



The Business of Housing:

IMPLEMENTING A RESIDENTIAL RENTAL LICENSING PROGRAM IN EDMONTON

Student Legal Services

Legal Education & Reform



TABLE OF CONTENTS

<i>INTRODUCTION:</i> _____	2
<i>THE CHARACTERISTICS OF RESIDENTIAL RENTAL LICENSING PROGRAMS:</i> _____	4
<i>A CANADIAN RESIDENTIAL RENTAL LICENSING PROGRAM CASE STUDY – RENTSAFETO:</i> _____	6
<i>THE POTENTIAL IMPACTS OF A RESIDENTIAL RENTAL LICENSING PROGRAM:</i> _____	12
<i>Health & Safety</i> _____	16
<i>Transparency</i> _____	19
<i>The Human Right to Adequate Housing</i> _____	23
<i>HOW TO IMPLEMENT A RESIDENTIAL RENTAL LICENSING PROGRAM IN EDMONTON:</i> _____	30
<i>CONCLUSION:</i> _____	34
<i>BIBLIOGRAPHY:</i> _____	36

INTRODUCTION:

The practice of landlordism — that is, buying real property and leasing it out to tenants while retaining an ownership interest — is a fundamental part of Canada’s capitalist political-economic system. Recent data indicates that landlordism is on the rise in Canada as the growth in renter households (+21.5%) more than doubled the growth in owner households (+8.4%) from 2011 to 2021.¹ This trend is also reflected in the growth of Canada’s rental housing stock from 1.8 million units in 2010 to nearly 2.2 million units in 2020.²

While there have been beneficial legal reforms over the years, much of the inherently exploitative elements of this institution continue to adversely impact many people. After all, it is quite difficult to reconcile a landlord’s drive for maximizing profits with a tenant’s basic human need for adequate shelter. Indicative of this adversarial dynamic is that, in 2021, 34% of renter households in Alberta were spending 30% or more of their income on the cost of shelter, compared to only 16% of owner households.³ Affordability issues are especially dire for renter households in Edmonton earning less than \$36,000 a year as, in 2020, they could only affordably access 15.1% of the total purpose-built rental stock, 2.5% of two-bedroom units, and no units with three or more bedrooms.⁴ Further to that, in 2021, 20.7% of renter households in Alberta were in core housing need — that is, living in unsuitable, inadequate, or unaffordable housing without the ability to afford alternative housing — compared to only 5.6% of owner households.⁵

¹ Statistics Canada “To buy or to rent: The housing market continues to be reshaped by several factors as Canadians search for an affordable place to call home”, *The Daily* (21 September 2021), online: <<https://www150.statcan.gc.ca/n1/en/daily-quotidien/220921/dq220921b-eng.pdf?st=Bc-ahHJA>> at 5. This is in stark contrast to the 0.7% decrease in renter households and the 23.7% increase in owner households observed from 1996 to 2006.

² *Ibid*. In comparison, from 1990 to 2010, the rental housing stock only increased by approximately 14,000 units.

³ *Ibid* at 27.

⁴ Canada Mortgage and Housing Corporation, *Rental Market Report*, by Canada mortgage and Housing Corporation (2021), online: <<https://assets.cmhc-schl.gc.ca/sites/cmhc/data-research/publications-reports/rental-market-reports/2020/rental-market-report-69720-2020-en.pdf?rev=936ca622-a6c5-4cbc-b937-d29b1d63cc14>> at 20.

⁵ *Supra* note 1 at 29.

When conflicts between landlords and tenants inevitably arise, the inherent power imbalance between the two results in the landlord receiving significant advantages at the outset. Marc Galanter provides an astute analysis of this dynamic with his party capability theory,⁶ in which landlords and tenants represent two different parties to a legal proceeding: the repeat player and the one-shotter. While repeat players and one-shotters are typically involved in similar litigation, the principal difference between the two lies in their means and opportunity to use the law to make or defend claims. Tenants are more likely to fall into the category of the one-shotter given that they typically have fewer resources to initiate legal proceedings, whereas landlords are more likely to fit the profile of a repeat player due to the fact that they receive passive income from tenants which can be used to cover legal expenses, and the nature of their business as landlords allows for more circumstances in which legal recourse may be needed or desired. As such, landlords are more likely to have litigation experience, which can result in increased institutional knowledge and connections that subsequently inform their legal tactics and objectives. On the other hand, tenants are not necessarily concerned with the outcomes of future cases and will generally approach legal disputes to minimize the probability of maximum loss.

Data from Alberta's Residential Tenancy Dispute Resolution Service [RTDRS] corroborates Galanter's hypothesis in that landlords initiated nearly 83% of the 12,872 applications received for the 2021-2022 fiscal year.⁷ It should also be noted that, despite being home to less than a quarter of Alberta's population, 44.1% of all RTDRS applications originated in Edmonton, the

⁶ Galanter, Marc, "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change" (1974) 9:1 *Law & Society Review* 95.

⁷ Residential Tenancy Dispute Resolution Service, RTDRS annual report, by Residential Tenancy Dispute Resolution Service (2022), online: <<https://open.alberta.ca/dataset/01e0066a-c12f-4278-bfc4-2c807d50304d/resource/138ffbff-d00a-48a0-8ca2-575b582911b5/download/sa-rtdrs-annual-report-2021-22.pdf>> at 7.

highest of any municipality in the province.⁸ This suggests a disproportionate level of conflict within Edmonton's residential tenancies market.

All of this goes to show that tenants are comparatively vulnerable in relation to landlords, with the resulting precarity only increasing as household income decreases. However, certain programs enacted at the municipal level, such as residential rental licensing programs, have the potential to significantly improve the living conditions of renter households and provide for a more egalitarian society overall that is ultimately in line with our professed and codified values. To that end, this report explores the characteristics of residential rental licensing programs, analyzes the RentSafeTO program implemented in Toronto, contemplates the potential impacts of residential rental licensing programs, and details how such a program could be realized in Edmonton.

THE CHARACTERISTICS OF RESIDENTIAL RENTAL LICENSING PROGRAMS:

Residential rental licensing is a type of program instituted at the municipal level which requires landlords to register and actively maintain their rental properties in accordance with the applicable health and safety standards, thus ensuring the well-being of tenants and the quality of the municipality's housing stock. Essentially, residential rental licence programs encourage municipalities to adopt a more business-minded approach to residential rental properties; rather than viewing them solely as tenants' homes, they ought to be seen as a landlord's enterprise as well. The underlying logic is that since other business owners are required to obtain a licence and pass certain health and safety inspections on a regular basis, so too should landlords. The fact that landlords are in the business of renting out properties intended to become tenants' homes is all the more reason to ensure that tenants are indeed receiving the goods and services for which they pay.

⁸ *Ibid* at 4.

In her article on residential rental licensing, Allison Sloto identifies three different approaches municipalities can take to that effect: no licensing, universal rental licensing, or targeted rental licensing.⁹

Sloto describes a universal rental licensing program as requiring all rental property owners to apply for and annually renew a licence, pay the corresponding fees, and undergo annual inspections.¹⁰ Such a program would ensure that all rental units are regularly inspected, thus reducing the possibility of health and safety standard violations in the long term. However, this approach offers little to landlords with a good record of compliance, thereby reducing the incentive to go above and beyond the minimum standards with respect to property maintenance. To mitigate this effect, cities such as Milwaukee, Wisconsin have applied universal rental licensing programs only in areas of particular concern regarding housing quality and crime.¹¹

On the other hand, targeted rental licensing programs categorize properties based on the number of health and safety violations. This is determined through inspections and complaints received by the municipality. Essentially, the more compliant a landlord is with the minimum standards, the less frequent the inspections and the less burdensome the licensing requirements and associated fees. Sloto notes that such an approach allows municipalities to be more judicious with their limited resources and more effective at responding to properties with recurring issues, which “is critical for municipalities with extreme time and resource constraints that are also faced with a large amount of substandard housing stock.”¹²

⁹ Sloto, Allison, “Targeted Rental Licensing Programs: A Strategic Overview” (2016) 48:3 *The Urban Lawyer* 638 at 640

¹⁰ *Ibid* at 641

¹¹ *Ibid.*

¹² *Ibid* at 643.

Sloto goes on to identify common elements of successful targeted rental licensing programs in the United States such as comprehensive registration systems, appropriate enforcement mechanisms, and compliance-oriented fee structures.¹³ By requiring landlords to register in a program, municipalities can then use that data to create a publicly accessible database outlining, among other things, whether the minimum health and safety standards are being met. This will provide local officials with data to better identify problem areas and allow more transparency for prospective tenants. Using this data, municipalities can create proactive and targeted enforcement mechanisms ranging from scaling fines to suspending or revoking licences until certain conditions are met. However, successful targeted licensing programs often provide for reward as well as punishment. Compliant landlords may receive reductions in the number of inspections they are required to undertake and the amount of fees they are required to pay, which “should be focused on attaining maximum landlord compliance by rewarding responsible landlords, and should not be seen as a revenue stream.”¹⁴

A CANADIAN RESIDENTIAL RENTAL LICENSING PROGRAM CASE STUDY – RENTSAFETO:

Implementing a residential rental licensing program may seem like a particularly contentious issue. After all, housing policy touches upon highly valued private property rights, the regulation of an incredibly lucrative industry, and perhaps most importantly, peoples’ homes — something from which they can find a sense of security, dignity, and even identity. Despite all of this, municipal governments throughout Canada have recently taken steps to address rental housing issues by implementing various forms of residential rental licensing programs. Such programs are within the realm of theoretical possibility and are also slowly becoming more of a practical reality

¹³ *Ibid* at 646.

¹⁴ *Ibid* at 651.

in urban Canada. While these programs have undoubtedly drawn detractors, especially among landlords, the results of the more well-established programs have been promising.

Modelled after Toronto’s DineSafe program, which monitors the safety and cleanliness of establishments that serve and prepare food by requiring owners of such establishments to post a colour-coded report card in a public-facing window, RentSafeTO came into effect in July of 2017.¹⁵ This program applies to all Toronto rental buildings that have three or more storeys and ten or more units, encompassing roughly a third of Toronto’s residents.¹⁶ Under this program, landlords are required to register their properties with the city, renew their registrations on an annual basis, and pay an annual registration fee established by the city’s User Fee Policy — in 2022 the fee was \$11.46 per unit.¹⁷

The primary purpose of this program is to ensure that rental property owners and operators comply with the applicable health, safety, and maintenance standards. This is accomplished by having dedicated RentSafeTO Bylaw Enforcement Officers [BEOs] evaluate all buildings registered under this program at least once every three years.¹⁸ Upon completion of the evaluation, the BEO will assign the building a score on a scale of zero to one hundred and use that score to determine what changes, if any, need to be made as well as schedule the next inspection or audit if the building receives a score of 50 or less.¹⁹ In 2022, the audit administrative fee was \$1,945.89,

¹⁵ Mathieu, Emily, “A Toronto rental program was supposed to create safer and cleaner buildings. Councillor now says, ‘we are failing’”, (13 November 2019), online: *The Star* <<https://www.thestar.com/news/gta/2019/11/13/rentsafe-program-failing-to-improve-conditions-for-tenants-councillor-says.html?rf>>.

¹⁶ RentSafeTO, 2021 Year in Review, by RentSafeTO (2022), online: <<https://www.toronto.ca/wp-content/uploads/2022/03/8d08-RentSafeTO-2021-YearInReview-Final.pdf>> at 5.

¹⁷ “RentSafeTO Fees & Fines”, (22 January 2018), online: *City of Toronto* <<https://www.toronto.ca/community-people/housing-shelter/rental-housing-tenant-information/rental-housing-standards/apartment-building-standards/rentsafeto-for-building-owners/rentsafeto-fees-and-fines/>>.

¹⁸ *Supra* note 16 at 6.

¹⁹ *Ibid.*

coupled with an inspection fee of \$117.62 per officer per hour.²⁰ Specific bylaw violations found in evaluations or audits may carry their own fines as well, sometimes consisting of continuing fines for each day the offence continues and escalating fines for subsequent convictions of the same offence.²¹ Any resultant fees or fines are subject to late penalties, and the total sum will be added to the property tax bill if not paid within 90 days.²² It should also be noted that registered landlords are not allowed to lease a unit to a new tenant if they are aware of any existing vital service disruptions or pest infestations; or if they have any outstanding property standards orders from the city.²³

Another method used to ensure compliance with minimum health and safety standards is through a mechanism called service requests. Essentially, landlords registered in this program must track and respond to any complaints from their tenants regarding building services.²⁴ These service requests are split into two categories, urgent and non-urgent, based on their potential impact on the welfare of tenants. Urgent service requests pertain to any issues regarding the disruption of vital services such as gas, power, water, and heat, or breaches in building and unit security, whereas non-urgent service requests encompass all other issues.²⁵ Registered landlords must respond to tenants' urgent service requests within 24 hours, and non-urgent service requests within seven days.²⁶

Suppose a registered landlord is unresponsive to a tenant's service request or the issue persists. In that case, the tenant can then submit a service request to the city, after which a BEO

²⁰ *Supra* note 17.

²¹ RentSafeTO, *Building Owner Handbook*, by RentSafeTO (2022), online: <<https://www.toronto.ca/wp-content/uploads/2022/06/90cd-Building-Owner-Handbook2022.pdf>> at 21.

²² *Ibid.*

²³ City of Toronto, Toronto Municipal Code Chapter 354, *Apartment Buildings* (17 December 2021), s 354-6.1.

²⁴ *Ibid.*, s 354-3.1(A).

²⁵ *Ibid.*, s 354-3.1(C)(3).

²⁶ *Ibid.*, ss 354-3.1(C)(1)-(2).

will attempt to respond within 24 hours for urgent service requests and five days for non-urgent service requests.²⁷ When this program began in 2017, BEOs could only successfully respond to urgent service requests within 24 hours 85% of the time; however, that figure rose to 92% in 2021 despite the number of service requests increasing by approximately 165% during that same period.²⁸ This indicates that the RentSafeTO staff have successfully managed to harness increased public awareness of this program and the consequent demand for service to develop an expertise resulting in a substantial increase in efficiency.

Once a BEO has contacted the tenant who made the service request, they will conduct an investigation, which can include reviewing the information provided in addition to other information regarding the property and applicable bylaws, contacting the registered property owner or operator to determine what steps, if any, have been taken to address the issue, and visiting the building, if necessary.²⁹ Investigation timelines may vary depending on the nature of the service request and what is required to rectify the issue; however, data indicates that both the average and median number of days to complete an investigation have been reduced by more than 60% from 2017 to 2021.³⁰ This is yet another laudable example of increasing efficiency in the face of sharp increases in demand for service.

Perhaps the most notable accomplishment of this program is the roughly 20% increase in both the average and median building evaluation scores and the 83% decrease in building audits between 2017 and 2021.³¹ There was also a 35% reduction in the number of notices of violation

²⁷ *Supra* note 16 at 9.

²⁸ *Ibid* at 8.

²⁹ “RentSafeTO for Tenants”, (22 January 18), online: *City of Toronto* <<https://www.toronto.ca/community-people/housing-shelter/rental-housing-tenant-information/rental-housing-standards/apartment-building-standards/rentsafeto-for-tenants/>>.

³⁰ *Supra* note 16 at 11.

³¹ *Ibid* at 6.

and orders to comply issued as a result of service requests from 2017 to 2021,³² and an 89% reduction in the number of notices of violation and orders to comply as a result of audits from 2018 to 2021.³³ While this could be attributed to possible changes in evaluation criteria, time pressure due to increased demand, or the subjectivity and biases of the BEOs, there is little evidence to suggest that the implementation of this program underwent significant changes during that period. Additionally, there was a 155% increase in the number of charges submitted to the courts and a 300% increase in the number of charges resolved by the courts from 2017 to 2021,³⁴ which suggests that enforcement has increased in proportion to the demand for service. Therefore, it is reasonable to conclude that this program is indeed incentivizing registered landlords to comply with existing health and safety standards and make active efforts to improve the conditions of the buildings they operate.

RentSafeTO is also being used as an informational and educational tool for tenants. Under this program, registered landlords are required to provide and maintain a Tenant Notification Board [TNB] in a central location on the property. The TNB must include, among other things, information regarding RentSafeTO, details about the most recent building evaluation, upcoming audits, city-issued notices and orders, planned and unplanned service disruptions, major capital projects, pest inspections and treatments, and cleaning and waste management plans.³⁵ This information is instrumental in informing tenants about their rights and their landlords' responsibilities. It also provides detailed information about how their building is managed so they can get a clearer understanding and perhaps a greater appreciation for the work that goes into maintaining their living space. By requiring registered landlords to post upcoming audits on the TNB, tenants are

³² *Ibid* at 12.

³³ *Ibid* at 13.

³⁴ *Ibid* at 15.

³⁵ *Supra* note 21 at 8–10.

given an opportunity to participate in a tenant engagement process. This includes city officials informing them about RentSafeTO and providing them with an opportunity to submit investigation requests regarding issues in their unit or elsewhere in the building.³⁶

The public reception of RentSafeTO has been mostly positive apart from the first few years of its existence, when it was perceived as too slow and unresponsive to poor living conditions,³⁷ most of which have been addressed through subsequent updates and staffing increases. There may be some residual concerns regarding the program's scope in that it only applies to larger multi-residential buildings. While RentSafeTO covers approximately 30% of the city's inhabitants, renters make up roughly 47% of the total population,³⁸ meaning just over a third of tenants in Toronto are not protected by this program at all.

Perhaps the lack of criticism levied against RentSafeTO in recent years stems from the fact that the city of Toronto has created an economically viable and increasingly efficient program that has delivered measurable results for many city residents. Adopting the approach recommended by Stolo in her article on targeted rental licensing programs, RentSafeTO “brings landlords into compliance, using progressive enforcement action if voluntary compliance is not achieved.”³⁹ The registration fees are relatively low, thereby minimizing the impact on tenants who may see their landlords attempt to download those costs onto them through inflated rent. Additionally, the program successfully operated with only 42 full-time staff in 2022. It comes as no surprise that other municipalities are drawing inspiration from it as they develop their own residential rental licensing programs.

³⁶ *Ibid* at 20.

³⁷ *Supra* note 15.

³⁸ City of Toronto, Inclusionary Zoning Assessment Report: Housing Need and Demand Analysis, by City of Toronto (2021), online: <<https://www.toronto.ca/wp-content/uploads/2021/10/95b5-CityPlanning-IZ-Assessment-Report-Need-and-Demand-2021.pdf>> at 4.

³⁹ *Supra* note 16 at 12.

THE POTENTIAL IMPACTS OF A RESIDENTIAL RENTAL LICENSING PROGRAM:

Implementing a residential rental licensing program could prove to be a significant departure from the status quo. As such, it is imperative to consider both the potential positive and negative impacts this type of program could have, not just on landlords and tenants alike but on society in general. For example, how would such a program affect the social relations between landlords and tenants? What economic and administrative impact would such a program have on municipalities? How would such a program affect provincial and federal housing policies? Would such a program alleviate or exacerbate the housing affordability crisis in Canada?

To answer these questions, it is vital to provide a clearer picture of the current state of affairs with respect to Canadian housing policy, with particular emphasis on the financialization of housing that has accelerated within the past several decades. Financialization can be understood as “structural changes in the operation of capitalism in which finance has come to play an increasingly dominant role in the economy and everyday life”⁴⁰ with financialized landlords consisting of “real estate investment trusts [REITs], private equity funds, financial asset management firms, and other investment vehicles.”⁴¹ While there may be structural differences amongst these financial actors, a fundamental similarity exists between them in that they view and treat rental housing as a financial asset specifically intended to deliver profits to investors. This dedicated pursuit towards maximizing revenues displaces other objectives associated with residential tenancies, such as sustaining affordable and high-quality housing. Further to that, the globalized nature of finance capital means that the provision of financialized housing can easily become detached from “local

⁴⁰ August, Martine & Alan Walks, “Gentrification, Suburban Decline, and the Financialization of Multi-Family Rental Housing: The Case of Toronto” (2018) 89 *Geoforum* 124 at 125.

⁴¹ *Ibid* at 124.

housing needs, local incomes, and local economies.”⁴² As a result, financialized landlords are economically incentivized “to terminate unprofitable tenancies and minimize expenditures on maintenance and upkeep.”⁴³

The financialization of housing is a fairly recent phenomenon in Canada. “From 1996 to 2021, REITs alone grew from holding zero to nearly 200,000 suites [...] with those largest financial firms alone holding [...] about 20% of the nation’s purpose-built housing stock.”⁴⁴ However, the financialization of housing is far more prominent in Edmonton where the Affordable Housing Solutions Lab estimates that “48% of all purpose-built suites are owned by financialized landlords.”⁴⁵ While this is more than double the estimated national average, it is important to consider that this figure leaves out a significant portion of tenants in Edmonton who live in secondary housing, which can be understood as housing that is not purpose-built for the residential rental market. This includes units such as single-family dwellings, condominiums used as apartments, semi-detached row homes and town homes, and secondary suites. In 2021, it was estimated that nearly 52% of tenant households in Edmonton lived in secondary housing.⁴⁶ Current data regarding the financialization of secondary housing is sparse given that the Canadian Mortgage and Housing Corporation stopped collecting this data in 2017, with 2016 being the last year in which disaggregated secondary housing data was made available — since then, only condominium secondary

⁴² Affordable Housing Solutions Lab, “The Financialization of Housing: What Is It?”, (25 April 2023), online: *The Pivot* <<https://affordablehousingsolutionslab.com/2023/04/24/the-financialization-of-housing-what-is-it/>>.

⁴³ Stilton, Jamie, “Who Owns the City? Pension Fund Capitalism and the Parkdale Rent Strike” (2021) 35 *Journal of Law and Social Policy* 1 at 12.

⁴⁴ August, Martine, *The Financialization of Multi-Family Rental Housing in Canada: A Report for the Office of the Federal Housing Advocate*, by Martine August (2022) at iii.

⁴⁵ Affordable Housing Solutions Lab, “The Financialization of Housing: Multi-Family Rentals in Edmonton”, (29 April 2023), online: *The Pivot* <<https://affordablehousingsolutionslab.com/2023/04/29/the-financialization-of-housing-multi-family-rentals-in-edmonton/>>.

⁴⁶ Affordable Housing Solutions Lab, “The Financialization of Housing: What types exist?”, (28 April 2023), online: *The Pivot* <<https://affordablehousingsolutionslab.com/2023/04/28/the-financialization-of-housing-what-types-exist/>>.

rental data has been published, which accounts for roughly 23% of secondary suites in the Edmonton area as of 2021.⁴⁷ However, given that secondary housing is, by definition, investor-owned, it is reasonable to assume that financialization plays a significant role in that market.

Unfortunately, the consequences that flow from the logic of treating housing as an investment vehicle are detrimental to tenants, especially low-income tenants and particularly in jurisdictions such as Alberta, where there is a policy of vacancy decontrol. Vacancy decontrol can be understood as a lack of restrictions on the amount and frequency of rent increases and the ability to adjust rent to a free-market rate once a unit is vacated. Alberta is an outlier compared to other Canadian provinces in that there is no cap on the amount by which a landlord can increase a tenant's rent provided that an entire year has passed since the last rent increase and that the notice requirements have been met.⁴⁸ As Jamie Shilton persuasively argues, this creates even more of an incentive for landlords "to push tenants out of longer-term, unprofitable tenancies by withholding repairs, initiating bad faith 'no fault' evictions, or otherwise pressuring tenants to leave."⁴⁹ Shilton refers to "no fault" evictions as those which a landlord could obtain without having to demonstrate that the tenant engaged in any misconduct. In Alberta, the allowable reasons for a "no fault" eviction consist of the landlord seeking to recover possession of the unit for their personal use or the use of a relative of the landlord, the sale of the rental premises, or the landlord's intention to demolish, renovate, or convert the unit to non-residential use.⁵⁰ Consequently, "[as] seniors have a tendency to remain in units the longest, they will be very vulnerable to coercion to get them out.

⁴⁷ *Ibid.*

⁴⁸ *Residential Tenancies Act*, RSA 2000, c R-17.1, s 14.

⁴⁹ *Supra* note 43, at 13.

⁵⁰ *Residential Tenancies Ministerial Regulation*, Alta Reg 211/2004, s 2(2).

Those who are unaware of [these] laws, especially those with a poorer command of the English language will also be particularly vulnerable.”⁵¹

Even if landlords fail to use the rental premises for the reasons set out in their notice of termination within a reasonable time after the termination date,⁵² tenants often have no means of determining whether that is the case as they will have given up possession of the unit. If they become aware that their former landlord has failed to do so, they must then take it upon themselves to initiate a proceeding against their former landlord and pay the corresponding fees while they secure new housing.

This means that turning over rental units — that is, increasing rent when a tenant vacates a unit — is a low risk, high reward endeavour for landlords. In 2020, one of Canada’s largest publicly-traded REITs, CAPREIT, boasted a record performance by increasing rents in turned-over units by an average of nearly 8% compared to the average 1.3% rent increase negotiated in lease renewals.⁵³ This was despite the COVID-19 pandemic, the initial onset of which had the effect of cooling the multi-residential rental market. However, many financialized landlords knew that this would be temporary and eagerly anticipated a return to normal, with Minto REIT even going so far as to tell investors that “[the] housing crisis in Canada’s major urban centres that existed prior to COVID will re-assert itself [...] The housing affordability gap continues to grow and will ultimately benefit the multi-residential rental sector.”⁵⁴ As public health restrictions were relaxed towards the end of 2020, the market heated back up, and record numbers of family-owned apartment

⁵¹ Levitt, Robert, “The Tenant ‘Protection’ Act: An Attack on Tenants” (3 April 1998), online: *Ontario Tenants* <<http://www.ontariotenants.ca/research/tenant-protection-act.phtml>>.

⁵² *Supra* note 50, s 6(2).

⁵³ CAPREIT, *2020 Annual Report*, by CAPREIT (2021), online: <https://s25.q4cdn.com/722916301/files/doc_financials/2020/ar/CAPREIT-2020-Annual-Report.pdf> at 30.

⁵⁴ Minto Apartment REIT, *2020 Annual Report*, by Minto Apartment REIT (2021), online: <https://s3.amazonaws.com/lws_lift/minto_investor_services/documents/1617225928_2020_annual_report.pdf> at 6.

buildings were bought up by large financial players eager to take advantage of the affordability crisis that was beginning to reassert itself.⁵⁵

Health & Safety

While landlords in Alberta have ample means, motive, and opportunity to terminate residential tenancy agreements, the same cannot be said for tenants. Apart from experiencing domestic violence, tenants may only prematurely terminate their tenancy if their landlord commits a substantial breach of the residential tenancy agreement. Further, what constitutes a substantial breach varies greatly depending on whether the breaching party is a landlord or a tenant. For example, a substantial breach on the part of a tenant can consist of a tenant breaching any of the covenants outlined in section 21 of the *Residential Tenancies Act*, such as failing to pay rent on time or failing to keep the property in a reasonably clean condition, “or a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial.”⁵⁶ Landlords, on the other hand, only commit a substantial breach if they breach the covenant outlined in section 16(c) of the *Residential Tenancies Act*, that is, they fail to “meet the minimum standards prescribed for housing premises under the *Public Health Act* and regulations.”⁵⁷

For a tenant to make a successful application to the courts that a substantial breach has occurred, they must have called an executive officer designated under the *Public Health Act*⁵⁸ to inspect the rental premises. The executive officer must then find that there was indeed a violation of the minimum housing standards such that they issue an order to the landlord requiring them to rectify the issue within a prescribed timeframe. It is only after the landlord has failed to comply

⁵⁵ Kiladze, Tim & Rachele Younglai, “Billions of dollars worth of Canadian apartment buildings on the block as sellers rush to cash out at record prices”, *The Globe and Mail* (26 April 2021), online: < <https://www.theglobeandmail.com/business/article-billions-of-dollars-worth-of-canadian-apartment-buildings-on-the-block/>>.

⁵⁶ *Supra* note 48, s 1(1)(p)(i)

⁵⁷ *Supra* note 48, s 1(1)(p)(ii)

⁵⁸ RSA 2000, c P-37.

with that order that they will have committed a substantial breach of the residential tenancy agreement.⁵⁹

It must be noted that this process can result in tenants living in substandard conditions for lengthy periods. The executive officers who conduct these types of inspections work for Environmental Public Health [EPH], which is the government body responsible for “[keeping] public places safe, [informing] the public about health risks (e.g., unsafe water or housing) and [ensuring] that the *Public Health Act* is being followed.”⁶⁰ As a result, these officers have an expansive mandate and a correspondingly high demand for service, which the COVID-19 pandemic has only exacerbated. To illustrate this, “[in] 2020-21, EPH responded to more than 80,000 complaints and service requests; eight times the normal volume. Approximately 83 per cent of all requests was [*sic*] related to COVID-19.”⁶¹ This has left tenants reporting that they have had to wait on the telephone for hours before being able to reach an inspector, with some even claiming that they have had to call multiple times over many months in an attempt to resolve issues like black mould infestations.⁶²

So, how might a residential rental licensing program interact with the current state of affairs? For starters, the data collected from this program could provide the city of Edmonton with new and additional information regarding its growing secondary rental market. This data could prove indispensable when it comes to informing future housing policy at all three levels of government. Further to that, the licensing fees could pay for a municipal team of housing inspectors. In turn, this would allow provincial health inspectors to focus their efforts in other areas and

⁵⁹ *Supra* note 48, s 28(1)(b).

⁶⁰ Alberta Health Services, *2020-21 AHS Annual Report, by Alberta Health Services* (2021), online: < <https://www.albertahealthservices.ca/assets/about/publications/2020-21-annual-report-web-version.pdf>> at 38.

⁶¹ *Ibid.*

⁶² Zapata, Karina, “When your rental has dirty secrets — renters share tips on calling the health inspector”, *CBC* (27 October 2022), online: < <https://www.cbc.ca/news/canada/calgary/home-health-inspection-expectations-1.6629654>>.

respond to public health concerns more effectively and efficiently. A municipal task force would also cushion the blow that potential provincial health budget cuts would have on the ability of tenants in Edmonton to find recourse in the event that their homes fall below the minimum housing standards. In fact, if implemented correctly, a municipal task force could prove to be far more responsive to the needs of tenants than the system we currently have. RentSafeTO provides us with a great example of a program in which the vast majority of service requests are responded to within five days, with most urgent service requests receiving a response within 24 hours. Toronto is also able to provide this service to nearly a million tenants with less than 50 full-time staff.

This is a powerful counterargument to detractors and skeptics such as the Calgary Residential Rental Association, which claims that such a program is “completely unworkable” given the additional costs imposed on government and landlords, which would ultimately be downloaded onto the tenants.⁶³ These are valid concerns, especially considering the precarity of low-income tenants who are much more likely to find themselves in substandard housing on account of their purchasing power, and whose landlords will likely receive the most scrutiny under a residential rental licensing program. That said, provided that such a program is constructed without the intention of providing the city with an additional revenue stream and is instead focused exclusively on ensuring tenants live in adequate housing, the costs that could be downloaded onto tenants are minimal.

For example, RentSafeTO’s licensing fee is less than \$12 per unit per year. If that cost were immediately added to a tenant’s rent, it would amount to less than an extra dollar per month. For landlords who score so low that they are subjected to an audit, which is where the program’s fees really ramp up, their score is made public through an open data portal. This publicly accessible

⁶³ Zapata, Karina, “Renters advocacy group calls for landlord licensing in Alberta”, (2 November 2022), online: *CBC* < <https://www.cbc.ca/news/canada/calgary/acorn-landlord-licensing-alberta-1.6637568>>.

data is an effective tool for preventing those costs from being immediately and completely absorbed through a rent increase, as prospective tenants and tenants negotiating a lease renewal will be less willing to pay more for what they know to be substandard. If a landlord wants to continue turning a profit from their residential rental properties, this program will incentivize them to do so by taking concerted steps to improve the quality of their units as opposed to relying upon an affordability crisis to generate desperation amongst tenants.

Transparency

As the system currently stands, landlords can obtain vast amounts of information about prospective tenants from credit checks, employment and tenancy references, and social media screenings. In contrast, tenants must often take a landlord at their word in terms of what deal they are receiving. A comprehensive and publicly-accessible registration system would be a significant step towards balancing the informational disparities between landlords and tenants and increasing tenants' relative bargaining power. Depending on how such a system is structured, tenants could see a historical record of health and safety violations, rent increases, and more easily determine who their landlord is should legal action be necessary in the future.

Increased transparency with respect to beneficial ownership interests could also serve as a proactive measure to combat the money laundering that has become so prevalent in the Canadian real estate industry that the practice has become known internationally as “snow washing,” wherein Canada’s robust economy and reputation for prudence are exploited to give illicit transactions an air of legitimacy.⁶⁴ This is made possible by the lack of transparency with respect to beneficial ownership interests in that entities who wish to purchase real estate anonymously can

⁶⁴ Cribb, Robert & Marco Chown Oved, “Canada is the world’s newest tax haven”, (25 January 2017), Online: The Star <<https://project.thestar.com/panama-papers/Canada-is-the-worlds-newest-tax-haven/#:~:text=It>>.

do so simply by creating a shell company and registering title to a property using only that company's name and address and nothing more.

A report from Transparency International Canada examined the real estate market of the Greater Toronto Area [GTA] and found that, between 2008 and 2018, nearly 23,000 corporate entities purchased approximately 52,000 homes, the vast majority of which were private companies with no available information regarding their beneficial owners.⁶⁵ 35% of the GTA housing covered in this report (\$9.8 billion) was purchased by companies without external financing, thereby avoiding “the scrutiny of financial institutions with statutory [anti-money laundering] obligations.”⁶⁶ For the corporate entities that did rely on external financing, 49% of those mortgages (\$10.4 billion) were borrowed from unregulated private lenders who “are not covered under Canada’s [anti-money laundering] regime and do not need to conduct beneficial ownership or source-of-funds checks on customers.”⁶⁷

While not all entities that acquire real estate in this manner are inherently guilty of money laundering, in the span of a decade, more than \$20 billion of residential real estate transactions in the GTA alone were not subjected to any of the standard checks and balances used to combat money laundering. Unfortunately, this can contribute to the artificial inflation of prices and the creation of a speculative bubble, thereby pricing low-income individuals out of the real estate market and forcing them into the rental market, where they will nevertheless remain vulnerable to increasing rents. That is because real estate prices are, in part, determined by comparables — that is, which neighbouring properties have recently sold and for how much. If the residential real estate

⁶⁵Transparency International, *Opacity: Why Criminals Love Canadian Real Estate (And How to Fix It)*, by Transparency International (2019), online: <<https://static1.squarespace.com/static/5df7c3de2e4d3d3fce16c185/t/5dfb8cf8f8effb79c8bdf415/1576766716341/opacity.pdf>> at 12.

⁶⁶ *Ibid* at 14.

⁶⁷ *Ibid* at 15.

prices of a given neighbourhood are rising annually by 5% and a money launderer eager to quickly close a sale offers 10% over the asking price, all future real estate transactions in that neighbourhood will use that price as a comparable for their property regardless of whether they are laundering any money themselves.⁶⁸

To put this in perspective, a recent report estimated that money laundering in British Columbia had the effect of increasing residential real estate prices between 3.7% and 7.5%.⁶⁹ Although the housing affordability crisis in Alberta is not as pronounced as it is in Vancouver or Toronto, this report identified Alberta as the province with the highest estimates of money laundering in Canada, likely due to the fact that money laundering practices often correlate with increasing crime and GDP levels.⁷⁰ The government of Alberta was quick to criticize the findings of this report out of concern that the data used was unreliable and unverifiable, to which the author of the report responded by stating that money laundering in Alberta will become a bigger issue as other provinces take steps to address those practices within their borders.⁷¹ Perhaps provincial inaction is all the more reason to create further checks and balances at the municipal level.

Should a residential rental licensing program be implemented in such a way as to provide for increased transparency, it could prove to be an effective tool for combatting what is now being

⁶⁸ Punwasi, Stephen, “How a Little Money Laundering Can Have a Big Impact on Real Estate Prices”, (24 April 2019), online: *Better Dwelling* < <https://betterdwelling.com/how-a-little-money-laundering-can-have-a-big-impact-on-real-estate-prices/> >.

⁶⁹ Maloney, Maureen, Tsur Somerville & Brigitte Unger, *Combating Money Laundering in BC Real Estate*, by Maureen Maloney, Tsur Somerville & Brigitte Unger (Expert Panel on Money Laundering in BC Real Estate, 2019), online: <https://news.gov.bc.ca/files/Combating_Money_Laundering_Report.pdf > at 57.

⁷⁰ *Ibid* at 126.

⁷¹ The Current, “Money laundering is Canada’s problem — not just the West Coast’s, expert warns”, (16 May 2019), online: *CBC* < <https://www.cbc.ca/radio/thecurrent/the-current-for-may-16-2019-1.5137392/money-laundering-is-canada-s-problem-not-just-the-west-coast-s-expert-warns-1.5137412> >.

referred to by the media as “the Montreal shuffle.”⁷² The Montreal shuffle is a property management scheme first detected in Montreal whereby

“evicting long-term tenants (legally or illegally), signing over the leases in bulk to an Airbnb operator and having them agree to as much quadruple the previous tenant’s rent, [landlords] can boost their monthly income and use the now way-above-market rents to artificially inflate their property valuation. They can then sell at an inflated price, or borrow against this new valuation.”⁷³

This scheme allows landlords to circumvent Quebec’s rent control provisions by exploiting a loophole that allows substantial rent increases as long as the tenant consents while also allowing Airbnb operators to claim that they are signing residential leases, as opposed to commercial leases, thus bypassing short-term rental regulations.⁷⁴ The effect of this practice forces long-term tenants out of their units, thereby dwindling the long-term residential rental housing stock and creating a network of illegal and unregulated “ghost hotels.” Flowing from this is the risk that substantial health and safety concerns may go unreported by residents due to the short-term nature of their stay in these units. Even when these short-term residents raise existing health and safety concerns, they may nevertheless go unaddressed by property owners given the alternative remedies available to them such as partial refunds or relocations to less problematic units. This practice can have disastrous consequences as was seen in March 2023 when a fire consumed a heritage building wherein all but three of the units were allegedly converted into short-term rentals.⁷⁵ Seven people

⁷² Ethan Cox, “The Montreal shuffle: Inside the Airbnb hustle taking homes off the market”, (3 August 2023), online: *Ricochet Media* <<https://ricochet.media/en/3976/the-montreal-shuffle-inside-the-airbnb-hustle-taking-homes-off-the-market>>.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Zachary Kamel, “Former tenants say landlord from Montreal fire engaged in ‘campaign of harassment’ to convert units to Airbnb”, (24 April 2023), online: *Ricochet Media* <<https://ricochet.media/en/3950/former-tenants-say-landlord-engaged-in-campaign-of-harassment-to-convert-units-to-airbnb>>.

lost their lives in this fire, allegedly as a result windows being nailed shut and insufficient emergency exits.⁷⁶

Edmonton, and indeed Alberta, is uniquely vulnerable to this practice as there is no rent control afforded by provincial legislation. As will be discussed in the following section of this report, while the city of Edmonton requires short-term residential rental accommodations to meet certain conditions upon receipt of a municipal business licence, there are no such conditions attached to business licences for long-term residential rental accommodations. This creates an incentive for Airbnb operators to bypass the fees and conditions associated with acquiring a business licence by agreeing to sign long-term residential leases with landlords at an above-market rental rate, thus artificially inflating property values and covertly depleting the city's long-term residential housing stock, the costs of which will impact tenants the greatest.

The Human Right to Adequate Housing

The transparency provided by a residential rental licensing program and corresponding enforcement would further incentivize landlords to comply with the law and bring Canada closer to realizing its recent declaration that adequate housing is a fundamental human right. After the horrors of WWII, human rights became a central issue in international law. Accordingly, the United Nations General Assembly adopted the *Universal Declaration of Human Rights* [UDHR]⁷⁷ in 1948. Article 25.1 of the UDHR states that “[everyone] has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of

⁷⁶ Zachary Kamel, “Fatal fire: Landlord knew about illegal rentals, ignored safety issues”, (23 March 2023), online: *Ricochet Media* <<https://ricochet.media/en/3942/fatal-montreal>>.

⁷⁷ GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” [emphasis added].

By 1966, the *International Covenant on Civil and Political Rights [ICCPR]*⁷⁸ and the *International Covenant on Economic, Social, and Cultural Rights [ICESCR]*⁷⁹ supplemented the *UDHR*, both of which were acceded by Canada in 1976. Notably, Article 11.1 of the *ICESCR* reaffirmed the right to adequate housing by stating that “[the] States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent” [emphasis added].

What “adequate housing” entailed was further elaborated upon in *General Comment No. 4*,⁸⁰ drafted by the UN Committee on Economic, Social and Cultural Rights in 1991. Essentially, the right to adequate housing consists of seven fundamental elements: security of tenure (legal protection from forced evictions), availability of services and materials (i.e., water, energy, sanitation, etc.), affordability (housing costs do not compromise the enjoyment of other rights), habitability (physical safety and space, and protection from the elements), accessibility (specific needs of marginalized groups are taken into account), location (proximity to employment, healthcare, education, and other social services), and cultural adequacy (respects the expression of diverse cultural identities).

⁷⁸ 16 December 1966, 999 UNTS 171.

⁷⁹ 16 December 1966, 993 UNTS 3.

⁸⁰ UN Committee on Economic, Social and Cultural Rights, “General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant),” (13 December 1991), E/C.12/1991/4.

Canadian courts frequently use these instruments “to interpret the provisions of the [*Canadian Charter of Rights and Freedoms*]⁸¹ as the primary means through which Canada’s international human rights obligations achieve domestic legal enforceability.”⁸² Section 7 of the *Charter* guarantees that “[everyone] has the right to life, liberty and security of the person and the right to not be deprived thereof except in accordance with the principles of fundamental justice.” This arguably makes it the most relevant provision of the *Charter* with respect to the right to adequate housing because “[adequate] housing is critical to meeting fundamental needs — not only shelter, but also privacy, autonomy and health [...] The severity of this rights infringement lies in the consequences that follow from being deprived of [adequate] housing — including economic exclusion, social stigmatization and severe risks to health.”⁸³ However, these instruments of international law are often viewed by Canadian governments as moral commitments rather than enforceable rights, and the courts have been more than willing to support the government in their reluctance to interpret section 7 as imposing positive obligations onto the state. That said, McLachlin CJ left open the possibility that “[one] day s. 7 may be interpreted to include positive obligations. To evoke Lord Sankey’s celebrated phrase in *Edwards v Attorney-General for Canada* [...] the *Canadian Charter* must be viewed as ‘a living tree capable of growth and expansion within its natural limits’ [...] It would be a mistake to regard s. 7 as frozen, or its content as having been exhaustively defined in previous cases.”⁸⁴

Perhaps that day is near given that, in 2019, the federal government adopted the *National Housing Strategy Act*, where section 4 states that

⁸¹ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

⁸² Jackman, Martha & Bruce Porter, “Rights Based Strategies to Address Homelessness and Poverty in Canada: The Constitutional Framework” (2012) SSRN Electronic Journal 1 at 3.

⁸³ Madeleine Stout, “Does Housing First policy seek to fulfil the right to housing? The case of Alberta, Canada” (2020) *Housing Studies* 1 at 4.

⁸⁴ *Gosselin v Quebec (AG)*, 2002 SCC 84 at para 82.

“[it] is declared to be the housing policy of the Government of Canada to recognize that the right to adequate housing is a fundamental human right affirmed in international law; recognize that housing is essential to the inherent dignity and wellbeing of the person and to building sustainable and inclusive communities; support improved housing outcomes for the people of Canada; and further the progressive realization of the right to adequate housing as recognized by the International Covenant on Economic, social and Cultural Rights.”⁸⁵

While all three levels of government share responsibility for housing, the federal and provincial governments typically set policy direction and create funding streams, while municipal governments are the ones charged with the design and delivery of housing programs.⁸⁶ This means that if it contributed towards the progressive realization of the right to adequate housing, Edmonton would be well within its rights to develop and implement a residential rental licensing program.

To get a clearer understanding of where the city of Edmonton currently stands with respect to the right to adequate housing, we need to look no further than the city’s Housing First policy. As homelessness increased to crisis levels in the mid-1990s, Canadian public policy began to shift from a Linear Residential Treatment model, which required unhoused community members to progress through various levels of housing while remaining sober and medically stable, to a Housing First model, which focused on rehousing the chronically unhoused and providing them with supports to remain housed.⁸⁷ In essence, the philosophy underpinning Housing First is that everyone has an inherent right to be housed because housing is a necessary condition to address and resolve many of the physical and mental health issues faced by unhoused community members.

⁸⁵ SC 2019, c 29.

⁸⁶ *Supra* note 83 at 5.

⁸⁷ *Ibid* at 1.

This begs the question: does Edmonton’s Housing First policy recognize and fulfill the right to adequate housing?

Researchers at the University of Alberta conducted a keyword analysis of 81 policy documents guiding the implementation of Housing First in Alberta between 2007 and 2017 to answer that very question.⁸⁸ Part of this analysis included weighing the different policies throughout the province against the elements of the right to adequate housing as laid out in *General Comment No. 4*.⁸⁹ In so doing, they found that affordability was the primary element addressed in all of the policies examined, noting that the focus on affordability implies that right to adequate housing is not an entitlement to be accessed free of charge; “rather, it requires states to adopt policies that provide correctives to the market.”⁹⁰

Despite Edmonton’s focus on affordability with respect to housing, a recent report from the Canadian Centre for Policy Alternatives [CCPA] shows that much more work needs to be done to address affordability in the city’s rental market.⁹¹ In calculating “the hourly wage that would allow tenants to spend no more than 30% of their pre-tax earnings on rent” the report’s authors determined that Alberta’s minimum wage of \$15.00/hour was 43% below Edmonton’s one-bedroom rental wage (\$21.42/hour) and 69% lower than the two-bedroom rental wage (\$25.37/hour).⁹² To put this in perspective, the report’s authors go on to note that, in Alberta, the share of one-person households with an income equal to or below the equivalent of a full-year, full-time minimum wage job is 35%, whereas the share of households with two or more people with an income equal to or below the equivalent of two full-year, full-time minimum wage jobs in 19%.⁹³ This

⁸⁸ *Ibid* at 2.

⁸⁹ *Ibid* at 11

⁹⁰ *Ibid* at 4.

⁹¹ Macdonald, David & Ricardo Tranjan, *Can’t afford the rent: Rental wages in Canada 2022*, by David Macdonald & Ricardo Tranjan (Canadian Centre for Policy Alternatives, 2023).

⁹² *Ibid* at 8–13.

⁹³ *Ibid* at 23.

means that there is no primary rental housing in Edmonton that can be affordably accessed by anyone working a full-time minimum wage job. As detailed above, one such policy that has the potential to serve as a corrective tool for the market-based provision of housing and the affordability concerns flowing from it is a residential rental licensing program. The data collected through this program could also provide valuable information regarding rent in the presently opaque, yet growing, secondary rental market, which was excluded from the CCPA's report due to lack of available data.⁹⁴

Turning back to the keyword analysis of the province's Housing First policies, the second most common element of the right to adequate housing touched upon was cultural adequacy, primarily because Indigenous peoples and newcomers are overrepresented in the province's unhoused population, which requires specially tailored supports and services to address their unique cultural needs.⁹⁵ The only other element touched upon in any of Edmonton's Housing First policies was the security of tenure, where the need for eviction prevention funds and the ability to identify those most at risk of losing housing were discussed.⁹⁶ This is yet another area where a residential rental licensing program may provide some relief. Any excess funds beyond what is needed to implement the program effectively could go towards establishing an eviction prevention fund. This would be particularly useful for lower-income tenants who are more likely to find themselves in rental accommodation that will fall below the minimum housing standards. These funds may also be used to assist tenants who are required to vacate their units if their landlord's licence is suspended or revoked such that they are no longer legally allowed to lease their rental property.

⁹⁴ *Ibid* at 10.

⁹⁵ *Supra* note 83 at 12.

⁹⁶ *Ibid*.

A fund of this kind could also be used to provide relief in the event that there is a tenancy crisis. For example, when the COVID-19 pandemic began, many tenants lost their employment and were left without a reliable source of income. Rather than subsidizing rents in their entirety, the data obtained through a residential rental licensing program could be used to determine precisely what a licenced landlord's net operating costs are. Then the eviction prevention fund could be used to cover those costs wholly or in part.⁹⁷ The benefits of this arrangement are threefold. First, it would relieve pressure on the public purse in the event of a crisis due to the fact that the funding could be sourced primarily through the fees collected through the program as opposed to the general tax pool. Second, it provides for more fiscal restraint during a crisis by covering necessary costs exclusively, as opposed to subsidizing profit margins. And finally, support and stability would provide relief for both landlords and tenants in that landlords would have their net operating costs covered, and tenants would have a significant expense taken care of for a period of time.

Accessibility went unmentioned in the city of Edmonton's policies, and location and habitability were not elements considered by any of the plans throughout the province.⁹⁸ It should also be noted that the University of Alberta's keyword analysis did not explore the availability of services element in any of the policies as the researchers operated under the presumption that "access to basic services such as electricity, water, and sewage is essentially universal in cities."⁹⁹ This is an erroneous assumption to make given that rectifying interruptions to basic services is one of the primary focuses of RentSafeTO, which operates in Canada's largest city. Both habitability and availability of services are two components of the right to adequate housing that a residential rental

⁹⁷ SRSLY WRONG, "All Lords Are Bastards", (6 November 2019), online: *SRSLY WRONG* <<https://srsly-wrong.com/podcast/212-all-lords-are-bastards/>>.

⁹⁸ *Supra* note 83 at 12.

⁹⁹ *Ibid* at 7.

licensing program could address to a substantial degree. Depending on the structure of the program, accessibility may also be addressed though likely to a lesser degree than what could be done to address issues regarding overall habitability and availability of services. It is also difficult to imagine how a residential rental licensing program could address the issue of location, which would require either the development of new housing or the development of the areas surrounding existing housing. While a residential rental licensing program would not be sufficient to fully realize the right to adequate housing in Edmonton, it has the potential of taking considerable steps towards addressing many of the components of that right, which are presently and notably absent from the city's housing policies.

HOW TO IMPLEMENT A RESIDENTIAL RENTAL LICENSING PROGRAM IN EDMONTON:

With all that said, how could Edmonton implement a residential rental licensing program? To answer that question, the city's jurisdictional authority and scope must be identified. Edmonton's power is primarily derived through sections 7, 8, and 9 of the *Municipal Government Act*.¹⁰⁰ In particular, section 7 outlines the matters for which a city council may enact bylaws, while section 9 specifically states that the municipality is given intentionally broad authority to that effect. Section 8 details what bylaws may consist of, with the most notable provision for the purposes of this paper being the power to "provide for a system of licences, permits or approvals" afforded by section 8(1)(c).

The relationships between private individuals are typically governed by civil and criminal laws established at the federal and provincial levels of government. This means that municipal bylaws are typically aimed at regulating the relationships between private entities and the general

¹⁰⁰ RSA 2000, c M-26.

public or private entities and the city. To that end, three bylaws¹⁰¹ could potentially enable a residential rental licensing program with varying degrees of difficulty: the *Zoning Bylaw*,¹⁰² the *Community Standards Bylaw*,¹⁰³ or the *Business Licence Bylaw*.¹⁰⁴

Generally, zoning bylaws are intended to regulate land use within a municipality. In so doing, the city of Edmonton is able to control what can happen on private property as well as the design and layout of the land and any structures built on it. At present, both renter-occupied and owner-occupied residential properties are included within the broad category of Residential Zones.¹⁰⁵ Properties that fall within the Residential Zone category are further differentiated by their layout and the number of available dwelling units. While these distinctions may influence what sort of living arrangements may occur (e.g., garden suites, secondary suites, etc.), there are no distinctions based on whether the occupant is renting. As such, significant amendments would need to be made to the existing *Zoning Bylaw* to differentiate between owner-occupied and renter-occupied residential properties. This could cause administrative redundancies and confusion, especially for properties that are both owner-occupied and renter-occupied. It is also important to note that the *Zoning Bylaw* is primarily geared towards regulating how the land is used rather than the relationships between individuals occupying it, limiting the effectiveness of pursuing a residential rental licensing program through this avenue.

Another option available to the city of Edmonton, if it is keen on implementing a residential rental licensing program, is through the *Community Standards Bylaw*. This is a more promising option than pursuing the program through the *Zoning Bylaw* in that the purpose of the *Community*

¹⁰¹ Connors, Jerreck, *Renter Assurance Options for the City of Edmonton*, by Jerreck Connors (2021).

¹⁰² City of Edmonton, amended by-law 12800, *Zoning Bylaw* (13 September 2022).

¹⁰³ City of Edmonton, consolidated by-law 14600, *Community Standards Bylaw* (24 February 2023).

¹⁰⁴ City of Edmonton, consolidated by-law 13138, *Business Licence Bylaw* (5 December 2017).

¹⁰⁵ *Supra* note 102 at ss 110–250.5.

Standards Bylaw is “to regulate the conduct and activities of people on privately owned property and immediately adjacent areas in order to promote that safe, enjoyable and reasonable use of such property for the benefit of all citizens of the City.”¹⁰⁶ While partially enabled by section 66(2) of the *Safety Codes Act*,¹⁰⁷ which allows the city to make bylaws respecting the minimum maintenance standard for buildings and structures, the current iteration of the *Community Standards Bylaw* is chiefly concerned with regulating external nuisances that have the potential to impact neighbouring properties such as yard maintenance, noise levels, and outdoor fires. The *Community Standards Bylaw* also fails to distinguish between owner-occupied and renter-occupied properties.

While the city of Edmonton could use this bylaw to create specific minimum maintenance standards for the inside of rental properties, this may be redundant because those standards already exist through the *Public Health Act* and associated regulations. A residential rental licensing program is meant to address compliance with and enforcement of currently existing housing standards rather than create new ones. Further to that, any new standards the city creates to address must be at least as stringent as those that already exist at the provincial level because section 13 of the *Municipal Government Act* states that provincial law will prevail in the event that there is a conflict or inconsistency between a bylaw and provincial law. Therefore, pursuing a residential rental licensing program through the *Community Standards Bylaw* would require significant amendments, which may result in redundancies and confusion amongst the public.

Implementing a residential rental licensing program through the *Business Licence Bylaw* bears perhaps the most reasonable prospect of success as there are already licensing requirements for those who provide residential rental accommodation.¹⁰⁸ Rental accommodation licences are

¹⁰⁶ *Supra* note 103 at s 1.

¹⁰⁷ RSA 2000, c S-1.

¹⁰⁸ *Supra* note 104, Schedule A.

further broken down into two categories: short-term residential rental accommodation and long-term residential rental accommodation. Short-term residential rental accommodation business licences are required for each property “that provides temporary lodging on a Premises where persons may rent all, or part of a residential property for 30 consecutive days or less, including bed and breakfasts, and lodging arranged through home-sharing services.”¹⁰⁹ These licensees are subject to special regulations which require them to create a city-approved Operational Plan, among other things.¹¹⁰ Long-term residential rental accommodation licences are required for entities who lease three or more units “for 31 consecutive days or more, including retirement or assisted living facilities and lodging houses.”¹¹¹ Under this category, one licence is issued per titled lot with three or more units and/or for all units in the city where there are less than three units per titled lot.¹¹² Noticeably absent from this category are similar special regulations as seen with short-term residential rental accommodation licences, which means that the city would have little administrative difficulty in enacting similar requirements for obtaining long-term residential rental licences.

It is also worth noting that applying special regulations to retirement or assisted living facilities and lodging houses could prove to be difficult as those living arrangements are expressly excluded from the application of the *Residential Tenancies Act*.¹¹³ Additionally, if the city were to broaden the reach of the licensing requirements to encompass small-scale landlords with less than three units, it is important to consider how this could potentially require licensing in arrangements where family members are occupying the rental unit. This could prove to be an issue if the city wanted to avoid licensing requirements for these types of familial living arrangements, as section

¹⁰⁹ City of Edmonton, consolidated by-law 20002, *Business Licence Bylaw* (5 April 2023), Schedule A.

¹¹⁰ *Ibid.*, s 60.

¹¹¹ *Ibid.*, Schedule A.

¹¹² Janz, Micahael, Licenses for Rental Providers and Public Access to Information, by Michael Janz (2022), online: <<https://pub-edmonton.escribemeetings.com/filestream.ashx?DocumentId=153183>> at 3.

¹¹³ *Supra* note 48, s 2(2).

640(8) of the *Municipal Government Act* precludes municipalities from enacting bylaws respecting the use of residential property if they have “the effect of distinguishing between any individuals on the basis of whether they are related or unrelated to each other.” So, while the Business Licence Bylaw has the greatest prospect of success for implementing a residential rental licensing program, careful consideration will need to be taken to ensure that success.

CONCLUSION:

Low-income individuals are far more likely to rely on rental accommodation for shelter, which can place them in an adversarial dynamic with their landlord, who, by virtue of the political and economic structures underpinning Canadian society, is incentivized to extract as much wealth from their tenants as possible. Unfortunately, this arrangement can result in significant problems ranging from the gradual dilapidation of society’s housing stock to an affordability crisis that spits out more and more people onto the streets year after year. While housing is a matter to be tackled by all three levels of government, municipalities are uniquely positioned to develop and implement policies that can result in meaningful and material change for the better.

One such policy is a residential rental licensing program which can be creatively structured and executed in ways that respond to a given municipality’s unique conditions and circumstances. Edmonton is currently facing many of the same challenges that inspired other municipalities to create residential rental licensing programs, such as increasing affordability concerns arising from the inflationary pressures of financialized landlords and money laundering. There is also little recourse for tenants who encounter substandard and unaffordable housing issues as they must rely on an under-resourced and overworked public health agency and a justice system that is often quite difficult to navigate without prior experience to resolve their issues.

A residential rental licensing program has the potential to provide a great deal of relief to these tenants in that it could be used to incentivize landlords to not only maintain their properties but actively improve them as well. It could also relieve some of the pressure on external agencies at the provincial and federal levels; by building local institutions instead, provincial or federal policies of austerity and privatization would have less of an impact on the most marginalized community members. The data collected from such a program could then be used as a tool to mitigate the affordability crisis by making it more difficult for landlords to take advantage of the province's policy of vacancy decontrol and engage in financial practices that artificially inflate housing prices. This data also has the potential to benefit the unhoused as well in that it will enable more precise monitoring and maneuvering of the city's Housing First policies which are informed by Canada's recognition of the right to adequate housing both domestically and internationally.

While these programs are relatively new to Canada, some of the more developed programs, such as RentSafeTO, are showing promising results in terms of increased property standards and compliance with existing laws. A similar program based in Edmonton is well within the realm of possibility as the city already requires that certain rental operators obtain a business licence. While only short-term residential rental accommodations have special regulations attached to their licences, there is nothing stopping Edmonton from placing a similar level of scrutiny on long-term residential rental accommodations? After all, these spaces are ultimately peoples' homes, where they go to find a sense of comfort and security, dignity and identity. It is high time that society imbues these sacred spaces with the protections and guarantees they deserve.

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