawyer?

Gosling: Harry Kopyto.

...

Board: I really strongly advise you to speak to duty counsel.

Gosling: Oh no...

...

Board: Do you understand what I'm trying to tell you, Mr. Gosling? You have two options, you either really get legal help or see duty counsel, that's free of charge and they would look into your case and they would tell you but it's been such a long time and you know that you have to fill in this form. It is not illegal for them...If government is going to use public money to subsidize your rent, then government has the right to make sure that you ... it's means tested that you actually do require the help.

Gosling: I'm familiar with all that.

Board: Then why are you not doing it?

Gosling: Again, I'm familiar with all that.

Board: Then why are you not doing it?

Gosling: I was supposed to have a lawyer at my side today and he did not show up and that's not my fault. Please understand I'm not paying this amount because I don't owe it...I've been paying the amount – the Lease shows and no more.

...

Board: If this is rent geared to income ... is that correct?

Unknown: Yes.

Board: Rent - It's called Rent-Geared-To-Income that's why they have to ask you what your income position is on an annual basis. And you have to fulfill this. It's not so troublesome surely. It's not worth this ... all this hassle you go through for it. You don't have to pay a lawyer... You don't have to pay a lawyer.

Gosling: I want this thing settled. I am not satisfied.

Board: Well ... of course you can take it up to the lawyer again. I am very surprised that if you have a lawyer and you are paying him that he hasn't shown up and hasn't informed us. I have nothing on record to show that you have a representative. That's all. Could I have the number of that file please?

...

Board: Alright. I am postponing this so you have the whole month of April to get your lawyer to decide if he wants to review or an appeal, that would be fine, okay?

Gosling: Yes.

In the end, the Landlord and Tenant Board granted an Order to evict Mr. Gosling. However, they postponed the effective date of the Order until April 30, 2008, so as to provide Mr. Gosling an opportunity to meet his "lawyer" to determine whether he wanted to appeal the decision, which unfortunately for Mr. Gosling, never happened.

Litigation Clerks should have discretion to request a hearing adjournment if they are of the view the matter should not proceed in the absence of a tenant obtaining legal assistance. If a vulnerable tenant advises that they have counsel or an agent who is not present at the hearing, and an Eviction Order is then made by the Board, efforts should be made by the TCHC legal unit to contact that legal counsel or agent prior to an Eviction Order being filed with the Sherriff.

Mr. Gosling had a long history of engaging Mr. Kopyto to assist him with matters relating to TCHC and the Landlord and Tenant Board. However, based upon our review of the available documents and our communications with TCHC and Mr. Kopyto, there does not appear to have been any communication between TCHC and Mr. Kopyto between the time the Landlord and Tenant Board issued the Order to evict Mr. Gosling on April 3, 2009, and when Mr. Gosling was actually evicted on May 28, 2009.

On June 1, 2009, Mr. Gosling telephoned Mr. Kopyto at the suggestion of the TCHC Superintendent for Arleta Manor. This telephone call was made from the Superintendent's office. Based upon our discussions with staff, it appears that Mr. Kopyto recommended that Mr. Gosling attend at the Jane/Finch Community Legal Services Office to seek assistance. Mr. Gosling did this and shortly thereafter a representative from Jane/Finch Community Legal Services began contacting TCHC on behalf of Mr. Gosling. Mr. Kopyto began to reengage himself in Mr. Gosling's file at some point later in June, 2009, by instructing Mr. Gosling to offer to pay \$500.00 in rent arrears and to arrange to have Mr. Kopyto act as Mr. Gosling's Power of Attorney. However, we have seen no evidence in any files, including the Landlord and Tenant Board file, that Mr. Kopyto took any steps to appeal Mr. Gosling's Eviction Order, as was recommended by the Board member.

Tenant Services Coordinators and Operating Unit Managers currently control when an Eviction Order from the Landlord and Tenant Board is filed with the Sherriff's Office, which triggers the physical eviction of a tenant. The TSCs and OUMs should exercise discretion as to when to proceed with the actual eviction and particularly if ongoing discussions with the tenant hold out a reasonable possibility of arriving at a resolution satisfactory to TCHC and to the tenant.

(b) Limitation on Board's Review of Subsidy

There is presently a legislative constraint in the *Residential Tenancies Act, 2006* restricting the authority of the Landlord and Tenant Board to review decisions regarding the eligibility or amount of rent-gear-to-income.⁶⁴ This legislative restriction on the Landlord and Tenant Board's authority over rent-gear-to-income decisions removes a safeguard for vulnerable tenants facing the final stage of the legal process. This legislative restriction applies only to those

⁶⁴ *RTA*, s. 203.

tenants paying rent-geared-to-income amounts under the *Social Housing Reform Act, 2000*.⁶⁵ Tenants who are fortunate enough not to require rent-geared-to-income subsidies are not subject to this restriction, and are free to challenge the appropriateness of rent they are paying. There may be some question of whether this limit on the Board's jurisdiction conflicts with the *Human Rights Code*.

Under the previous legislation, the *Tenant Protection Act*, the adjudicators at the Ontario Residential Housing Tribunal took different positions concerning their ability to review decisions of housing providers concerning subsidy.⁶⁶ Some took the position that the existence of the internal review process precluded them from reviewing subsidy decisions except perhaps to take it into consideration in refusing to evict on the grounds of overall fairness. Other adjudicators took the position that they could not evict for non-payment of rent unless the landlord could prove the amount of rent that should be paid each month, meaning that they could therefore look into the subsidy decision in determining the rent owing.⁶⁷

It is possible that a vulnerable tenant could find themselves facing eviction proceedings at the Landlord and Tenant Board for non-payment of arrears that were never rightfully owed, due to a rent miscalculation and an unsuccessful internal review. In such a case, the Board's hands would be legislatively tied since it cannot review the correctness of rent calculations. In this way the vulnerable tenant faces the additional indignity of appearing before an adjudicative body with the power to evict, but with no power to examine what may be the root cause of the tenant's problem.

TCHC should discuss with the provincial government an amendment to the *Residential Tenancies Act, 2006* that would permit the Landlord and Tenant Board to examine rent-geared-to-income determinations.

⁶⁵ *SHRA*, c. 27.

⁶⁶ *Tenant Protection Act*, 1997, S.O. 1997, c. 24 (repealed).

⁶⁷ Three conflicting Tribunal decisions on subsidy issues are: *Metro Toronto Housing Corp. v. Pottinger*, [2001] O.H.R.T.D. No. 110; TSL – 60434, [2004] O.H.R.T.D. No. 55; and EAL – 46520-RV, [2005] O.H.R.T.D. No. 68.

Recommendations

- **The letter that accompanies the Notice of Termination (N4) should be revised and not use a “threat” of legal proceedings being initiated.**
- **A Notice of Termination (N4) should not be served upon a tenant during their first month of rent arrears.**
- **Tenant Services Coordinators and Operating Unit Managers should exercise discretion as to when to proceed with the actual eviction, especially if there are ongoing discussions with the tenant that may reasonably result in a satisfactory resolution.**
- **TCHC should not necessarily require all repayment agreements with tenants be satisfied in full within three months. TCHC should ensure that all repayment agreements are reasonable and achievable.**
- **TCHC should provide the tenant with written information relating to legal clinics available within close proximity when a Notice of Termination (N4) or an Application to Evict (L1) is served upon the tenant.**
- **Litigation Clerks should be empowered with the discretion to request an adjournment of a hearing if they are of the view the matter should not proceed in the absence of a tenant obtaining legal advice.**
- **If a vulnerable tenant goes on record as having a legal representative who is not present at the hearing, efforts should be made by the litigation department to contact that legal representative prior to an Eviction Order being filed with the Sheriff.**
- **TCHC should continue to inform tenants of the services offered at the Landlord and Tenant Board relating to duty counsel and interpretation services.**

- **TCHC should take steps to recommend an amendment to the *Residential Tenancies Act, 2006* to allow the Landlord and Tenant Board to assess the appropriateness of rent-gear-to-income decisions.**

Section 6: Commissioner of Housing Equity

It became clear to me through these consultations that TCHC tenants need more assistance than is currently available at TCHC, to “maintain healthy, successful tenancies”, one of the goals in the current Community Management Plan.⁶⁸ Tenants now have access to the Office of the Toronto Ombudsman to investigate matters on their behalf. I believe the creation of this Ombudsman’s office will help TCHC continue to achieve its goals. However, I feel tenants require additional assistance in this complicated subsidized housing system. My mandate extends only to reviewing the eviction process for vulnerable tenants, however, I believe the proposal I describe below could assist TCHC tenants in other ways and also contribute directly to the financial success of TCHC.

A new independent office should be created to ensure TCHC staff have satisfied all prerequisites prior to an eviction matter proceeding to the Landlord and Tenant Board. I propose this “office” be independent, and be named the Commissioner of Housing Equity.

The TCHC Board of Directors should appoint the Commissioner. The original term should be for two or three years, and subject to renewal. The Commissioner ought to have an understanding of social housing and of the issues facing vulnerable tenants.

The Commissioner of Housing Equity should have some characteristics of an independent auditor, in ensuring that all policies and practices have been followed, and some characteristics of an ombudsman, in its role of mediating fair settlements. It would not, however, fulfill the role of advocate for the tenants. It will have as its focus the assurance that all eviction prevention policies are and have been engaged. The Commissioner will also invite tenants facing eviction for arrears to participate in mediation to be conducted by outside/independent mediators. I suggest that the Tenant Services Coordinator responsible for that tenancy be the TCHC representative at the mediation since they have the most knowledge of that tenant, their rental history and circumstances.

One of the hallmarks of TCHC’s Eviction Prevention Policy and Guidelines is to engage in personal contact for the purpose of exploring whether a resolution can be achieved. To give

⁶⁸ Toronto Community Housing Corporation *2010-2012 Community Management Plan Update* at 3.

effect to these policies, both the tenant and TCHC should participate in these mediated settlement discussions facilitated by the Commissioner's office, before the tenant file is transferred to the legal department. All files must be sent to the Commissioner's office once a decision has been made to send an Application to Evict (L1) to a tenant.

The benefits of this approach are many. There may be immediate cost savings to TCHC because if a mediated settlement is achieved, TCHC will not have incurred legal costs including the fee for filing the Application To Evict (L1) with the Landlord and Tenant Board. This is a less stressful and more cost effective procedure, rather than the process after legal proceedings are commenced when tenants are overwhelmed by the prospect of losing their homes and anxious and confused about the legal proceedings.

Prior to or during the mediation the Commissioner's office can assess whether the tenant requires assistance and, where required, can engage TCHC staff in connecting the tenant to the appropriate agency to assist the tenant. This is yet another "check" in the system to ensure that TCHC tenants are linked to the community supports and services they need to "maintain healthy, successful tenancies".

This office is not to advocate for individual tenants or investigate individual complaints. There are numerous public agencies that already exist to fulfill those roles. The mandate of the Commissioner of Housing Equity is to promote resolution of rent arrears situations, short of eviction, and in the process link tenants, if necessary, with community supports to assist them.

To be able to provide effective advice and assistance to both TCHC and its tenants, the Commissioner must have sufficient staffing resources. The Commissioner should provide a report semi-annually to both the CEO and the Board of Directors of TCHC. This will ensure that TCHC can respond effectively and promptly to identified issues.

As stipulated in the Terms of Reference for this review, I believe the implementation of the office of the Commissioner of Housing Equity is "a remedial measure to prevent further occurrences similar to that experienced by Mr. Gosling".

Recommendations:

- **TCHC should establish a new independent office, the Commissioner of Housing Equity, with sufficient staffing and resources.**
- **The central function of the Commissioner of Housing Equity is to resolve rent arrears situations, through mediation, and reduce those matters which proceed to the Landlord and Tenant Board. Through this process the Commissioner's Office will link tenants with available community support agencies to get assistance, as needed and identified.**

APPENDIX “A”

RECOMMENDATIONS

Section 5: A. Mandate of TCHC

- **TCHC must better communicate its mandate. It is a landlord, not a direct provider of social work services, but it must assist tenants to identify, locate and contact appropriate support services.**
- **TCHC must clearly communicate this mandate to tenants and staff.**

Section 5: B. Communication with Tenants

- **The Eviction Prevention Policy Guidelines should define “direct contact” as requiring at least one face-to-face meeting.**
- **TCHC must place a greater emphasis on direct personal contact with tenants.**
- **At the commencement of the tenancy, TCHC should ensure that tenants are aware of TCHC policies and practices regarding expectations and the payment options available, eviction prevention and the importance of making rental payments and completing the Annual Review Form in a timely manner.**
- **A copy of the relevant policies and practices, including a copy of the Eviction Prevention Policy and Guideline, should be provided to the tenant at the time the lease is signed. Furthermore, given the fundamental importance of these documents, they should, to the extent possible, be made available in different languages.**
- **All tenants should receive a tenant handbook at the commencement of their tenancy. TCHC should include information in the tenant handbook relating to the mandate of TCHC, the importance of the annual review process and eviction prevention. The handbook should also include contact information for the community agencies in proximity to the tenant’s building.**
- **The relevant policies and practices, including the Eviction Prevention Policy and Guidelines, should be available in each of the communities, and available on TCHC’s website.**
- **Staff should create a checklist setting out the matters to be covered with the tenant at the commencement of the tenancy. Staff should take steps to ensure that the tenant understands TCHC policies and practices, and the tenant should sign the checklist accordingly.**

- During the initial consultation or follow-up interactions with tenants, staff should be prepared to identify and document factors that may indicate tenant vulnerability. This written information should then be forwarded to the TSC to be maintained in the tenant's file.
- TSCs should document efforts made to communicate with tenants as well as the results of those efforts. Every reasonable effort must be made to achieve personal contact with the tenant. The TSC should be responsible to ensure that personal contact is made with tenants listed in the Exception Rent Roll Report.
- The Eviction Prevention Policy Guidelines should be amended to make face-to-face contact with the tenant mandatory prior to sending a request to file an Application to Evict and after the Landlord and Tenant Board issues an Order to Evict.
- During annual inspections and when performing work orders, TCHC staff should be sensitive to tenants who may be exhibiting signs of vulnerability. Staff should document such indicators for the TSC's review. Where appropriate, the TSC should engage the services of the HPO.
- TSCs should have set office hours and routine building attendances to address tenant questions. TCHC should ensure that tenants are aware of this.
- TCHC must ensure that tenant questions relating to arrears and the eviction process are being answered by the Call Centre effectively and within a reasonable timeframe.
- The Eviction Prevention Policy should state that language translation/interpretation/literacy services will be made available, if needed, for communication with tenants.
- All letters from TCHC should be signed in a manner that clearly identifies the author.
- TCHC needs to improve the written communications with tenants, so as to: (1) reduce duplication; (2) reduce the likelihood that correspondence will contain inaccurate or contradictory information; and (3) increase the transparency of all documentation sent to the tenant.
- Staff should make reasonable efforts to determine the language preferences of tenants. Staff with language capabilities appropriate to particular communities should be located in those communities if it can be achieved without major disruption to TCHC operations. The Eviction Prevention Policy should require that language translation/interpretation services be made available if needed.
- TCHC should provide tenants, on an annual basis, or as frequently as their rent changes, with a letter that provides transparency as to how their rent has been calculated.

- TSCs should administer the tenant file and manage all correspondence that is sent to a tenant with respect to rent arrears matters. This should reduce the likelihood of multiple parties sending inaccurate, contradictory or duplicative information.
- TCHC must integrate and update its computer system for maintaining tenant records and information.
- In the normal course, a tenant should not receive a Notice to Terminate during the first month that they are in rental delinquency. However, steps should be taken by TCHC to remedy the rent arrears, including establishing personal contact and sending a rent arrears letter.
- All written communications from TCHC relating to arrears and eviction prevention matters should be written using plain, non-threatening language. However, tenants must be aware that some documents, such as the Application to Evict (L1), will contain specific legal language.

Section 5: C. TCHC Staff and Community Agencies

Role and Responsibilities of Tenant Services Coordinator

- TSCs must have set office hours when they are available to respond to tenant inquiries, either in person, by telephone or e-mail.
- TSCs must take overall responsibility for administering the tenant file, particularly as it relates to rent arrears and rent review matters. The Eviction Prevention Policy and Guidelines should expressly set out the TSC's overall responsibility.
- The responsibilities of the TSC should be clarified for staff and tenants. For example, TCHC should confirm whether door knocking is a responsibility of the TSC, or whether the TSC can delegate this responsibility to the Superintendent or the HPO.
- TSCs must be held accountable to ensure compliance with the Eviction Prevention Policy, the Arrears Collection Process and the Eviction Prevention Checklist. There should exist meaningful consequences for failing to abide by these standards.
- TSCs should continue to complete the Eviction Prevention Checklist with oversight from the OUM.

Role and Responsibilities of Health Promotion Officer

- The responsibilities of the HPO should include acting as a liaison between tenants and community support agencies. The HPO should assist in making referrals, where appropriate, to these agencies.
- The responsibilities of the HPO should include their involvement once TCHC has initiated eviction proceedings. Ultimately, the HPO should be more closely intertwined with the TSCs and Superintendents with whom they work.
- TCHC should engage in an awareness campaign for the purpose of carefully explaining the role of the HPO to all staff and tenants. The HPO's responsibilities should be expressly set out in the Eviction Prevention Policy and Guidelines.
- TCHC should consider hiring only individuals with relevant post-secondary education or equivalent experience to fill future HPO positions.

Training

- TCHC should conduct mandatory training with respect to the Eviction Prevention Policy and Guidelines for every staff member who may deal directly or indirectly with a tenant, including Superintendents, Operating Unit Managers and Litigation Clerks.
- TCHC should take steps to ensure that all frontline staff receive training relating to the *Social Housing Reform Act, 2000*. TCHC should ensure that relevant updates and amendments to this legislation are disseminated, with training, to all frontline staff in a timely manner.

Supervision

- All staff assigned to an Operating Unit should have their offices located in one location in that region. This will ensure appropriate staff oversight and provide staff with the benefit of being able to troubleshoot with their fellow staff members.
- TSCs should be required to report, in writing, to their OUM, that they have (1) forwarded the monthly arrears report to the Superintendent; (2) they have arranged for face-to-face contact with tenants in arrears; and (3) complied with the expectation regarding regular building attendances.
- Each direct contact with a tenant, as outlined in the Eviction Prevention Policy and Guidelines, should be carefully documented. An attempt at making contact should be distinguished from actual in-person or telephone contact.

- OUMs should undertake a periodic audit review of the tenant files managed by the TSCs, to ensure a level of quality control. This must include tenant files where the eviction process has been initiated.
- The Community Health Manager should undertake a periodic audit review of the work carried out by the HPOs.

Managing the Relationship with Community Agencies

- TCHC must reaffirm to its tenants that it does not provide supportive housing assistance.
- TCHC should educate its tenants and staff that the HPO can be engaged to assist in making a referral to a community agency.
- TCHC should actively recruit agencies to offer services for each of its communities.
- Each tenant building should post an up-to-date list of agencies that are within close proximity of the building. This list should be regularly updated, at least every six months.
- TCHC should arrange meetings within each of its communities to describe the types of community assistance that may be available within close geographic proximity.
- TCHC should continue fostering its relationship with the Public Guardian, and refer to the Public Guardian tenants who may fall within the Public Guardian's mandate.
- TCHC should contact the appropriate government authorities with a view to recommending amendments to the *Municipal Freedom of Information and Protection of Privacy Act* and other privacy legislation to allow information to be disclosed where a vulnerable tenant faces serious financial, physical or health hardship if information is not disclosed.
- TCHC should work toward establishing a protocol to manage the exchange of information between TCHC and community agencies.
- TCHC should assist tenants to engage with the local legal aid clinics early in the rent arrears process.

Section 5: D. Rent Review Process

- At the commencement of a tenancy, TCHC should provide tenants with a list of all documents that will be required to complete the Annual Review Form.

- Tenants should be provided with a clear and transparent document explaining how their rent has been calculated.
- TCHC staff must be trained in the legislative rules governing rent and subsidy calculations, rent payment and rent arrears. Staff should be able to explain rent calculations to tenants succinctly.
- TCHC should provide the instructions and warnings that form part of the Annual Review Package in as many languages as reasonably feasible.
- TCHC staff should include a multilingual notice in the Annual Review Package that informs the tenants of translation/interpretation services.
- TCHC staff must attend regularly in tenant buildings for the purpose of meeting with tenants regarding the requirements of the annual review process.
- Where TCHC is dealing with a vulnerable tenant, the Tenant Services Coordinator or Health Promotion Officer may wish to contact the emergency contact for that particular tenant in an effort to explore whether the emergency contact can assist with the annual review process.
- TCHC should make efforts to provide space in its buildings where volunteers and agencies can meet with tenants to assist them in completing the Annual Review Form.
- TCHC should consider providing tenants with the Annual Review Package only 90 days prior to when the information must be obtained.
- Tenants should be provided with an acknowledgement receipt when their annual review materials are received by TCHC.
- TCHC should encourage tenants to provide TCHC with the authority to receive a copy of a tenant's Notice of Assessment directly from the Canada Revenue Agency.
- TCHC should confirm with the CRA that the consent form currently available to tenants is sufficient for TCHC to directly obtain a copy of a tenant's Notice of Assessment.
- TCHC should be flexible as to the day of the month when rent payments are due from tenants.
- TCHC should contact the appropriate provincial ministry and engage in discussions with a view to developing legislative amendments to the *Social Housing Reform Act, 2000*.

Section 5: E. Internal Review Process

- **The language of the Notice of Decision should be simplified, especially the language advising tenants about an internal review.**
- **TCHC should include with the Notice of Decision a simple form asking the tenant whether they wish to pursue an internal review. The form should include “yes” and “no” checkboxes, as well as instructions to the tenant to sign the form and give it to the TSC.**
- **TCHC should consider extending the time for submitting a request for internal review.**
- **TCHC should set minimum standards for what constitutes a valid Notice of Decision. A valid Notice of Decision would have the following features:**
 - **Sufficiently detailed reasons and supporting documentation to justify and explain the decision;**
 - **Rent review calculations and supporting documentation;**
 - **Name and contact information for the TSC who made the decision.**
- **TCHC should adopt an internal review process that applies all, or at least some, of the features of the Ottawa Housing Authority internal review process:**
 - **The hearing should be an oral hearing before a panel;**
 - **The panel should consist of members representing tenants at large as well as members representing the social housing provider;**
 - **The member representing tenants and the social housing provider representative may not be connected to the building in which the tenant seeking review resides;**
 - **No person involved in the decision under review may sit on the panel.**
- **The Ontario *Human Rights Code* and TCHC’s own Human Rights, Harassment and Fair Access Policy must be applied to the internal review process.**
- **TCHC should include a statement of its commitment to natural justice and procedural fairness in the Eviction Prevention Policy.**

Section 5: F. Eviction Proceedings

- **The letter that accompanies the Notice of Termination (N4) should be revised and not use a “threat” of legal proceedings being initiated.**
- **A Notice of Termination (N4) should not be served upon a tenant during their first month of rent arrears.**
- **Tenant Services Coordinators and Operating Unit Managers should exercise discretion as to when to proceed with the actual eviction, especially if there are ongoing discussions with the tenant that may reasonably result in a satisfactory resolution.**
- **TCHC should not necessarily require all repayment agreements with tenants be satisfied in full within three months. TCHC should ensure that all repayment agreements are reasonable and achievable.**
- **TCHC should provide the tenant with written information relating to legal clinics available within close proximity when a Notice of Termination (N4) or an Application to Evict (L1) is served upon the tenant.**
- **Litigation Clerks should be empowered with the discretion to request an adjournment of a hearing if they are of the view the matter should not proceed in the absence of a tenant obtaining legal advice.**
- **If a vulnerable tenant goes on record as having a legal representative who is not present at the hearing, efforts should be made by the litigation department to contact that legal representative prior to an Eviction Order being filed with the Sheriff.**
- **TCHC should continue to inform tenants of the services offered at the Landlord and Tenant Board relating to duty counsel and interpretation services.**
- **TCHC should take steps to recommend an amendment to the *Residential Tenancies Act, 2006* to allow the Landlord and Tenant Board to assess the appropriateness of rent-geared-to-income decisions.**

Section 6: Commissioner of Housing Equity

- **TCHC should establish a new independent office, the Commissioner of Housing Equity, with sufficient staffing and resources.**
- **The central function of the Commissioner of Housing Equity is to resolve rent arrears situations, through mediation, and reduce those matters which proceed to the Landlord and Tenant Board. Through this process the Commissioner’s Office will link tenants with available community support agencies to get assistance, as needed and identified.**