

Feedback on Future Regulations to Create a Balanced Framework Around Municipal Rental Replacement By-Laws

Submission to the Ontario Ministry of Municipal Affairs and Housing

May 19th, 2023

Ontario Ministry of Municipal Affairs and Housing
777 Bay Street
Toronto, ON M5G 2G2

To the Ministry of Municipal Affairs and Housing

Re: Seeking Feedback on Future Regulations to Create a Balanced Framework Around Municipal Rental Replacement By-Laws

On behalf of the Canadian Centre for Housing Rights (CCHR), I am writing to provide feedback on proposed “Regulations to Create a Balanced Framework Around Municipal Rental Replacement By-laws.” The Canadian Centre for Housing Rights (CCHR) is Canada’s leading non-profit organization working to advance the right to adequate housing. For over 35 years, we have worked tirelessly at the intersection of human rights and housing, providing free services to renters facing evictions and human rights violations to remain housed, providing education and training about housing rights across Canada, and advancing rights-based housing policy through research, policy development, and law reform.

To help the province of Ontario develop a balanced framework around municipal rental replacement by-laws, we recommend that:

- Tenants must be guaranteed the right to return to a replaced unit and any minimum requirements must be developed to allow for this transition back into their unit. Rents in the new units must be clearly defined so that it is no more than the rent that the tenant was paying before temporarily vacating the unit during the redevelopment phase along with any rent increases that the provincial annual rent increase guideline permits during this period. These limitations must be maintained for a minimum of 10 years after the tenant has returned with flexibility given to municipal governments to extend this period based on local housing need.
- Any common rules for compensation to tenants should account for costs that substantially minimize the financial burden of tenants who are temporarily relocated. These include moving costs – for both the temporary relocation and the return to their original homes - as well as the amount of the difference between the rent a tenant was paying in the unit they temporarily vacated and the rent that they are expected to pay for a new unit during the redevelopment period. Municipal governments should be given the flexibility to determine how these costs are calculated and whether additional factors need to be accounted for. Provincial guidelines can encourage municipalities to create frameworks that cover the maximum possible costs to effectively alleviate the financial burdens of temporarily displaced tenants.
- Any minimum requirements for having the same number of core features in replacement units should detail all core features such as bedrooms and bathrooms and include guarantees for returning tenants to access any new amenities that a redeveloped building may now include.

- Restrictions on municipal governments' ability to regulate the size of replaced units should be scrapped to allow municipalities the flexibility to develop bylaws that reflect local housing need.
- The provincial framework must permit municipalities to apply the replacement policy as expansively as possible so that all buildings that are slated for redevelopment, irrespective of the total number of units, can be protected.
- Tenants must be meaningfully engaged and consulted throughout the redevelopment process in a way that ensures their needs are satisfied, and that their right to a secure, adequate and affordable home is not only protected but advanced.

Preserving existing affordable housing through rental replacement policies

Over the last year, we have [routinely commented on the province's](#) proposals to build \$1.5 million homes over the next 10 years. We have supported the province's call to urgently act on delivering housing options for all Ontarians while encouraging more collaboration with community groups and municipal and regional governments to address the housing crisis. We have also recommended prioritizing the needs of those most impacted by the housing affordability crisis through investing in creating deeply affordable housing options. In addition, we believe that preserving the province's existing stock of affordable housing is as important as building new housing options for Ontarians. This is because Ontario loses [20,000 market affordable rental homes annually](#), an alarming trend that significantly dilutes the potential of provincial measures to create more affordable housing options.

Given decades of underinvestment in affordable housing construction, much of the existing stock of affordable rental homes is aging. Naturally, the cost of maintaining these buildings is higher than newer developments. In many instances, demolishing and redeveloping the building may be the only viable option. However, in many jurisdictions around the world, the redevelopment process has led to the displacement of existing tenant households and has contributed significantly to the [gentrification of many neighbourhoods](#), disrupting social cohesion in the process.

In this context, rental replacement policies offer a workable way in which the negative impacts of the redevelopment process can be mitigated. Notably, such policies can require redeveloped buildings to replace the older rental units, which were primarily inhabited by low- to moderate-income households, with the same number of rental units at the same rates in the redeveloped building. Such policies help long-term tenants retain access to their homes by giving them the right to return to the redeveloped units while facilitating the temporary relocation during the redevelopment process through compensation and other supports.

In Toronto, where the rental replacement policy has been in place for about 16 years, the City of Toronto has successfully preserved [about 5,000 rental units](#), a significant portion of which are affordable housing. While such a policy is only in place in a few other municipalities, many more are beginning to consider this tool as more jurisdictions look to produce housing through adding more density around infrastructure they have already invested in, as opposed to building

outwards. Legislative changes made last year through Bill 23 that aimed to promote more density near transit corridors may likely push the development trajectory in this direction as well. Given that much of the older affordable housing is located around transit corridors where growth is also planned, many of these buildings will likely be the target of redevelopment to accommodate more housing. Thus, for the process of intensification to be fair and reasonable, where long established, lower income tenants are not displaced to make way for a wealthier demographic, a well-designed replacement policy is imperative.

To this end, the provincial government's current proposal to create a framework for municipal rental replacement policies consists of some elements that may help protect tenants if it is detailed out using a rights-based approach. Other provisions in the proposal ought to be scrapped.

The Province's Regulatory Proposals: Minimum Standards and Common Rules

A number of proposed minimum standards and common rules introduced by the provincial government hold promise so long as the details of these standards are designed through a rights-based approach that meets the housing needs of low- to moderate-income tenants.

Tenants' Right to Return

First, with respect to "prescribed minimum requirements for landowners to give tenants the option to rent a replacement unit at the same location as their demolished unit, at a similar rent," the option for tenants to return must be guaranteed. The landowner or the prospective landowner must be obliged to notify the tenant with clear information of this right.

The "similar rent" at which the new unit will be made available to the tenant must also be clearly defined to ensure that the tenant can feasibly return to the new unit. That is, rents for the redeveloped unit should be calculated from the time the tenant temporarily vacated it in addition to any increases permitted by the provincial annual rent increase guideline over the course of the period of redevelopment. Similarly, earlier arrangements that the tenant had with the landlord for utility payments should remain the same in the new units. Such provisions effectively keep the cost of housing for returning tenants at the same levels while accounting for factors such as inflation. Because the housing crisis is affecting a wide cross-section of the province's households, these requirements must also be applied broadly in that similar rents must be maintained for homes that are priced at both affordable and mid-range rates. These requirements are in line with those that are in place in Toronto, which have helped preserve a significant portion of its rental housing stock and minimize the disruptive impacts of dislocation on tenant households and the city's social fabric.

Furthermore, the period of affordability must be long enough to ensure a degree of housing stability for its tenants. While the City of Toronto currently has a 10-year threshold, the option to extend the affordability period should also be made available to municipalities so that they can sustain protections for tenants in scenarios where it remains difficult for tenants to find alternative affordable housing options.

Compensation

Common rules about the type of compensation owed to tenants who are temporarily displaced must be assessed against the extent to which compensation minimizes financial difficulties and the risk of experiencing housing precarity and homelessness. As a general rule, details related to compensation must be fleshed out in a way that significantly adds to provisions in the Residential Tenancies Act, which require three months' equivalent of rental compensation in the event of displacement from demolition, an amount that is not sufficient.

The City of Toronto's rental replacement policy's requirements offer a useful reference point. Compensation ought to consist of funds to help with the tenants' moving costs as well as assistance to make up for the difference in rent that a tenant originally paid and the rent for a temporary unit that will be sought out during the redevelopment process. Rents for such newer units are likely to be at a much higher rate given the lack of rent regulations on vacant units. Given variations in rental markets across the province, municipal governments should be given the flexibility to determine the difference between the rent that a tenant is currently paying and the amount that one is expected to pay in a new unit during the redevelopment process.

At the same time, the province can incorporate guidelines that encourage municipal governments to calculate the compensation based on the difference between what a tenant is currently paying and the average asking price as opposed to the average market price of the entire rental market. The latter metric undercounts the financial burden that a tenant faces when looking for an alternative housing option while the average asking price reflects the actual prices that prospective tenants must pay for new units. Provincial guidelines can also encourage municipalities to work with developers to proactively find alternative housing options for the tenants who are temporarily relocating.

Core Features

The fact that the province is also contemplating minimum requirements for core features to be included in a replaced unit can help bring some consistency and transparency into the process, but once again the details are of great significance. Replaced units must not only retain the same number of bedrooms but the equivalent number of bathrooms and living space. In addition, the redeveloped building may likely have new amenities available to their residents which should also be accessible to returning tenants to ensure an inclusive living environment. In essence, requirements related to core features should strike the right balance between maintaining a degree of familiarity for returning tenants while enhancing their living conditions with the various engineering refinements and the addition of amenities that come with a redeveloped building.

Size

The proposed restrictions on municipal governments' ability to impose "minimum square footage" requirements in replaced units are a concern. A significantly smaller unit, even with the same core features, may still lead to unsuitable and overcrowded living conditions. For example, two people who earlier shared a large room as part of a larger family unit may struggle to maintain the same arrangement if presented with a significantly smaller room in their redeveloped unit. Difficulties may also arise in using their existing furniture in a smaller unit that once fitted adequately into the original unit. Not only can this cause cluttering and pose a health

hazard for the residents, it may also be a financial burden to have to purchase new furniture that fits more suitably into a smaller unit.

The proposed limitations on square footage may help offset costs stemming from the other requirements embedded in a replacement policy, as well as a redevelopment process that increasingly involves more costly inputs such as labour and material. However, the proposed limitations in the regulation are arbitrary and risk diluting the viability of the entire replacement policy in that a family that has temporarily relocated may return to a highly unsuitable environment that perpetuates the kind of housing precarity that this policy is designed to mitigate. A rights-based approach would require that governments leave the question of size open to negotiation between developers and municipalities, with meaningful consultation with impacted communities, and with guidance from the province that encourages redeveloped units to be as close to the size of the original units. Alternatively, municipalities should retain the power to broadly set standards related to size, similar to the way in which the City of Toronto currently approaches its rental replacement policy.

Rent Regulation

The province also asks whether “Rent for replacement units be regulated, and if so, how?” As referenced earlier, it is important to institute requirements that keep rents in replaced units at similar rates of the original units. This is imperative in a housing market where vacancy rates are historically low and affordable housing options are out of reach for a cross section of the province’s population that covers both low- and moderate-income households. The fact that the proportion of tenant households across the province has been increasing – a trend that is projected to continue – means that this cohort will continue to face affordability challenges over the coming years. Coupled with the fact that redevelopments will likely increase as municipalities opt for more intensification to create more housing, the need to regulate rents in replaced units is all the more important.

Using municipal demolition and conversion controls is a sustainable and effective tool as evidenced by the success of the City of Toronto’s replacement policy. That is, replacement policies should require that replaced units are offered at the same rent as the amount that a tenant paid prior to demolition coupled with any increases permitted by the provincial annual rent increase guideline. These rents should remain similar for affordably priced and mid-range homes over at least 10 years. The option should also be given to municipalities to extend the period of affordability depending on their assessment of the rental market and the housing needs of their residents.

Exemptions

In response to a follow-up question on whether there are “any types of entities/institutions that own or operate residential rental properties...that should be exempt from the...rules,” the policy should apply as expansively as possible. Certain entities such as long-term care homes may be exempt so long as separate provisions are in place to ensure residents of long-term care homes are duly consulted and accommodated in the event of a redevelopment.

Other elements that the government should consider

To reiterate, a rental replacement policy ensures that the process of intensification, which is a necessary way of sustainably creating more housing options, unfolds in a fair and equitable manner. Any provincial regulations should be designed in a way that minimizes the harmful effects of the redevelopment process on tenants. While some of the proposed common minimum standards have some potential, they must be detailed in a way that guarantees protections and an adequate standard of living for tenants, in line with a rights-based approach to housing policy development.

As a matter of principle, provincial regulations related to rental replacements should empower municipal governments and provide them with a degree of flexibility to design a policy that is as expansive as possible and suitable to local housing needs and context. This is in line with [recommendations that we had made](#) in our first submission to the province on Bill 23, when it was earlier contemplating the regulation. In the province's current iteration, a glaring example of counterproductive policies is in its proposed restrictions placed on municipalities' ability to regulate the size of redeveloped units.

In addition, earlier legislative proscriptions have limited the application of the rental replacement policy to redevelopments of buildings with six or more units. However, several smaller buildings, such as multi-tenant houses happen to be the target of redevelopments as well. Given that many of these units are also the homes of some of the province's most vulnerable, ranging from students to low-income seniors, the protections ought to be broadened to cover a larger portfolio of the province's housing stock.

Ultimately, a replacement policy must meaningfully engage tenants throughout the process of redevelopment. At a time of increasing housing precarity and homelessness, a command and control approach to restructuring our cities and housing stock can risk displacing thousands of tenants, and in turn, compromise our communities' social cohesion. As the province develops a framework for rental replacements, a truly "balanced" outcome would mandate all actors in the redevelopment process to transparently communicate with tenants about all disruptions inherent in the redevelopment process, their views on these changes, and how accommodations can be made during the temporary relocation period in a way that satisfies the needs of tenants. Indeed, policies related to the entire redevelopment process must be designed with the wellbeing and satisfaction of the tenants who are being displaced, with the end goal of advancing their right to adequate, affordable and secure housing.

Sincerely,



Bahar Shadpour
Director of Policy and Communications
Canadian Centre for Housing Rights (CCHR)