

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LONDON PROPERTY MANAGEMENT ASSOCIATION

Applicant

- and -

THE CORPORATION OF THE CITY OF LONDON

Respondent

APPLICATION UNDER Section 273(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 and Rule 14.05(3)(d), (g) and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on **Tuesday, October 26, 2010 at 10:00 a.m.**, or as soon after that time as this Application can be heard, at the court house, 80 Dundas Street, London, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and

file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

D. SIMPSON

Date: September 17, 2010

Issued By.....
Local Registrar

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APPLICATION

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1. The Applicant makes an Application for:
 - (a) a Declaration that By-law CP-19, *being a by-law to provide for the licensing and regulation of Residential Rental Units in the City of London* (the "By-law") conflicts with the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, as amended ("RTA");
 - (b) a Declaration that the By-law violates the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, as amended ("MFIPPA");
 - (c) a Declaration that the By-law is enacted in contravention of the provisions of the Ontario *Human Rights Code* R.S.O. 1990, c. H.19 (the "Human Rights Code") inasmuch as it discriminates in accommodation on the basis of age, marital status and receipt of public assistance;
 - (d) a Declaration that the By-law in whole is illegal;
 - (e) a Declaration that the By-law in whole is unreasonable, unfair and oppressive; and,
 - (f) An Order quashing the By-law in whole.
 - (g) Alternatively, an Order:
 - (i) quashing sections 2.1, 2.4, 4.1(d), 7.1, 7.2(b), 7.4(a), 7.4(b), 7.4(c), 7.4(d) and 8.5 of the By-law for illegality as being in

conflict with superior provincial legislation, specifically, the RTA;

- (ii) quashing sections 5.1(a), 6.1(b) and 6.2(k) of the By-law for illegality as violating superior provincial legislation, specifically, MFIPPA;
- (iii) quashing sections 4.1(d), 7.1, 7.2, 7.4(a), 7.4(b), 7.4(c), 7.8 and 8.5 of the By-law as these sections constitute an unlawful delegation of Municipal power under superior provincial legislation, specifically the *Municipal Act*, 2001, S.O. 2001, c. 25
- (iv) quashing sections 1.1 (“Converted Dwelling”), 1.1 (“Owner”), 2.1, 2.3, 2.4, 4.1(c), 5.2, 5.2(e), 5.3, 5.4, 6.1(d), 6.2(e), 6.2(k), 7.1, 7.2(b)(i), 7.3 and 7.4(e) of the By-law for illegality as these sections of the By-law are vague and/or uncertain;
- (v) quashing section 5.2 of the By-law for illegality as this section was enacted in bad faith, based on arbitrary decisions and without input from those affected by the By-law, investigation, analysis or due diligence on the part of City Council (“Council”);
- (vi) quashing sections 2.1, 2.4, 3.1, 5.1(d), 5.2(b), 6.1(d), 6.2(c), 6.2(d), 6.2(e), 6.2(f), 6.2(g), 6.2(h), 6.2(i), 6.2(k), 6.5, 6.7, 7.2(b)(i) and 7.2(b)(iv) of the By-law for illegality as these sections were enacted in excess of the Respondent’s jurisdiction;

- (vii) quashing sections 5.1, 5.2(b), 5.2(c), 5.2(d), 5.3, 5.4, 6.2(b), 6.2(f), 6.2(g), 6.2(h) and 6.2(j) of the By-law on the basis of unreasonableness, unfairness or oppression; and
- (viii) that quashing any and all of sections 1.1 (“Converted Dwelling”), 1.1 (“Owner”), 2.1, 2.3, 2.4, 3.1, 4.1(c), 4.1(d), 5.1, 5.1(a), 5.1(b), 5.1(c), 5.1(d), 5.2, 5.2(b), 5.2(c), 5.2(d), 5.2(e), 5.3, 5.4, 6.1(b), 6.1(d), 6.2, 6.2(b), 6.2(c), 6.2(d), 6.2(e), 6.2(f), 6.2(g), 6.2(h), 6.2(i), 6.2(j), 6.2(k), 6.5, 6.7, 7.1, 7.2(b), 7.2(b)(i), 7.2(b)(iv), 7.3, 7.4, 8.5 and 12.2 of the By-law makes the By-law invalid as these sections are not severable from the remainder of the By-law and therefore the entire by-law must be quashed;
- (h) an Interim Order declaring that administration and enforcement of the By-law be stayed until this Application is finally disposed of by this Honourable Court;
- (i) an Order extending or abridging the time for service and filing of the Notice of Application, the Application Record and the Confirmation of Application, if necessary;
- (j) costs of this application on a substantial indemnity basis; and
- (k) such further and other relief as this Honourable Court may deem just.

2. The grounds for the Application are:

- (a) the Applicant, the London Property Management Association (“LPMA”), and its Members are directly and adversely affected by the By-law;
- (b) the Respondent, the Corporation of the City of London (“the City”), is a municipal corporation duly incorporated under the laws of the Province of Ontario and is a single tier municipality for the purposes of the *Municipal Act, 2001*; and,
- (c) on September 21, 2009 Council enacted the By-law, which requires Licensing of residential rental structures containing 4 or less “Rental Units” and “Converted Dwellings” on a City-wide basis.

The By-law Conflicts with the RTA

- (d) Section 2.1 of the By-law states, “no person shall operate a Rental Unit without holding a current valid license issued under the provisions of this By-law;”
- (e) section 2.4 of the By-law states, “no person shall operate a Rental Unit while their license issued under this By-law is under suspension;”
- (f) the administration of the By-law is assigned to the License Manager who has the power to refuse to issue or renew a license or revoke or suspend a license pursuant to Sections 4.1(d), 7.1, 7.2(b) and 7.4(a)-(d) of the By-law;

- (g) the RTA applies to rental units in residential complexes “despite any other Act” and it states that a tenancy may be terminated only in accordance with the RTA and does not authorize termination of a tenancy for failing to possess a valid, current license under a municipal licensing By-law;
- (h) where there is a tenancy in effect for a rental property, it is impossible for a landlord to legally comply with both the RTA and the By-Law where a licence is refused, revoked or suspended under the By-law based on grounds that do not allow a landlord to terminate a tenancy in accordance with the RTA;
- (i) unlawful recovery of possession of a Rental Unit is an offence under the RTA and attracts fines up to \$25,000.00 per offence for individuals and up to \$100,000.00 for corporations; and
- (j) sections 2.1, 2.4, 4.1(d), 7.1, 7.2(b), 7.4(a)-(d) and 8.5 of the By-law are illegal and should be quashed as they are in conflict with the RTA, which is superior provincial legislation.

The By-law Violates MFIPPA

- (k) Section 5.1(a) of the By-law allows the City to collect and keep in its custody and control the name, municipal address and telephone number of each individual “Owner,” which constitutes “Personal Information” of individual property owners for the purposes of MFIPPA;

- (l) section 28(2) of MFIPPA states that Personal Information shall not be collected on behalf of an institution, which includes a municipality, unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity;
- (m) the City maintains that licensing will allow for an improved database of information which can be used on occasions where after hours contact needs to be made to correct an emergency property related issues but it is unnecessary, unlawful and absurd that the City, through the By-law, collects the name, municipal address and telephone number of each "Owner" in situations where the emergency contact for the rental structure is an agent or property management company and not an "Owner" who may, for example, reside outside the jurisdiction of the City or the Province or the Country;
- (n) section 6.1(b) of the By-law requires that personal information of individual property owners be included on the face of issued licences and section 6.2(k) of the By-law requires, as a condition of obtaining, continuing to hold and renewing a licence, that a copy of the issued licence be "posted and maintained in a prominent and visible position inside the Rental Unit near the front entrance";
- (o) section 32 of MFIPPA states that an institution, which includes a municipality, shall not disclose Personal Information in its custody or

under its control except in certain circumstances, none of which apply to the situation at hand;

- (p) the By-law's requirement that licenses containing Personal Information of individual Licensees be posted in a prominent and public location is an unnecessary and illegal disclosure of Personal Information collected by the City and in its custody or under its control in contravention of section 32 of MFIPPA;
- (q) as the collection, retention and disclosure of Personal Information by the City under the By-law contravenes MFIPPA, which is superior provincial legislation, sections 5.1(a), 6.1(b) and 6.2(k) of the By-law requiring such collection, retention and disclosure should, therefore, be quashed; and
- (r) the disclosure of Personal Information by the City, through the By-law, and making such information readily accessible to tenants and their guests, unnecessarily exposes individual property owners and their families to significant threats of personal safety.

The By-law is Enacted for an Improper Purpose and Contravenes the Provisions of the Ontario *Human Rights Code*

- (s) the By-law is, in part or in whole, enacted for the purpose of discouraging and/or preventing occupancy of rental housing by students attending post-secondary educational institutions in the City of London and as such it contravenes ss. 2 and 11, of the Human Rights Code on the basis of age and marital status;

- (t) The By-law also discriminates in accommodation on the basis of receipt of public assistance inasmuch as it eliminates affordable rental housing units from available rental housing stock in the City of London;

The By-law is Illegal and was enacted in Bad Faith

- (u) Sections 7.1, 7.2, 7.4(a), 7.4(b), 7.4(c) and 7.8 which permit the Licence Manager to refuse licences, constitute an unlawful delegation of Municipal power.
- (v) Council passed the By-law without the minimum degree of fairness, openness and impartiality required of a municipal government by:
 - (i) proceeding in bad faith and without regard to the public participation process by its actions which include, but are not limited to, rejecting the overwhelming majority of public input and submissions opposed to the By-law; rejecting the contents of two petitions containing over 9,000 signatures of tenants opposed to the By-law; failing to have supporting evidence for the By-law; approving funding for 2 inspectors for the purposes of licensing one year before passing the By-law; failing to undertake any investigation, analysis or due diligence on alternative options to licensing including enforcement of current City by-laws; one Councillor publicly reporting outcomes of Council and Planning Committee votes prior to the “public” votes taking place; and

- (ii) failing to permit any public comment, including comment from LPMA or landlords affected by the By-law, on the information requested on the Application form and Self-Certification Checklist;

- (w) Council passed the By-law without candour, frankness and impartiality regarding the unsustainable current license fee amount and the end goal of the licensing regime being that the By-law will apply to all Rental Units and Rental Properties in the City;

- (x) Council passed the By-law for a collateral purpose, based on an improper motive, which is demonstrated by at least 12 City Committee, Staff and Council Reports, Agendas, statements made by individual Council Members and other documents dating back to 2007, that demonstrate that the true purpose for the passage of the By-law is to target and discourage the provision of housing for Students which is an illegitimate municipal purpose and inconsistent with the By-law's stated purposes; and,

- (y) the By-law has the effect of interfering with and ceasing the operation of affordable rental housing units in an unlawful manner and in a discriminatory manner inasmuch as young people, people who are not married and persons in receipt of public assistance are denied affordable housing accommodation as a consequence of implementation by the City staff of the provisions of the By-law in a manner contrary to law;

- (z) council is attempting to accomplish indirectly what it is not authorized by its statutory licensing powers to do directly in:
 - (i) attempting to regulate “Rental Units” even though purporting to license “Rental Properties”; and
 - (ii) regulating and discouraging Student housing.

The By-law is Unreasonable, Unfair and Oppressive

- (aa) The By-law contains irrelevant, onerous and unreasonable conditions as requirements to obtain and to continue to hold a valid current license, including, but not limited to:
 - (i) detailed and irrelevant particulars of the composition of the corporation or each partner’s interest if the property owner is a corporation or a partnership and personal contact information for all directors, officers and partners with notification of any changes of same to be provided to the License Manager within 10 days of such change; and
 - (ii) sworn statements by Applicants, regardless of their qualifications relative to opinions required to be expressed in the statements, as to the truthfulness, accuracy and completeness of the applications thereby shifting legal liability and risk for any physical deficiencies in the Rental Property from the City to property owners by relying upon representations made by same.

- (bb) Although external to the By-law, the City has imposed a “Self-certification” model which requires landlords to complete initial inspections of rental units for by-law and statute compliance regardless of the landlords’ knowledge or qualifications for such assessments. “Self-certification” is unreasonable, unfair and oppressive as the regime transfers legal liability for compliance-related deficiencies from the City to property owners thereby creating a new and additional liability to landlords for which the City itself requires payment, but is not willing to assume.

By-law is Invalid because of Non-severability of Provisions

- (cc) Council’s decision to pass the By-law, and the staff reports it relied upon in arriving at that decision, demonstrate that the individual sections of the By-law that may be quashed:
- (i) are sections that are integral and indispensable parts of the By-law as a whole;
 - (ii) are blended with, connected or essential to the remainder of the By-law;
 - (iii) cannot be clearly distinguished from the valid portions of the By-law;

- (iv) leave no complete By-law that is capable of being enforced;
- (v) leave no By-law that would have been enacted by Council if it had realized that these sections were *ultra vires*;
- (vi) leaves no By-law that Council would have intended on voting for;
- (vii) are not severable from the remainder of the By-law; and
- (viii) therefore, the entire By-law must be declared invalid.

Statutory Provisions Relied Upon

- (dd) Sections 5, 10(2), 14, 23.2, 23.3, 151(1), 272 and 273 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
- (ee) sections 1, 3, 20, 21, 37(1), 39, 50, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 233, 234, 236, 237 and 238 *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, as amended;
- (ff) sections 1, 2(1), 4, 14, 28(2), 31 and 32 of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, as amended;
- (gg) sections 2 and 11 of the *Human Rights Code*;
- (hh) Rules 3.02(1), 13.1.01, 14.05(3)(d), 14.05(3)(g), 14.05(3)(h), 38.01, 38.02, 38.03, 38.09(1) and 38.09.1 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and,

- (ii) Such further and other grounds as counsel may advise and this Honourable Court may accept.

3. The following documentary evidence will be used at the hearing of the application:

- (a) the affidavit of Michael Howe, sworn September 16, 2010 and the exhibits attached thereto;
- (b) the affidavit of Jane MacLaren, sworn September 23, 2010 and the exhibits attached thereto; and
- (c) such further and other evidence, including affidavit evidence, as counsel may advise and this Honourable Court may permit.

4. The Applicant proposes that this application be heard at London, Ontario.

DATE: September 17, 2010

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Court File No.: 2263/2010

LONDON PROPERTY MANAGEMENT ASSOCIATION vs. THE CORPORATION OF THE CITY OF LONDON

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