COUNCIL DIRECTION:

On June 27, 2006, the Coalition for Residential Care Facilities Tenants (CRCFT) presented to the Social Services Committee (SSC) with their concerns regarding the impact of the proposed Residential Tenancies Act (Bill 109). In particular, they made the following recommendations:

1. That the City of Hamilton require that operators provide written tenancy agreements to tenants;
2. That the City of Hamilton ensure that operators provide Care Home Information Packages (CHIPS); and,
3. That the City of Hamilton should provide mandatory education programs and better mental health systems access for landlords to avoid evictions.

SSC requested that staff report back on these issues as well, do a comparison of the experience with municipally-subsidized and provincially or federally-funded Residential Care Facilities (RCFs), and that staff explore the feasibility of implementing a Housing Ombudsman office.
INFORMATION:

The City Of Hamilton has a long history with RCFs. RCFs are licensed through Schedule 20 of the City Business By-Law 06-213, through the Licensing and Building Standards Department. Inspections of the RCFs are conducted by Health Inspectors, Nurse Inspectors, Fire Department and Building Inspectors. The Nurse Inspectors in Public Health Services conduct regular inspections to monitor compliance with Schedule 20 and its guidelines. The Community Services Department, through the subsidy agreements, provide subsidy to tenants of RCFs through the domiciliary hostel program, which is cost-shared with the Ministry of Community and Social Services (MCSS). The approval of the subsidy agreement is based on compliance with Schedule 20 and all other relevant statutes. Staff in both departments work together closely to ensure compliance with Schedule 20 and the subsidy agreement.

**Tenant Protection Act, 1997**

RCFs, were included under the Tenant Protection Act, 1997 (TP Act), under the definition of “care homes”.

Under the TP Act, a tenant in a care home can end their lease by providing at least thirty (30) days notice in writing to the landlord. A landlord can terminate a tenancy only for reasons allowed by the TP Act. A landlord must first tell a tenant in writing when they want the tenant to move out, regardless of the reason, by giving them a Notice to Terminate a Tenancy. A Notice to Terminate a Tenancy used by a landlord must be in the proper form, which is available from the Ontario Rental Housing Tribunal (ORHT). Under the TP Act, a tenant can also be evicted for cause; which relates to the tenant’s behaviour or actions or that of their guests. These include:

- not paying the rent in full,
- often paying the rent late,
- illegal activity,
- affecting the safety of others,
- disturbing the enjoyment of other tenants or the landlord,
- allowing too many people to live in the rental unit (“overcrowding”),
- not reporting income in subsidized housing.

Both Schedule 20 and the City of Hamilton subsidy agreement support requirements of the TP Act 1997, concerning the need for tenancy agreements and CHIPS.

**Schedule 20 of City Business Licensing By-Law 06-213**

Section 44, of Schedule 20 states,

“The operator shall enter into a written tenancy agreement with each individual who is admitted as a tenant of the facility and shall give each such individual a Care Home Information Package (CHIP) as required under the Tenant Protection Act, 1997, S.O. 1997, c. 24, prior to entering into the tenancy agreement.”
The Schedule 20 guidelines set the parameters for the tenancy agreement for operators in the development of and requirement of the tenancy agreement.

The guideline indicates:

I) The tenancy agreement shall include:
   a) all ongoing care services and meals that the tenant agrees to pay for and the cost of each;
   b) a statement that the tenant has the right to cancel the agreement within five (5) days and to discuss the agreement with anyone;
   c) how much the tenant will pay in rent and how often the payments will occur, for example, weekly, monthly, otherwise;
   d) the term of agreement with fixed terms or without fixed terms, for example, monthly, weekly, etc.; and,
   e) the cost of optional services.

II) The tenancy agreement can say what the tenant and the landlord agree upon for example:
   a) house rules;
   b) limits on having roommates or renting your room to someone else; and,
   c) whether your landlord may enter your room or apartment for cleaning, repairs, or to check on your condition.

III) If a tenant has agreed to have checks on his or her condition, the tenant has the right to change this at any time by written notice to the operator.

IV) Either the operator or a tenant may terminate the tenancy for the grounds set out in the TP Act and each has the rights and obligations set out in the TP Act and any other relevant legislation. Applications for evictions must be made to the ORHT. No eviction can take place without an order from the ORHT.

V) The operator shall ensure that the tenant is made aware that he or she has the right to consult with someone about the tenancy agreement.

VI) The operator must give each tenant a CHIP. A CHIP tells the tenant:
   a) what kind of rental units are available and how much each costs;
   b) the kinds of care, services and meals that are available and how much each costs;
   c) the lowest number of employees that must work in the facility at any one time;
   d) the qualifications of the employees;
   e) what optional services are available, and how much they cost;
   f) whether there is a personal emergency response system, such as a call-bell, and how it works; and,
   g) how to make a complaint to the operator and whether the tenant can appeal a decision. If there is no way to make a complaint to the operator, the information package must tell the tenant this.
During inspections, the Nurse Inspectors review each client file to ensure that a CHIP is on file for each tenant. The CHIP is differentiated from the tenancy agreement in that it fully describes the “menu” of care services available in the facility, where the tenancy agreement details individual tenancy terms. If the CHIP is not on file, the facility is cited as being in non-compliance with Section 44. However, this is not a chargeable offence under Schedule 20.

**Subsidy Agreement**

The Health and Social Supports Branch of the Community Services Department administers the RCF subsidy program under the authority of the Ministry of Community and Social Services Act, 1990. Clause 5, of the City of Hamilton Subsidy Agreement with RCFs states,


Operators are required to submit a copy of their tenancy agreement template and house rules with their subsidy agreements. Community Services Department staff review both items to ensure that there are no apparent violations of the **TP Act**. Although compliance with the **TP Act** is addressed and confirmed at the time contracts are renewed, there is very little leverage that the City has to ensure enforcement of the **TP Act**. Staff from the Public Health Services and Community Services Departments work with tenants and operators to ensure compliance with the **TP Act**; however, resolution for tenancy issues fall under the jurisdiction of the ORHT. Any disputes, whether they are from an operator or tenant are referred to the ORHT for resolution. Tenants are referred to the local Community Legal Clinics to get assistance in taking their issues before the ORHT. The province funds community legal services to advocate on behalf of all tenants and in all situations where a violation is reported.

**Educational Sessions**

Section 13 of Schedule 20 requires that “every employee whose primary duty is the supervision of tenants shall participate in continuing education to a minimum of twenty (20) hours within each consecutive period of twenty-four (24) months from the date of commencing employment.”

The operators can choose a number of routes to meet this requirement. One option is the education sessions provided by the Education Committee. The Committee is chaired by the two nurse inspectors from Public Health Services and consists of representatives from the Housing Help Centre, Residential Care Facilities, Canadian Mental Health Association, St Josephs Healthcare Centre for Mountain Services (education services), Assertive Community Treatment Team, a representative from the RCF and Hostel Unit of the Community Services Department, and an RCF tenant.
The Education Committee plans monthly education sessions, except during the summer months, on various topics including the requirements of the TP Act and other relevant Acts. The sessions are advertised to all operators and staff of RCFs.

Currently the nurse inspectors monitor the compliance for the Section 13 of the bylaw at each site inspection and recommend and promote the education sessions.

**Mental Health Systems Access**

Schedule 20, bylaw 06-213 does not directly address mental health systems access for landlords, however section 51 (2) states “where the tenant is determined to have special needs of a physical, mental, or developmental nature, the operator shall consult with the tenant, his or her next of kin and or a community worker, and prepare a plan which may include additional services, such as additional personal care services and or rehabilitative services”.

Currently, the nurse inspectors of the City of Hamilton Public Health Services monitor for compliance with the plans according to this section.

Access to mental health systems supports is available to operators/landlords by referring to COAST or to IntAc. COAST provides mental health crisis response and can be accessed by calling directly (905 972-8338). Operators/landlords and mental health consumers or their families can also refer to IntAc which is a centralized, coordinated single point of access to mental health intensive case management services for any resident of Hamilton, who is living with a serious or persistent mental illness. Intensive case management services are available to provide treatment and/or psychosocial rehabilitation in a recovery model of care. Program information can be obtained and referrals can be made by calling 905 528-0683. IntAc and the intensive case management services are funded 100% by the Ministry of Health and Long-Term Care, Mental Health and Addiction Services Branch. Access to these services may assist to stabilize disruptive behaviour of some residents who may be putting their residency at risk (i.e., cause for eviction).

**Tenant Protection Act – Current Issues Within Residential Care Facilities**

There are a number of issues that have come forward with regards to RCFs being included under the TP Act. These include concerns from both tenants and operators. Operators indicate that they have to evict a tenant because the tenant’s behaviour is a risk to the health and safety of other tenants. Tenants sometimes choose to move to another RCF or into the community without giving proper notice. The most prevalent issue is that operators may move tenants between rooms or buildings (if they own more than one home).

Community Services staff is currently involved in the Ministry of Community and Social Services (MCSS) consultation on the domiciliary hostel (RCF) program. The MCSS is consulting with various stakeholders as it sets up a policy framework to support the development and implementation of standards within the program. Staff have raised
the concerns of tenants and operators, as well have pointed out that per diem funding of domiciliary hostels contributes to an inherent incongruency in ensuring compliance with the TP Act from both the tenants' and operators’ perspectives. As well, staff facilitated a meeting of the CRCFT with the MCSS on August 2, 2006, where the CRCFT had an opportunity to raise their concerns directly.

**Provincially Funded – Homes For Special Care**

Other similar residential programs, specifically the provincially-administered, Homes for Special Care (HSC) also fall under the TP Act. They experience the same issues as RCFs in regards to compliance. In those situations, staff from the Ministry of Health and Long-Term Care (MOHLTC) place and relocate tenants from one HSC to another. The City of Hamilton would have no jurisdiction over those facilities as they fall entirely under the MOHLTC. There are no federally-operated homes of this nature.

Review of Schedule 20 is currently underway by Public Health Services; the establishment of a sound complaint process is one of the expected outcomes. As well, the Community Services Department is involved with the policy framework for provincial standards within the domiciliary hostel (RCF) program. The MOHLTC is committed to ensuring that compliance with the TP Act / RP Act will be a primary focus. Legal Services is currently providing clarification to staff on both initiatives.

**Housing Ombudsman**

Staff researched the notion of a housing ombudsman’s office. The primary examples of this are found in England. The ORHT provides a parallel function. The ORHT is an independent, quasi-judicial agency. Tenants and landlords can apply to the ORHT to resolve certain types of disputes, either through mediation or adjudication. In mediation, an ORHT mediator will help a landlord and tenant to resolve a dispute and reach an agreement they are both satisfied with. In adjudication, a hearing is usually held. An ORHT member makes a decision based on the evidence examined, and issues an "order." The ORHT also provides landlords and tenants with information about the rights and obligations each has under the TP Act.

In summary, the presentation of the CRCFT with regards to the proposed RP Act is timely. These issues will be explored during the review of Schedule 20 and the implementation of the MCSS standards in the residential care facilities. Staff will make every effort to ensure that tenants have an opportunity to be involved in those processes.

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