

Question For Shortsighted city council and RRL supporter?

DOES RRL REALLY HELP TO RESOLVE
CURRENT ISSUES OR CONTRIBUTE TO NEW
PROBLEMS?



A Review of the Effectiveness and Implications of Municipal Licensing of Residential Apartments

Using evidence of best-practices to determine the impact of apartment licensing on good quality affordable housing, responsible tenancy and apartment ownership, and good neighbourhoods.

September 2013



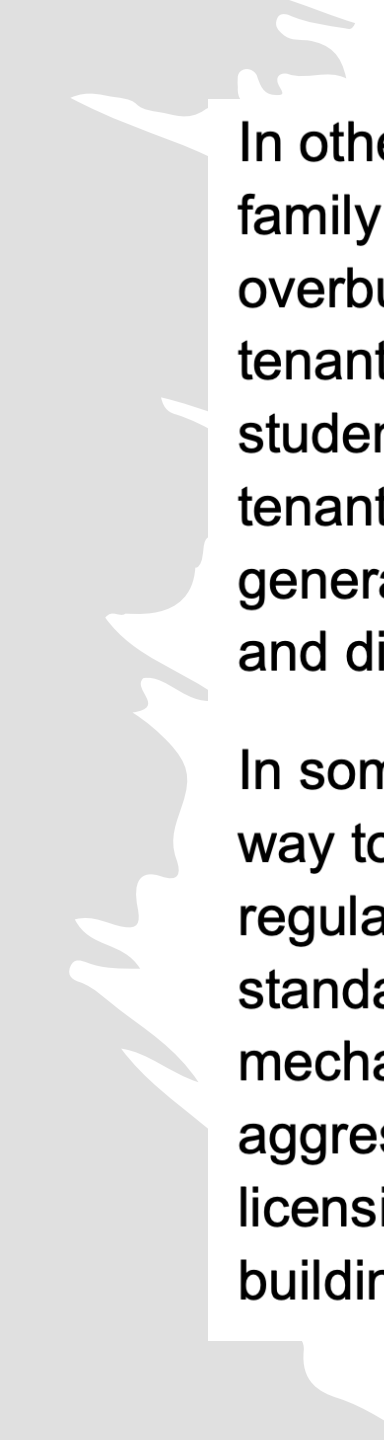
*REFERENCE TO A Research Report for the
Federation of Rental-Housing Providers of
Ontario (FRPO)*

Executive Summary

Some Ontario municipalities have identified an apparent need for a licensing system to manage aspects of the municipal rental housing sector and to generate additional municipal revenues. However, a growing collection of evidence suggests that apartment licensing is in fact not the best solution, instead creating its own set of problems. In this report, we examine the arguments that are often put forward by the proponents of licensing, including licensing's alleged ability to:


- Provide a revenue source to the municipality;
- Manage off-campus student housing, poor landlords and problem tenancies;
- Manage new rental units in existing neighbourhoods;
- Enforce general municipal and provincial property-related regulations;
- Perform better than adjudication at the Landlord and Tenant Board; and
- Aid municipalities in managing and sustaining the rental housing marketplace.





In other neighbourhoods, smaller-scale residential apartments and rented 'flats' in single-family homes generate a different range of concerns. Often, concerns relate to overburdening the parking arrangements or generating noise and traffic. In some cases, the tenants represent a concentration of a particular type of clientele, like post-secondary students, or those regularly dependent on community health or social support services, or tenants who are in some form of transitional housing – and these specialized clienteles may generate specific types of neighbourhood concerns, ranging from adequacy of public transit and disability accommodation, to fire safety and police-calls.

In some cases, individual municipal councillors may hope that municipal licensing will be a way to address shortcomings they perceive in the existing municipal and governmental regulatory network, or as a vehicle to raise the local standard above the universal Provincial standard. From an administrative perspective, licensing may be seen by some as a mechanism to create a 'funnel' or 'gateway' to engage other, more diffuse or less aggressively enforced regulatory activities (both local and beyond). Financially, some see licensing requirements as a 'net' to capture development charges, zoning levies, and building permit fees that might otherwise go uncollected.



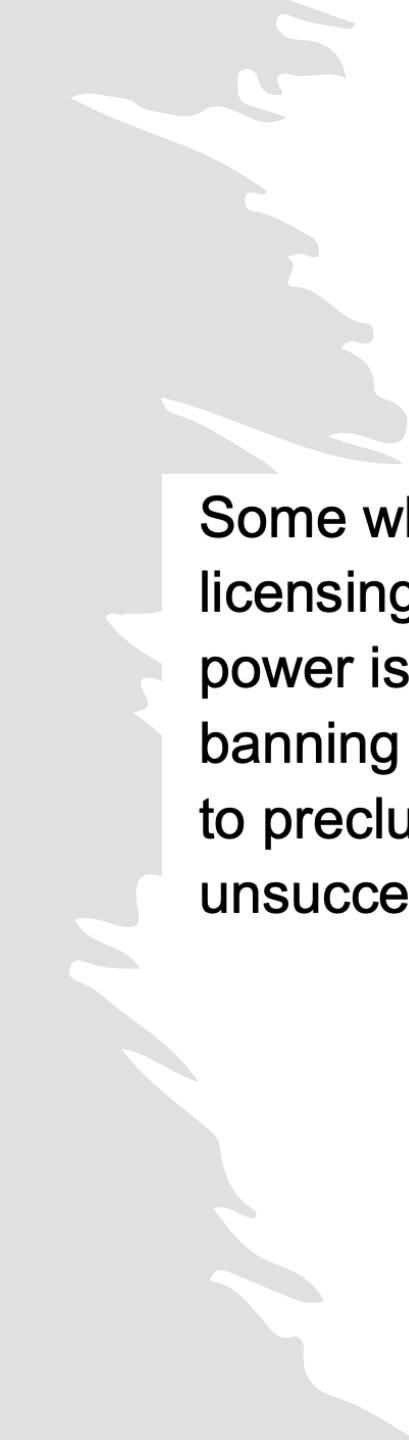
Evidence in the field suggests that apartment licensing is not the best solution to any of the major issues that it is meant to resolve. Cities such as Toronto, Ottawa, Regina, Milwaukee, and others have carefully examined the experience in a number of jurisdictions and then decided against licensing. Their research and findings are illustrative and generally support the conclusions of this Report.

Municipal licensing is sometimes seen as a comprehensive solution for a wide range of rental housing problems. This can make licensing seem attractive for administrative and political convenience, but this perceived comprehensiveness does not equate to its effectiveness.

Apartment licensing is not an efficient source of new 'net' municipal revenues. It creates unintended negative effects on the local economy, especially on the rental housing marketplace, both for owners of major apartment buildings, as well as for those individual property owners or investors who create up to a half-dozen rental housing units in an existing community.

More importantly, apartment licensing does not necessarily offer added protection to tenants and prospective tenants. In fact, it tends to add to the eligible costs that can be charged by landlords and to reduce the options for tenants in the rental housing market. Examining apartment licensing, however, has been demonstrated in various jurisdictions that there are better ways to address the impact of student housing and other 'supplementary units' on communities.

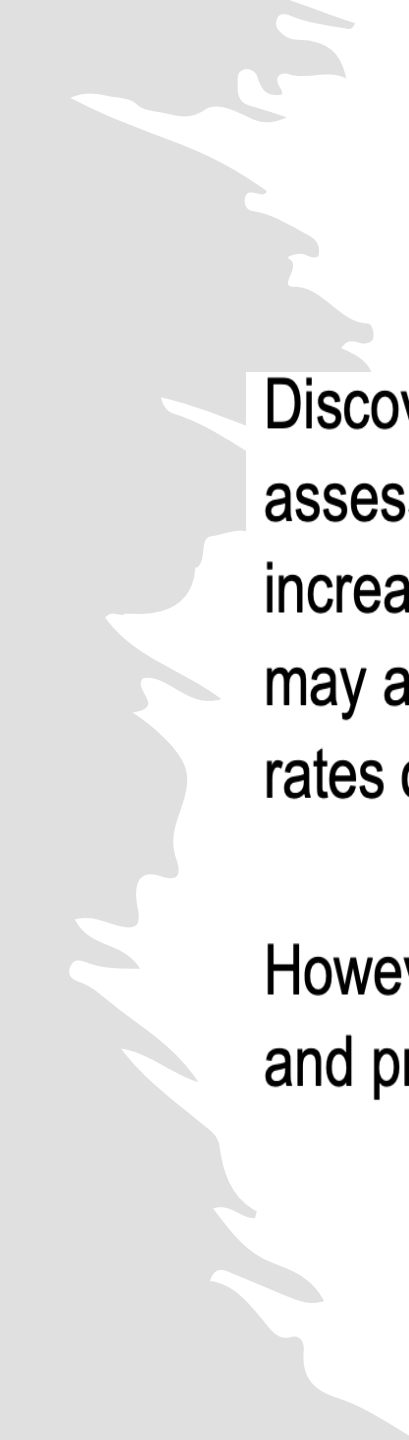
Within the existing range of municipal and provincial powers, there is an extensive set of tools for addressing the problems in the rental housing sector, although effective implementation has required 'new learning' in some cases. A number of progressive municipalities are taking new and creative approaches to monitoring, inspection and enforcement by targeting problem areas and issues in the rental housing field. The evidence demonstrates that the existing regulatory regime can work well and at a more reasonable cost to taxpayers, especially if implemented effectively and in collaboration with apartment owners, tenants, neighbours and post-secondary institutions, and with support from local elected representatives.



Some who oppose rental housing of a particular type or in a particular location may view licensing as a potential tool to stop it altogether. In Ontario, however, the municipal licensing power is understood to be a tool for regulating a legitimate business activity – not for banning it outright. Past efforts to use licensing as a substitute for land-use planning tools or to preclude, rather than regulate, legitimate commercial activity have generally been unsuccessful when challenged.

Rental Licensing Failed in Waterloo, London & Windsor

The recent experience of the City of London ON is illustrative. Since 2010, the City has spent an average of \$400,000 per year in administrative staff costs, for total of \$1.2 million over past three years. The fees collected from the licensing program were just less than \$80,000, resulting in part from phasing needed to overcome community opposition and from widespread non-compliance. Of the estimated 12,500 London rental housing units requiring a license under the bylaw, fewer than 2,000 were registered. Evidently, many have gone “underground”, based on the City staff’s evaluation. To respond to this mismatch between original projected licensing revenues and actual fee-paying compliance, City staff sought a 13.9% increase in the by-law enforcement budget in 2013, as well as an increase in landlord licensing fees.ⁱⁱ/ A similar pattern emerged in the City of Waterloo. Low compliance and fixed-costs for expanded inspection staffing seem to lead to steady pressure on councillors to increase the fees and to widen their application, in order to reduce the budgetary burden of the new licensing regime.



Discovering 'new' units would also allow them to be reported to MPAC, adding taxable assessment to the municipal and school board tax rolls, if in fact a licensing system increases the reporting of new units. These financial risks to small-scale apartment owners may account for the municipal staff reports indicating that apartment licensing has 'evasion' rates of at least 35% and perhaps close to 50%.

However, there are significant public policy questions associated with confronting existing and prospective small-scale apartment owners with significant costs. Rather than producing



2. Off-campus student housing

The impact of student housing on the neighbourhoods surrounding post-secondary institutions often requires special attention. Complaints run the gamut from noise, parking and police-calls, to concerns about the creation of informal supplementary residential units, or the conversion of single-family homes into rooming houses and multiplex residences without adequate approvals or safety inspections.

However, targeting specific populations or specific types of housing with licensing has legal and policy risks. In the cities of North Bay and Oshawa, targeting students through a rental-unit licensing regime was seen as a potentially discriminatory practice by the Ontario Human Rights Commission. In response, those municipalities are developing licensing by-laws that are confined to the neighbourhoods surrounding their post-secondary institutions, which may or may not obviate the fairly obvious criticism that they are still directed at students and at student housing. Student representatives have been active with the Human Rights Commission, challenging such ‘targeting’ of students.ⁱⁱⁱ/ However, to avoid these criticisms and legal risks, the alternative may be to propose wider options that will catch in the net of licensing many communities or types of rental housing that do not need to see this regime imposed on them.

The ‘right-of-access’ and other legal issues

Staff reports considering apartment licensing in several municipalities note the challenges associated with gaining entry to rental units for the purpose of ensuring compliance with existing regulations. Licensing was periodically suggested by municipal staff, such as in Guelph, as a deft, pre-condition mechanism that would help to get around the existing restrictions in statute law and common law.^{iv/}

Since many municipalities have seen inability to gain access as a significant barrier to effective enforcement, licensing is often seen as a mechanism to compel access as a precondition for offering an apartment for rent. In Hamilton’s case, however, staff have pioneered the use of search warrants to ensure their ability to act on complaints or evidence

access by designated public authorities – rather than an elaborate “work-around” using licensing legislation as a pretext – is the more appropriate course.

The underlying assumption is that access would be a precondition to licensing, where inspection is demanded or required. It is important to note that the prevailing law governing access is not altered under a licensing regime. 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.

Another legal issue that was not specifically addressed by public reports of municipalities, but bears considering, is whether licensing apartments has the effect of exposing municipal corporations to damage actions and other litigation. As the St. Jamestown fire experience also demonstrates, claims can be substantial and litigants will seek “deep pockets”, like municipalities, with predictable consequences for municipal insurance premiums. Using



5. *Ineffective local enforcement*

While there are many municipal and provincial regulations and policies in the housing and property standards field, some may 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. (Restrictions in the *Residential Tenancies Act, 2006* on access to units by landlords and others appear to make civic inspections uncertain, episodic and time-consuming). Despite this, the City of Toronto's detailed analysis of licensing regimes points-out the problems inherent in enforcing an apartment licensing by-law, which appear equally daunting.^{v/}

It is estimated that there are as many as 23,000 such individual “unregistered” rental units in a city like Hamilton. If licensing contributes to a loss of these units in the regional housing market (Hamilton City staff estimated a 30% “shrinkage”), the consequences are significant for the volume of rental units available to serve low-income individuals, couples and families, and university and college students, as well as for the rental rates demanded for the remaining units. If being “captured” by an apartment licensing by-law also entails consequential, retroactive planning approvals or development-related levies, there would be an even greater incentive to discontinue the apartment unit, or to join the unregulated “underground economy” in lower-cost rental units, as documented by the City of London’s staff report on the topic [referenced in *Hamilton District Apartment Association’s Report to Planning Committee of Hamilton City Council, December 11, 2012*].

• TENANT ADVOCACY GROUPS CLAIM DOES NOT ALIGN WITH FACTS

3. Enforcement by Landlord Tenant Board – too costly for tenants.

The Ontario Landlord Tenant Board (LTB) has jurisdiction to issue Orders that impose compliance obligations and fines or rent reductions on landlords that fail to meet the requirements of the *Residential Tenancies Act*.

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. The LTB is, it is argued, is too expensive, and therefore out of reach for tenants as a remedy. It is therefore necessary and desirable to use licensing, it is argued, to make up for this gap.

In fact, data from the LTB demonstrates that the LTB does in fact deal with a significant body of tenant-initiated cases relating to such matters.

The Chart below is reproduced from the Landlord and Tenant Board’s Annual Report. It breaks down the over 6,000 tenant-filed applications by subject matter – over 1200 of which dealt with maintenance and 3,500 of which dealt with tenant rights. Clearly, with this volume of cases, the LTB is accessible for many tenants.

Tenant Initiated Application (2009-10)	
Description	No. of Cases
Determine whether the Act Applies	33
Sublet or Assignment	43
Combined Application	1,114
Vary Rent Reduction Amount	2
Rent Rebate (e.g., illegal rent)	574
Tenant Rights	3,517
Rent Reduction	43
Failed Rent Increase Above Guideline	2
Bad Faith Motive of Termination	115
Maintenance	1 215



Report Link:

HTTPS://FRPO.ORG/FILES/REPORTS_AND_SUBMISSIONS/RESIDENTIAL-LICENSING-EFFECTIVE-REVIEW-SEPT-2013.PDF