



**Submission to the Government of Ontario
regarding Bill 184,
Protecting Tenants and Strengthening
Community Housing Act, 2020**

Prepared by Maytree

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Maytree

77 Bloor Street West

Suite 1600

Toronto, ON M5S 1M2

CANADA

+1-416-944-2627

info@maytree.com

www.maytree.com

[@maytree_canada](https://www.instagram.com/maytree_canada)

Introduction

Housing is a human right. Adequate housing is essential to a person's safety, dignity, and sense of inclusion in society. The right to housing is recognized by international law in the *International Covenant on Economic, Social and Cultural Rights*, ratified by Canada in 1976. Canada's commitment to housing rights was also reaffirmed by the federal government in 2019, in the *National Housing Strategy Act*.

The onset of the COVID-19 pandemic in early 2020 has underscored why housing is a basic human right. Without access to secure and adequate housing, not only is the health and well-being of the individual compromised, but also that of society at large. The pandemic has brought systemic inequities into sharp focus. These inequities have disproportionately saddled people with disabilities, and Black and Indigenous individuals and communities, with poorer health, economic, and housing outcomes.

Bill 184, Protecting Tenants and Strengthening Community Housing Act, introduces some positive new measures that better support tenants. Namely, the Bill proposes an increase in penalties for landlords who illegally evict tenants or refuse to allow tenants back into a renovated unit, thus helping to discourage the practice of "renovictions." It also significantly extends the complaint period during which tenants can claim an illegitimate eviction. Further, the Bill proposes offering compensation to tenants who are evicted due to a new owner moving in, and extends compensation for demolition, conversion, or renovation to tenants in buildings of any size.

However, the proposed legislation compromises the right to adequate housing in five major ways. In particular, Bill 184:

1. Ignores the crisis situation many tenants face as a result of the COVID-19 pandemic;
2. Reduces tenants' access to justice;
3. Lacks the robust enforcement and institutional capacity required to implement proposed changes;
4. Does not address the patchwork rent control system; and
5. Fails to provide sufficient protections for tenants who face housing discrimination and a greater risk of homelessness.

To truly protect the tenants and their housing rights, the government should:

1. Protect tenants from accruing unsustainable arrears and facing eviction due to the pandemic;
2. Provide tenants with access to financial and legal support to prevent homelessness;
3. Strengthen institutional capacity to ensure the rights of landlords and tenants;
4. Increase affordability of rental housing through key regulatory changes; and
5. Focus on measures to prevent housing discrimination.

Five major challenges of Bill 184 and recommendations to fix them

1. Bill 184 ignores the crisis situation many tenants face as a result of the COVID-19 pandemic

- Bill 184 was initially tabled before the state of emergency in Ontario was declared. Passing this legislation as proposed would be a missed opportunity to address the urgent issues facing tenants and landlords that have arisen since the start of the COVID-19 pandemic.
- The economic lockdown has had the biggest impact on those least able to make their rent prior to the pandemic and least likely to have savings. Half of those who earned \$16 per hour or less lost their jobs or the majority of their work hours between February and April, compared to 1 per cent of workers who earned \$48 per hour or more.
- Analysis from the CIBC¹ estimates that, despite the availability of the Canada Emergency Response Benefit (CERB), rent non-payment rates in Ontario averaged around 9 per cent in April and May. The level in Ontario was above the Canadian average, likely a reflection of “stretched affordability in the GTA especially, which was exposed amidst layoffs in lower wage industries.”
- The current moratorium on evictions prevents the Landlord and Tenant Board (LTB) from enforcing eviction orders for non-payment of rent, providing tenants some protection from imminent homelessness. However, it does not prevent cash-strapped tenants from accumulating arrears and then being evicted when the moratorium is lifted.

Recommendations

To lift the moratorium safely and prevent a spike in evictions, potentially coinciding with a second outbreak in the fall and winter of 2020-21, the government should add new measures to Bill 184 to address the current crisis, including:

- Ban future evictions for rent arrears accrued during the pandemic. Void all N4s (Notice of Termination for non-payment) served since the L1 (Application to Evict a Tenant for Non-payment of Rent and to Collect Rent the Tenant Owes) moratorium was introduced.
- Introduce a financing program to prevent tenants from developing unsustainable rent arrears.
- Require landlords to inform the LTB when they issue an N4, enabling the LTB to monitor eviction activity and anticipate any increase in demand for conflict resolution. This would also allow the LTB to inform tenants of their rights and available services.

1 https://economics.cibccm.com/economicsweb/cds?ID=11110&TYPE=EC_PDF

2. Bill 184 reduces tenants' access to justice

- Bill 184 proposes that tenants who pay a rent increase without contesting it for a year renders the increase legitimate. Under this scenario, tenants who receive illegal rent increases, whether calculated in error or on purpose, would not have any recourse.
- The Bill also proposes changes to LTB hearing procedures. The amended rules would require tenants to provide advance notice if they wish to raise new issues in an eviction hearing at the LTB resulting from rental arrears. This would reduce a tenant's ability to defend themselves and would disproportionately impact more vulnerable individuals.
 - For example, a tenant facing an eviction hearing due to rent arrears would be unable to raise the issue of their landlord's failure to complete basic repairs without first informing the LTB.
 - This additional administrative burden will be especially difficult for tenants with limited English, or people with cognitive disabilities, for example. It would require considerable additional resources for legal clinics to manage the issues arising from this change.
- Bill 184 would allow a landlord to issue an eviction order without a hearing if the tenant breaks a mediated agreement - for example, by missing a scheduled rent repayment. Mediated repayment agreements are crucial for tenants and landlords to settle arrears without eviction, particularly during this time of economic uncertainty. But, given this uncertainty, it is likely tenants will have difficulty meeting these repayments on top of their usual rent. In these cases, Bill 184 reduces the rights of tenants and makes it easier for landlords to evict.
- This means Bill 184 will deprive tenants of financial and legal advice at exactly the time when arrears are likely to spike, and when tenants' ability to commit to repayment plans will be compromised as a result of the COVID-19 pandemic.

Recommendations

To support tenants' access to justice, the government should:

- Maintain the requirement that landlords go to court to get an eviction order if a tenant breaks a rent repayment agreement.
- Provide funding to increase tenants' access to free legal counsel so they can adequately prepare for an LTB hearing.
- Require the LTB to develop plain language communications to make tenants aware of how they should prepare for a hearing and how they can access free legal support.

3. Bill 184 lacks the robust enforcement and institutional capacity required to implement proposed changes

- Bill 184 introduces important measures to identify and penalize illegitimate landlord activity. These include a new requirement for landlords to file an affidavit with own-use applications, as well as a doubling of fines for individuals and corporations found in violation of the act.
- While these amendments represent improvement, they lack robust enforceability. The onus remains on tenants to prove a violation has taken place, and it is unclear whether the government has the capacity to investigate possible violations.
- Further, with a significant decline in the number of adjudicators over the past two years at the LTB - which receives more than 80,000 applications a year - the capacity of the LTB to fairly and efficiently adjudicate has been critically undermined. The LTB needs sufficient numbers of experienced and competent adjudicators for Bill 184 to be meaningfully implemented.

Recommendations

- Introduce steep penalties and better enforcement to prevent misuse of N12 (own-use) and N13 (renovation/demolition) applications. Measures could include random checks to ensure the unit has not been rented out at a higher rate, and requiring building/planning permits to be attached to applications.
- Prioritize the reappointments of existing adjudicators. Appoint new adjudicators through a transparent, efficient, and competitive process.

4. Bill 184 does not address the patchwork rent control system, which compromises the ability of the housing market to provide adequate housing

- Progressively realizing the right to adequate housing cannot happen without comprehensive rent control. The current patchwork of rent controls creates a housing market where affordability issues may only worsen.
- Already, 45 per cent of tenants in Ontario spend more than 30 per cent of their income on rent. In a best case scenario, these tenants might experience rent increases in line with inflation. However, if they move out of choice, force, or necessity, they might instead face a significant increase in rent or deterioration in their living environment.
- The current system also creates perverse incentives for landlords, who gain financially when their tenants move out, as they can then increase rents significantly. This encourages landlords to pursue “renovictions” or to become complacent, as loyalty from their tenant is not financially desirable.

Recommendations

To protect tenants in their current dwelling, as well as their future ability to secure adequate housing, Bill 184 should introduce comprehensive rent controls by:

- Applying rent regulations to units first occupied as of November 2018, which are currently exempt.
- Restricting rent increases between tenancies.

5. Bill 184 fails to provide sufficient protections for tenants who face housing discrimination and greater risk of homelessness

- While most landlords readily comply with the *Residential Tenancies Act* and the *Ontario Human Rights Code*, overt and more subtle forms of discrimination in housing persist.
- For many equity-seeking groups, including people of colour, refugees, individuals with physical or cognitive disabilities, or those experiencing mental health issues, this means further exclusion from the housing market, resulting in poorer housing options in terms of both affordability and quality.
- Common discriminatory practices include minimum income requirements, which have been shown to systemically impact Code-protected groups and, crucially, do not accurately predict a tenant's ability to pay the rent.²
- Further, a 2016 survey of tenants facing eviction³ found that:
 - Almost half of respondents identified with a racialized community;
 - Half of respondents reported having previously faced discrimination in housing on the basis of gender, race, income, and other grounds; and
 - Two out of three had experienced some form of homelessness in the past.

Recommendations

To better protect the rights of equity-seeking groups, the government should:

- Through the LTB, collect better data on the filing and results of eviction applications, disaggregated by gender, race, and disability status. This is crucial to understanding the scope of the challenge and to measuring progress.
- Issue and promote improved guidance on tenant screening practices to reduce systemic forms of discrimination that also do little to protect landlords' interests. For example, a "first come, first served" approach to tenancy screening, whereby the onus is placed on the landlord to provide a compelling and legitimate reason why a tenant should not qualify, could be considered.

² <http://www.ohrc.on.ca/en/right-home-report-consultation-human-rights-and-rental-housing-ontario/housing-discrimination-and-individual#fnB54>

³ <https://www.acto.ca/930-2/>

- Introduce a diversion program at the LTB, as proposed by the Ontario Tenant Duty Counsel Program. The diversion program would respond more holistically to vulnerable tenants facing eviction and help stabilize their tenancy.

Conclusion

Bill 184 was introduced before the onset of wide-spread economic disruption caused by COVID-19. While some of the proposed changes could serve to better protect tenants, the Bill does not sufficiently respond to heightened income and housing insecurity arising from the pandemic.

In the coming months, as emergency orders and eviction moratoriums are lifted, many tenants who have experienced income or job loss as a result of COVID-19 will be at much greater risk of evictions and homelessness. Instead of ignoring this risk - which would disproportionately affect people of colour and people with disabilities - Bill 184 could stave off mass evictions and contribute to better housing security for all by:

1. Protecting tenants from accruing unsustainable arrears and facing eviction due to the pandemic;
2. Providing tenants with access to financial and legal support to prevent homelessness;
3. Strengthening institutional capacity to ensure rights of landlords and tenants;
4. Increasing affordability of rental housing through key regulatory changes; and
5. Focusing on measures to prevent housing discrimination.