City of Ottawa
Rental Accommodation
Regulations Study

Submission of the
Eastern Ontario
Landlord Organization

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BACKGROUND AND INTRODUCTION

Who EOLO is

The Eastern Ontario Landlord Organization (EOLO) consists of the owners and managers of more than 40,000 residential rental homes in Ottawa, as well as many suppliers to the rental housing industry. EOLO has been the voice of private rental housing providers in Ottawa since 1990.

Our members range from the largest residential landlords in Eastern Ontario to the owners of one or two rental units. All private landlords in Ottawa with more than 2,000 rental units belong to EOLO. Our Board of Directors includes representatives of Minto, Paramount, Homestead, Osgoode, Timbercreek, CLV, Ferguslea, District, Regional, United Properties – Ottawa and Empire Holdings. Other large members include Killam, Sleepwell, Island Park Towers and Arnon.

What we believe

EOLO advocates for:

- adequate government assistance for low-income people to be able to afford the housing they need,
- fair and reasonable costs for municipal services, based on the fact that the costs of providing rental housing are passed through to tenants,
- fair and reasonable property taxes, based on the fact that the costs of providing rental housing are passed through to tenants,
- fair and reasonable property standards and property standards enforcement to ensure minimum standards are met, and
- maximizing the use of the free market so that, as consumers, tenants have choice, and can select the package of rental amenities, suite size and design, and location that best suits their tastes and budgets.

The majority of low-income people in Ottawa live in for-profit rental housing, which is at the affordable end of the market. However, due to their low incomes, they struggle to pay their rent. Those facts make it important not to burden the private rental sector with unnecessary costs or regulations, since the low-income tenants, and all other tenants, ultimately pay for those costs and regulations.

MAIN SUBMISSIONS

Introduction to these submissions

As stated by the consultant at page 3 of Rental Housing Condition Discussion Paper, a key guiding principle in the Regulations Study is how regulations influence the quality, availability and affordability of rental accommodations.

In a nutshell, EOLO submits that landlord licensing would reduce the availability and affordability of rental accommodations, while having little, if any, positive effect on the quality of rental accommodations. That is what we have seen with rooming houses. These submissions begin with a review of the effect of rooming house licensing.

Then, we present a detailed discussion of the arguments for and against licensing rental housing, beginning with the arguments for licensing (expressed as the goals it seeks to achieve) and the arguments that licensing will not achieve those goals (the counter arguments).

In addition to the counter-arguments, EOLO suggests at least one alternate solution which would address the goal without the imposition of a licensing regime. For three of the goals, we suggest two alternatives, and for one goal, we suggest three alternatives, for a total of 10 solutions for the five licensing goals.

EOLO advocates the use of some of the alternate solutions rather than licensing. However, we should not be taken as advocating the use of all the alternate solutions. It may well be that a selection of them should be tried first, and then alternative solutions should be added or discontinued as experience dictates.

After the section on the arguments (goals) of licensing, this paper addresses other arguments against landlord licensing, and concludes with brief sections on student housing and on short term rentals.

Many tenant advocates seem to presume that licensing improves product quality and produces a benefit to society, at least apart from its costs. But is that true?

ROOMING HOUSES – A CASE STUDY IN LICENSING

Ottawa's experience with licensing accommodation has largely been with the licensing of rooming houses. According to the consultant's background report, the number of rooming houses has fallen from 400 in the 1990s to 192 in 2001, and to 91 today. Seemingly, the number of rooms has fallen by a similar amount.

A large part of the fall between 1990 and 2001 was likely due to the stricter enforcement of the fire regulations that apply to rooming houses. When that enforcement move took place, there was little or no support to help rooming house operators pay for the required upgrades in fire separations, exiting and other fire safety measures. Many of them converted the buildings back to single family use, or to rental flats which were not subject to the stricter fire safety rules applicable to rooming houses.

However, since 2001, the main regulation issue has been licensing. Both the facts, and economic theory, strongly suggest that the fees, and other costs and work of licensing have reduced rooming house supply.

The goal of licensing was to improve rooming house quality. However, at at least one rooming house consultation, all those present reported that several licensed rooming houses were in appalling condition. The statistics on 311 service calls back that up. This is Table 9 from the consultant's Rental Housing Condition Discussion Paper.

Table 1: 3-1-1 Calls About Rooming Houses: 2009-2018

Number of 3-1-1 Calls Per Rooming House for the 10 year period

	0	**1 to 3**	**4 to 8**	**9 or more**	**Total**
Licensed Rooming Houses	36	30	12	13	91
Former Rooming Houses	51	31	13	4	99
Total	87	61	25	17	190
% of Active Rooming Houses	40%	33%	13%	14%	100%
% of Total Rooming Houses	46%	32%	13%	9%	100%

Those figures clearly show a few rooming houses with issues, and the bulk of licensed rooming houses with no significant issues (generally less than one service call per year). To quote the consultant, "The number of problematic rooming houses is in the minority compared to the total, and they continue to be problematic even once licensed."

The facts strongly suggest that rooming house licensing:

- Has reduced rooming house supply, and
- Has not eliminated problems in the minority of rooming houses that are problematic.

Based on those facts, EOLO submits that rooming house licensing should be reduced. In order to maintain the current rooming house supply, and potentially to increase that supply, rooming house licensing should be changed to a performance based system, in which those rooming houses with minimal service calls are released from the licensing system.

New rooming houses should be left out of the licensing system if they pass an initial inspection and the property has not received a significant number of calls for property standard enforcement under the current owner. Alternately, new rooming house could be subject to proactive inspections for a period of 6 to 12 months. If they meet a basic standard, then they should be left out of the licensing system, unless and until they later fail to meet the standards of calls for service (verified by proactive inspections).

The rooming house experience also suggests that licensing is not the cure-all that many of its proponents presume it is.

RENTAL LICENSING

THE GOALS OF RENTAL LICENSING ACCORDING TO ITS PROPONENTS

1. Improving ineffective enforcement
2. Gaining entry
3. Financing more inspections
4. Compensating for deficiencies in LTB enforcement
5. Helping fearful tenants enforce their rights

GOALS AND COUNTER ARGUMENTS

GOAL 1. IMPROVING INEFFECTIVE ENFORCEMENT

Licensing proponents believe that municipal landlord licensing is a way to address shortcomings in the existing municipal and governmental regulatory network.

Landlords and civic authorities sometimes have problems dealing effectively with dangerous, disruptive or extreme-nuisance tenancies (including criminal activity, fire-safety problems associated with hoarding; the spread of pest infestations, like bed-bugs; chronic noise complaints; exotic and problem pets; prohibited or illegal activities; etc.).

While there are many municipal and provincial regulations and policies in the housing and property standards field, licensing proponents feel that they are ignored in practice or inadequately enforced. Much civic inspection and enforcement is on a 'complaints' basis, and enforcement often appears to be largely ineffective against persistent or repeat offenders.

Proponents believe licensing would make those problems go away.

Example 1. A number of home owners in Sandy Hill believe that rental operators either are now or will rent rooms in excess of the number of bedrooms in the student rent buildings they operate (called "bunkhouses" by the home owners). The home owners want a licensing regime in order to stop the rental operators from building units with 4 bedrooms and a dining room, and then renting out the dining room, or allowing five tenants to use the dining room as a bedroom.

However, a licensing regime does not provide any substantive additional enforcement tools against non-compliance with by-laws.

It is illogical to presume that people who do not follow the existing by-laws will follow a new licensing by-law. Since the best predictor of future behaviour is past behaviour, it is logical to assume that scofflaws who disregard the current by-laws will also disregard a new by-law requiring licensing.

Consider a licensing regime that permits the use of only four bedrooms per apartment in areas with lots of student rentals, and requires an annual inspection, as in example 1. Despite the licensing regime, an owner could arrange for the inspection having rented the four bedrooms, and then rent the dining room as soon as the inspection is performed. Or the students could rent the unit, with two of them saying they will share a bedroom, but then after the inspection they could split up and use the dining room as a bedroom.

In Ontario cities which have adopted landlord licensing, municipal staff reports indicate that apartment licensing has 'evasion' rates of at least 35% and perhaps close to 50%. (Fenn, Residential Licensing Effectiveness Review[1], 2013, p. 10)

Broad-based licensing should not be an indirect substitute for direct action on matters or parties that require specific monitoring and enforcement. Regulatory theory and common sense suggest that unless the consequences of short falls in enforcement are grave, a public authority should not impose burdens on the many to 'capture' the few. (Fenn p. 9)

Several years ago, Ottawa City Council became concerned that vacant properties were being allowed to deteriorate. Even though By-law Services had not enforced the property standards against vacant properties for many years, a number of people proposed to add a new by-law requiring owners to obtain permits to hold a property vacant, thinking that was necessary to solve the problem. Instead, after input from stakeholders, including EOLO, the City decided to try enforcing the existing property standards rules. That change solved the problem. The City found that a new set of rules to require permits to keep a property vacant was not necessary. EOLO submits that the same situation would also apply concerning the problems which proponents want to "address" through licensing. The solution is to enforce the by-laws we have now.

It should also be noted that a licensing regime does not provide any substantive additional enforcement tools to address non-compliance. Rather a licensing regime creates new procedural offences, which would tend to take to take attention away from the substantive issues.

Legal thinkers draw a distinction between what is *malum in se* (bad in itself) and what is malum prohibitum (bad because of being prohibited). Laws engender more respect and work better when they address what is *malum in se* rather than what is *malum prohibitum*. Specifically, failing to do necessary repairs after appropriate notice is *malum in se*, but operating without a license is *malum prohibitum*. Operating a rental building without a license is only wrong in situations where a license is required by law and

[1] The Fenn paper was written by Michael Fenn when he was a member of StrategyCorp, a government relations firm. Mr. Fenn had extensive experience in leadership positions at the municipal and provincial levels of government, including seven years as an Ontario Deputy Minister (including at the Ministry of Municipal Affairs and Housing), as well as eleven years as chief municipal administrator in Burlington and Hamilton-Wentworth. He prepared the paper at the request of the Federation of Rental-housing Providers of Ontario. This submission adopts a number of Mr. Fenn's arguments, with varying degrees of changes to his language. Each such argument is credited to Mr. Fenn, but this submission does not distinguish between a direct quote and a paraphrase.

operating without a license has been prohibited. That means the courts will tend to impose only modest fines for operating without a license, and there is little moral blame which attaches to such an offence.

The real hammer in licensing is the threat to shut a rental operation down if the license is not granted or is withdrawn. However, in practice, the threat of shutting-down rental accommodation, thus evicting innocent tenants for a landlord's licensing violations or non-compliance, would be difficult to carry through and would work against providing more and better rental housing, since the evicted tenants might well find themselves either homeless or in a worse situation.

There are better solutions to the perceived problem that do not require licensing.

Alternate Solution A: Prosecutions Of Substantive Property Standards Offences

A more cost-effective solution, which does not bring with it the downsides of landlord licensing, would be more concerted action addressing the limited number of problem addresses, up to and including prosecutions for substantive property standards violations. Successful and conspicuous prosecutions would send a clearer and more results-based message to the market than prosecutions for licensing violations. Prosecutions for substantive property standards violations would engender appropriate concern or fear among those who have violated the property standards, while leaving good operators more certain that the City's enforcement powers will not be directed at them.

Alternate Solution B: Doing The Work And Putting The Cost On The Tax Bill

When the violations are the failure to repair properties after notice, then the city has the power to have the work done, and to add the cost to the property's tax bill. A more frequent use of that power would also be a much better solution than landlord licensing. Recommending a greater use of the power to have repairs done is one of the few issues on which EOLO is in agreement with ACORN.

GOAL 2. GAINING ENTRY

Some licensing proponents point to the challenges associated with gaining entry to rental units for the purpose of ensuring compliance with existing regulations. The proponents allege that landlords tell tenants not to permit entry by the property standards inspectors, and the tenants comply with those instructions.

Licensing is suggested as a mechanism that would help to get around the existing restrictions on entry in statute law and common law.

Example 2 is that many long-standing residents of Sandy Hill believe that the owners who develop bunkhouses with 4 apartments of 4 bedrooms each plus a living room and dining room will rent the dining room out along with each of the bedrooms, in order to put 5 roomers in each apartment. Since the property standards inspector can only enter a dwelling unit with the permission of the occupant, a warrant, or another lawful right to enter, inspectors cannot check on the use of the units.

Proponents of licensing believe that a requirement to obtain a rental license which requires an inspection will prevent the rental of the other rooms as bedrooms.

Example 3 is the rental of single family homes near Algonquin College to groups of students. Except on the main roads, the use of properties as rooming houses is not allowed under the zoning of that area. Long-standing residents of the area believe that landlords are allowing their tenants to place locks on the doors of their bedrooms, turning the units into rooming houses. The residents also see households that are groups of young people, often of the same ethnicity, and they believe the use of the property is a rooming house. (They too use the term "bunkhouse", although EOLO will reserve that term for the buildings with several units with four or more bedrooms.)

Proponents of licensing believe that a requirement to obtain a rental license which requires an inspection will prevent the use of locks on the bedroom doors, and that will stop the property owners from renting to groups of students.

The underlying assumption is that access would be a precondition to licensing, where inspection is demanded or required. However, licensing would not alter the law governing access. It is only the need to have a license to continue to operate that leads to suggestions that voluntary compliance – at least by landlords, if not by tenants – would be easier to secure.

But there are better solutions to the perceived problem that do not require licensing.

Alternate Solution C: EOLO By-Law Alternative

EOLO suggests that there is a far simpler solution to the problem of gaining entry. Most entry is for the purpose of determining the condition of rental units. That is often a question of whether a unit is in a good state of repair or not. However, it could also be to determine whether there are locks on the doors of bedrooms (which is a key indicator of whether the premise is a rooming house). That is part of the condition of a unit.

Under the Residential Tenancies Act, a landlord can gain access to a rental unit by giving a 24 hour written notice of entry under sub-section 27(1). One ground for giving that notice is to determine the condition of the unit, and whether the unit complies with housing and maintenance standards. The City could enact a by-law requiring landlords to comply with a demand from a property standards officer (PSO) to give notice of entry and then to enter with the property standards inspector to determine the condition of the unit.

It might be said that the PSO is determining the condition of the unit rather than (or as well as) the landlord, but that is exactly the same situation as would apply if the landlord gained entry for the PSO to perform a pro-active inspection, either under a pro-active inspection regime or under a licensing regime. Under the current provincial law, licensing CANNOT give new or different rights of entry to the PSO. Instead, as well as many other requirements, licensing makes landlords gain entry for the PSO through notices of entry under the RTA. If the issue is entry, a by-law requiring landlords to give entry upon demand is all that is required.

Alternate Solution D: Obtain Search Warrants

Hamilton city staff have pioneered the use of search warrants to ensure their ability to act on complaints or evidence of illegal conversion. Although it was once a rarely used aspect of existing legislation, Hamilton has incorporated search warrants into its regular enforcement program, as a periodically used 'last resort.' Even when search warrants are not used, the recognized fact that they are indeed secured on a regular basis has likely encouraged voluntary compliance with access requests. This 'induced' voluntary compliance enhances the capacity of enforcement authorities to inspect premises suspected of being non-compliant with existing provincial and municipal health, safety and property-related codes and standards. (Fenn, p.15)

Alternate Solution E – Blitzes With Info To Tenants, and Tenant Support

Hamilton deals with problem properties by using enforcement 'blitzes'. Enforcement staff circulate information and solicit input from tenants and neighbours. A phased approach, perhaps beginning with fire-code compliance and moving on to other standards, ensures a comprehensive result and addresses the chronic sources of tenant complaints. (Fenn, p.15)

GOAL 3: FINANCING MORE INSPECTIONS

Proponents of landlord licensing see it as a way of collecting money outside the property tax system to fund more property standards and other inspections.

The experience of other Ontario municipalities suggests that with all-in costs, rental licensing is a break-even proposition at best, and then only if applied with high recurring fees, and light or very selective enforcement. (Fenn, p. 9)

For example, with an initial application fee of $325 per unit, Oshawa reported recovering only 65 to 70% of its costs in 2012. On renewals, with the same fee, cost recovery for the city ranged from 82% to 100% depending on whether any fire inspection was done. (Oshawa Corporate Services committee item CORP-12-113, dated April 12, 2012.)

If indeed money is extracted from landlords to fund more property standards and other inspections, then that will tend to reduce rental supply and cause rents to rise to pay for those costs. That is the inevitable outcome of the economic forces which operate in a competitive market like rental housing.

In fact, rents will rise more than the amount of the license and inspection fees. Rents will also rise because of the substantial internal costs of the work required to obtain the licenses, including collecting the paper required and the time and effort to schedule the licensing inspections.

There are better solutions to the perceived problem that do not require licensing.

Alternate Solution F: Hire More Property Standards Officers from the General Tax Base

The solution to having more pro-active inspections performed is to hire more property standards inspectors (PSOs) using funds from the general tax base.

EOLO understands that the consultant has been instructed to bring back recommendations which are "sustainable", and "sustainable" is code for not costing tax money. Some people state that rental properties result in a disproportionate number of calls for by-law enforcement, and use that as a justification for imposing the cost of more inspectors on rental owners and thus on tenants.

However, the City statistics do not appear to back up that allegation. The Rental Housing Conditions Discussion Paper reports that between 2009 and 2018 there were 103,118 service calls for property standards enforcement. Only 18,789 of those calls (18%) were for residential rental units, even though rented units make up 34% of residential units in the City.

In order to make an accurate calculation, EOLO asked City staff if they have figures to show what proportion of the service calls are for the Industrial-Commercial-Institutional (ICI) sector, but staff do not have those figures. Set out below is a table based on an educated guess that the ICI sector is the subject of 10% of the service calls.

Table 2: Service calls for rental homes vs. owner-occupied homes

Sector	Number of calls	% of calls	Number of homes, or properties	Calls per unit (over 10 years)
Rental	18,789	18.2%	110,000	0. 17
Owner-occupied residential	73,017	61.8%	250,000	0. 29
ICI	10,312 est.	10% est.	5,000 est.	2.06
Total	103,118	100%	365,000	

Sources: Rental Housing Conditions Discussion Paper, and City of Ottawa Rental Market Analysis, p. 34

In fairness, the City should not plan to charge landlords and tenants the cost of more municipal enforcement on rental units, when rental units produce significantly less of the total work load than owner occupied homes.

GOAL 4: COMPENSATING FOR DEFICIENCIES IN LTB ENFORCEMENT

Some have argued that the LTB is an ineffective forum for dealing with tenant complaints dealing with such matters as maintenance concerns, tenants' rights, rent rebates, etc. They say the LTB is too expensive and complicated, and therefore out of reach for tenants as a remedy. It is therefore desirable to use licensing to make up for this gap.

In fact, data from the LTB on a province-wide basis demonstrates that the LTB deals with a significant amount of tenant-initiated cases relating to repair issues or complaints about landlord behaviour.

Tenant Initiated Application			
Description	**Number of Cases**		
	2009-10	**2013-14**	**2017-18**
Combined Application	1,114	1,680	1,798
Tenant Rights	3,517	3,600	2,832
Maintenance	1,215	1,318	1,818
Other	812	962	1,290
Total	**6,658**	**7,560**	**7,738**

At the LTB, low-income tenants can obtain a waiver of the application fee. For moderate and high-income tenants, the application fee for a tenant application is $50. Low-income tenants can obtain advice and representation from a Legal Aid clinic. Students can obtain advice and representation from the Ottawa U Student Legal Aid Service. In Ottawa, all tenants can obtain free advice from the Tenant Duty Counsel, who provides services 5 days a week, both morning and afternoon, at the Ottawa District office of the LTB.

Many more applications by landlords are dealt with. They are primarily applications to collect unpaid rent. The bulk of the other landlord applications are for tenant misconduct. In many cases, that is tenants disturbing other tenants. (In bringing those applications, the landlords are protecting the tenants who are disturbed, who can be numerous.) In a small number of applications, the allegation is that the tenant has harassed or substantially interfered with the landlord's reasonable enjoyment of the premises or the landlord's lawful rights. That can be by telephone calls too late at night, or frequent telephone calls, or abusive language directed at the landlord or their staff, or refusal to allow the landlord to enter a unit to perform repairs.

In one consultation session, a participant argued that the predominance of landlord applications meant that landlords know how to use the LTB more than tenants. However, it is equally or more likely that the difference flows from the number of tenant faults compared to the number of landlord faults which take place, and the need for landlords to collect the rent in order to pay the building operating costs and financing costs to stay in business.

Note that under the RTA, since April 2018, landlords have been required to use a provincially mandated standard lease, which is written in plain language. The standard lease includes 6 pages of information about landlord and tenant rights and obligations. On the subject of "Resolving disputes" the standard lease says this:

> The landlord and tenant are required to follow the law. If they have problems or disagreements, the landlord and tenant should first discuss the issue and attempt to resolve it themselves. If the

> landlord or tenant feels that the other is not obeying the law, they may contact the Landlord and Tenant Board for information about their rights and responsibilities, including whether they may apply to the Landlord and Tenant Board to resolve the dispute.

In addition, for decades, landlords have been required to provide tenants with a two page brochure about their rights written by the LTB. Those provisions mean that almost all tenants have ready access to ample information about their rights.

Tenants and landlords can contact the LTB by telephone to ask specific questions and obtain information. In 2017-18, the LTB call centre answered 272,719 calls across Ontario. That figure was up 11,000 calls from 2016-17, but down 26,000 calls from 2015-16.

The LTB is part of the Social Justice Tribunals of Ontario (the SJTO). In 2017-18, an estimated 829,447 users accessed the main SJTO portal with an estimated 4,006,514 page views. Of those users, 670,876 accessed the LTB section of the SJTO website (SJTO 2017-18 Annual report).

There are better solutions to the perceived problem that do not require licensing.

Alternate Solution G: Provide More Tenant Education

If there is a concern that some tenants do not know their rights under the law and especially under the RTA despite the LTB documentation and information services, then the cost-effective solution is to support agencies to provide more tenant education. Action-Logement, Housing Help and Community Legal Services of Ottawa[2] already have that as part of their mandates. So do other local agencies such as the South-East Ottawa Community Health Centre, which regularly holds tenant legal seminars and drop-in sessions. Those agencies are well placed to provide more education on tenant rights (and hopefully tenant obligations). Awareness of such education offerings could be promoted through the various immigrant services in Ottawa, and through the emergency shelters (to reach vulnerable people who arrive in Ottawa through domestic migration.)

Alternate Solution H: Provide More Landlord Education

If there is a concern that too many landlords do not know their obligations under the law and especially under the RTA, then the cost-effective solution is to support and encourage groups to provide more landlord education. Landlord groups in Ottawa are willing to take that up as part of their mandates. EOLO itself, OREIO and ORLA already hold education meetings for their members. Those groups already hear from City officials and from housing help agencies on numerous issues. EOLO and the other landlord groups are well placed to provide more education on landlord obligations (and also on tenant rights).

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[2] Community Legal Services of Ottawa is the name of the new amalgamated clinic which is carrying on the work of the former three clinics, namely Community Legal Services Ottawa Centre, South Ottawa Community Legal Services, and West End Legal Services.

GOAL 5: HELPING FEARFUL TENANTS ENFORCE THEIR RIGHTS

Some advocates say vulnerable and low-income tenants (or foreign students) are afraid to apply to the LTB or to call property standards because they are afraid of retaliation from their landlord.

However, the Residential Tenancies Act (RTA) gives tenants protections, and there are several support agencies for vulnerable or low-income tenants or for students. The experience of EOLO's members and most other landlords is that tenants are not at all afraid to make requests and demands for repair work. Indeed, landlords find that numerous tenants make unreasonable requests with no fear at all.

It is illogical to think that a tenant would fear the outcome of a maintenance complaint to property standards and thus not cooperate with property standards, but the same tenant would not fear the outcome of a licensing investigation. In the case of property standards, the fear would be of landlord retaliation, which would mean taking the tenant to the LTB to seek an eviction order. At the LTB, the tenant has the defence against eviction that the application was retaliatory: and so, such action by a nefarious landlord is unlikely to succeed.

If instead there were a licensing regime, and the City used the ultimate hammer of revoking (or not renewing) the license, then the operation of the rental unit would be unlawful, and the landlord could apply to the LTB for termination and eviction to come into compliance with the law. There would be no effective defence to that since the City's order was not in retaliation. Even more, if the City took the position that the unit needed to be vacated, the tenant would have no defence to that.

For landlord breaches other than inadequate maintenance and repairs, tenants have the ability to apply to the LTB for breaches of tenant's rights, such as unlawful entry or alleged harassment. In addition, the Ministry of Municipal Affairs and Housing operates the Rental Housing Enforcement Unit. Tenants can report allegations that landlords have committed offences under the RTA, and the Enforcement Unit will investigate.

Another protection for vulnerable tenants is that the LTB's approval is needed for the withdrawal of a tenant's rights application. That is protection that a tenant is genuinely satisfied with the resolution that has been reached in the application.

Yet another protection for tenants is the LTB's mediation service. Mediators are trained that part of their job is to compensate for the alleged or potential power imbalance between landlords and tenants.

As well, there are better solutions to the perceived problem that do not require licensing.

Alternate Solution I: Provide More Support for the Housing Help Agencies

A large part of what Action-Logement and Housing Help do with City funding is support vulnerable and low-income tenants. Foreign students and Canadian students can access the University of Ottawa Student Legal Aid service. If there is concern that vulnerable tenants do not know their rights or are afraid of their landlords, the cost-effective solution is for the City to provide (more) funding for Action-Logement and Housing Help.

According to its 2018 Annual Report, Action-Logement served 2,454 households through case files, and provided referrals and other services to another 3,784 people. Their success rate was 91%, as measured by the number of households who reported no housing issues after the Action-Logement intervention. That is a very high success rate. (EOLO understands that many of the cases involve financial issues, including OW and ODSP disputes, and other financial shortfalls. However, a significant number of cases were cases where tenants and landlord were in dispute, and Action-Logement mediated a resolution or stood up for the tenant, including 96 legal cases in which Action-Logement represented the tenant, often at the LTB.)

Providing support through Action-Logement and Housing Help would have the side benefit in addressing the root cause of the perceived problem, namely lack of knowledge of Canadian law and practices, or social-psychological limitations on the part of those who are fearful. Changing the rules (by imposing licensing) would do nothing to help people overcome the limitations which may well be interfering with their independent functioning in Canadian society generally.

Alternate Solution J: Rely on the Duty Counsel System at the LTB, and the Legal Aid Clinic

When tenants at any income level want to claim at the LTB, they can obtain advice from the duty counsel who is available at the Ottawa LTB office and hearing rooms 5 days a week. Low-income tenants with somewhat complicated problems can often obtain representation from the Community Legal Services of Ottawa, Ottawa's legal aid clinic, which specializes in poverty law, including residential landlord and tenant law. Virtually all vulnerable people would be eligible for such services, if their case or their claim has some merit. The same applies to low-income or vulnerable people against whom the landlord is making a claim at the LTB, and virtually all remedies are only available to landlords by an application to the LTB

OTHER ARGUMENTS AGAINST LICENSING

6. AVOIDING REDUCING RENTAL SUPPLY

There are significant public policy questions associated with confronting existing and prospective apartment owners with significant costs. Rather than producing more revenue, an equally likely outcome of landlord licensing might be widespread discontinuation or abandonment of small-scale apartment units. If licensing applied to the owners of condominium units, then some of those owners might well sell their units for owner occupation to avoid the cost and hassle of licensing. Both sets of changes would result in the loss of rental accommodation and increased rents for tenants. The licensing treatment may well be worse than the supposed disease. (Fenn, p. 10)

Although EOLO does not believe this is widespread in Ottawa, in some cities, numerous property owners have converted single family homes into flats in violation of the zoning bylaws, and without a building permit. If applying for a building permit is perceived as imposing unwarranted costs or triggering intrusive, protracted, expensive processes, property owners may be tempted to ignore the requirements, particularly if most of the work is interior to the building and unobtrusive. That dynamic is unlikely to change where a license is required as well as a building permit or a rezoning application.

The solution to the illegal conversion to flats is to ensure an easy, quick, low-cost permitting process where these modest projects are allowed, accompanied by a vigorous and coordinated enforcement of the building, fire and electrical codes, by monitoring complaints and problem areas and by working with the contractors and neighbourhoods. Rather than imposing landlord licensing, municipal decision-makers need to ensure that the administrative cost to the homeowner or small-time apartment property owner is commensurate with the economic opportunity of offering rental accommodation legally. (Fenn, p. 14)

7. AVOIDING INCREASING RENTS

A reduction in rental supply is one mechanism through which licensing fees and costs would raise rents. However, there is another direct mechanism. Under the RTA, a landlord can apply to raise rents by more than the guideline if the landlords' municipal taxes and charges increase by an unusual amount. Through the application, almost all of the increase above the guideline is passed through as an "above-guideline increase", an "AGI".

Assume the property taxes on a rental house are $3,000 per year, and they go up to $3,090 per year (3%). That would not justify an AGI. However, then assume that a $480 licensing fee is imposed. Then the new municipal taxes and charges would be $3,570. That would justify an AGI equal to the licensing fee. That would amount to an AGI of $40 per month, which would be borne by the tenant in addition to the guideline rent increase for that year.

Such applications have been made to pass through the licensing fee imposed by the City of Waterloo. Many Ottawa landlords could be expected to take the same action to pass through any new City licensing fee.

8. CITY LIABILITY EXPOSURE IF A LICENSING REGIME IS IMPOSED

Landlord licensing may expose the City of Ottawa to damage actions and other litigation. Claims can be substantial and litigants will seek defendants with “deep pockets”, such as municipalities, with predictable consequences for municipal insurance premiums. Using building code case law as an example, an alleged failure to adequately enforce a licensing regime could result in municipalities being added to the list of defendants in actions related to liability for negligence or property losses. (Fenn, p. 13).

The risk applies particularly if properties are required to be licensed, but licenses are not applied for or are refused. Then if the rental operation is not shut down, the tenants can easily claim for any damage they suffer due to building defects. However, the flip side is that if the City shuts down rental operations, the City will be seen as depriving tenants of their homes, with the resulting bad publicity for the City.

9. LICENSING MISDIRECTS ATTENTION

Unfocused property standards and building code inspections, and licensing, run the risk of focusing on deficiencies and non-compliance of the sort that many responsible homeowners would innocently find in our own homes. Frequently, broad-scale enforcement devotes too much attention to the easily enforced elements of a regulatory regime, rather than to the difficult and time-consuming pursuit of the more serious cases. (Fenn, p. 11)

It is only natural that given the chance, PSOs and By-law Services would seek to show their value by performing large numbers of inspections and addressing issues at buildings that they can easily access, and where landlord and tenants cooperate. Human nature means By-Law Services would be attracted to addressing the easily enforced elements of a regulatory regime, rather than the more serious cases.

The regulatory regime should focus on the problem cases, so that it always remains clear to the officials that they show their value by tackling and focusing on the problematic cases and improving the situation at the problem addresses, not by processing large numbers of addresses. To do that, targeted pro-active inspections, teamwork among city departments, and the alternative solutions listed above, are much better than licensing.

STUDENT HOUSING

What do the people who want to license student housing really want?

Many people who oppose increases in the number of students renting housing in existing neighbourhoods see licensing as a potential tool to stop student rentals altogether.

However, the municipal licensing power is a tool for regulating a legitimate business activity – not for banning it outright.

The call for landlord licensing as a cure-all comes most strongly from the long-standing home owners around the universities. It is driven by a desire to keep the students out, even though that desire is masked in calls for making the conditions for students better (while keeping their numbers down).

Should they be given what they want?

Stopping student rentals favours existing home owners over the people who want to move into the areas around the universities and colleges. It would be unfair to the people who want to move into those desirable neighbourhoods to keep them out.

In addition to that argument of fairness, the motivation of keeping out students is inappropriate and contrary to the Human Rights Code because it is discrimination based on age.

What does that imply for licensing in student housing areas?

What is needed is effective enforcement of the general by-laws, including property standards, noise and zoning. Also of assistance would be co-operation among the City, the Universities (and Colleges), area landlords and the long-standing residents, as has been organized through the Sandy Hill Town and Gown Committee under the leadership of Councillor Fleury.

In particular, the Sandy Hill Town and Gown Committee identifies problem addresses not in compliance with the by-laws. The City needs to enforce its current by-laws against those properties, and their owners and occupants as applicable.

SHORT TERM RENTALS

With respect to short term rentals, EOLO's main concern is that any new rules not normalize short term rentals so that tenants feel entitled to rent rooms in their units (or their whole units) on a short term basis. Landlords need to be able to continue to control the use to which their units are put, including banning any rental which is done without their consent. The RTA provides that sub-lets can only be lawfully done with the landlord's consent, and sets out a regime for determining whether that consent has been improperly withheld or validly withheld.

SUMMARY AND CONCLUSION

EOLO submits that licensing should be relaxed on rooming houses.

EOLO submits that licensing should not be imposed on long term rentals, since the concerns which are driving the demand for licensing can be addressed through less problematic and less expensive alternate approaches that do not risk reduced rental supply and higher rents.

Regardless of where the money comes from, imposing a licensing regime costing millions of dollars would increase costs and provide little, if any, value. Much more economic, and more effective, measures can be taken instead. The overall loss to society from adopting licensing would occur whether tenants pay for licensing, or landlords pay for licensing, or taxpayers pay for licensing, or all three groups pay for licensing in various amounts.

The foregoing argument would apply even if licensing did not reduce the supply of rental housing or raise its price. However, economic theory clearly predicts that imposing new requirements on rental housing will reduce the supply of rental housing, and raise its price from what the supply and the price would have been without the new requirements. That theory is demonstrated empirically in the supply decreases that have clearly taken place in the rooming house sector.

No one should want reduced supply and increased prices in rental housing. Licensing is less effective than other solutions that will achieve similar or superior results without risking those outcomes. The most ardent supporters of landlord licensing seem to see it as a step to effect societal change – to drive students out of neighbourhoods, to drive renters out of condominium buildings, or even to move towards all rental housing being provided by governments. Instead, the City should safeguard tenants and rental housing by adopting rational, practical, minimal-risk solutions to target specific concerns. Licensing is not a good solution to the identified problems regardless of whether the problems are real or merely perceived.