

the Community Legal Fax

F a c t s & F . A . Q . s

an information newsletter published by Hamilton's Community Legal Clinics

find us online at www.hamiltonlegalclinics.ca

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McQUESTEN

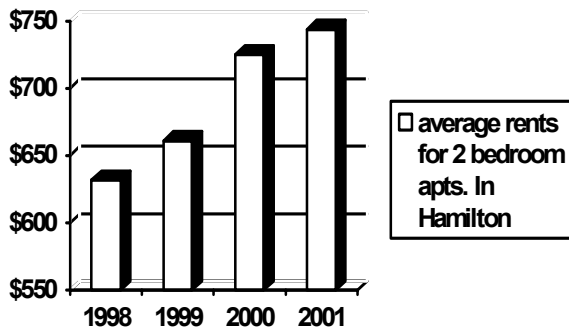
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Rough Road Ahead for Hamilton's Tenants in 2002

Hamilton's 66,000 tenant households are coming to grips with disappointing news about the rising costs and shrinking availability of affordable rental housing in the city. Demand for rental units continues to grow. According to the Canada Mortgage and Housing Corporation's *Annual Rental Market Report*, Hamilton's vacancy rate fell from 1.7% to 1.3% in 2001. On top of those disturbing numbers, over the past three years the average rent for two bedroom apartments increased by more than \$100/month – from \$632 in 1998 to \$744 in 2001. Even though national inflation in those three years rose by less than seven percent, average rents in Hamilton increased by more than twice that amount.



As a result of their inability to afford the increases in rents, low income and vulnerable tenants were being evicted by landlords at alarming rates. During one week in January 2002, just after the holidays, landlords applied to the Ontario Rental Housing Tribunal to evict 150 tenant households in Hamilton – that's more than 200 individuals, including seniors, parents and their children. The majority of these applications were a result of non-payment of rent.

Community resources such as the Housing Help Centre, the Housing Emergency Loan Program, Food Banks and Moving Programs have been stretched to the limit trying to keep up with the demand for their services. Hamilton's Community Legal Clinics

continue to offer advice and representation to tenants who run into legal difficulties; through the Early Intervention Program information packages are sent out on a weekly basis to all tenant households whose



landlord has initiated eviction procedures. These services and programs tend to be stop-gap measures. What has become clear is that governments must step forward to offer long-term solutions to the rental housing crisis that is affecting our community.

In November, the Federal Government took the first step by announcing the details of a National Housing Program promised in the last general election (a responsibility they had relinquished in 1993). The feds will commit \$680 million over four years to building 27,000 new housing units across the country. There is a catch though. The program must be cost-shared with the provinces; and the government of Ontario has been somewhat reluctant to invest in affordable housing initiatives. Negotiations are ongoing and there is hope that both levels of government will soon come to an arrangement.

The municipal government of Hamilton will probably have an important role to play in delivering the National Housing Program. By its own admission, the creation of new affordable, rental housing has been practically non-existent for more than a decade. Only 15 rental units have been built in Hamilton since 1999, while last year alone 503 units were removed from the rental housing market. The City's Housing Department has recently completed a policy paper outlining proposals for building new rental housing in Hamilton. There is at least some hope that in collaboration with the Federal Program, Hamilton's rental crisis might ease and enable low income

and vulnerable tenants in Hamilton to find a place to call

home.

Villani versus The Canada Pension Plan



In the mid 1990s people with disabilities noticed that it became much more difficult to obtain Canada Pension Plan Disability benefits. This was because the Pension Appeals Board had changed the way they interpreted the disability provisions of the Canada Pension Plan. The CPP Review Tribunal started routinely denying benefits for persons who would seem to be quite disabled. Prior to '96, the Pension Appeals Board used what was known as a 'real world test' to determine whether a person should get disability benefits. The Board reviewed a person's disability and determined how the disability affected that person's ability to be able to find and keep a job in the 'real world'. In doing this, they looked at the worker's age, education, language ability and job skills. Under this real world test, you wouldn't conclude that person could physically do the work of a lawyer, for example, when they did not have the education, training or language skills to become a lawyer.

In 1996 this procedure changed – the Pension Appeals Board decided not to use the 'real world' test; according to new criteria, factors like age, education, job skills and language ability were no longer relevant when determining whether a person had a disability. Using this logic, if a person could physically perform the work of a lawyer, they would not be eligible for CPP disability benefits despite the fact that they did not have the education or training to become a



lawyer.

Many advocates argue that in order to determine whether a person is disabled and able to work, it is essential to look at how a disability affects that person's ability to find and keep a job. This means looking at the type of job the person could likely perform given their skills, education and training. The Ministry tightened their rules knowing that any appeals would have to fit into this new criteria and would severely curtail successful appeals.

During the summer of 2001 all this changed when the Federal Court of Appeal decided *the Villani Case*. This was an appeal by Mr. Villani of a denial of disability benefits by the Pensions Appeal Board. His appeal was allowed by a unanimous decision of the Court. The decision was strongly worded and had some harsh comments for the Appeals Board. The Court said that the Pensions Appeal Board had subverted the "benevolent purpose of the legislation". The Court restored the 'real world test' that had been used prior to 1996.

This case has had an impact. In the early Pensions Appeals Board cases decided after *Villani* the Pensions Appeals Board has accepted and applied the precedent of the *Villani* case. It is now easier to win an appeal at the Pensions Appeal Board.

The impact of the *Villani* case seems to have filtered down to the Ministry. There have been fewer CPP disability appeals; legal clinic caseworkers have also noticed a decrease in cases. It would seem that fewer cases are being denied by the Ministry.

The impact that this has had on our community can be significant. Anyone who was turned down for disability benefits since 1996 should re-apply. Since the test for receiving benefits is not as narrow as it once was, there are likely many people who were denied benefits in the past who would be allowed benefits now. If you (or a client) have had your case denied by the Ministry, you should contact your local legal clinic for help in appealing the decision; if the time for the appeal has run out, contact your M.P. for help in sending a new application.

Andrew Bomé, a Staff Lawyer at McQuesten Legal & Community Services noted that the recent Federal Court Decision means "C.P.P. Disability Benefits that were once denied may now have a chance of success..."



**The Board and Staff of
DUNDURN
COMMUNITY LEGAL
SERVICES invite you
to their brand new
office to join in
celebrating a new
location and twenty
years of service to the
community. This
event will coincide
with the launch of
Hamilton's Legal Aid
Services brochure.**

JOIN US!

March 5th, 2002

**between 3 pm & 6 pm
Opening Ceremonies to
begin at 3:30**



**110 King Street West
On the Plaza Level of
Jackson Square**

(up the escalator from the food court)

**PLEASE RSVP by February 25th at
905-527-4572**

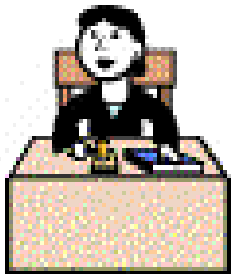


Social Housing DOWNLOADING

The recent passage of the Social Housing Act has resulted in significant changes to the administration of and the rules governing social housing in this province. The first change is that municipalities or “Service Managers” are now responsible for managing and overseeing social housing, instead of the province. The transfer from the province to the City of Hamilton has already taken place.

Some of the many changes that affect tenants and/or applicants for social housing (people on the CHAN waiting list) are:

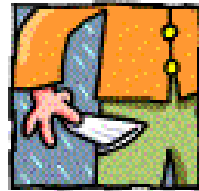
- The new rules state that tenants or applicants must report any changes in information to the landlord within 10 business days - failure to report these changes would result in a loss of subsidy or in losing one’s place on the waiting list; we are hoping that the province will increase the time allowed to something more reasonable;



- Most decisions that are made which affect tenants and/or applicants for social housing are subject to an “internal review” or appeal process - this process is presently being set up by City staff with input from housing providers and some tenant representatives; we are hopeful that the City will recognize the value of an

independent third party arbiter conducting the review or appeal;

- A housing provider can now insist that a tenant must apply for certain types of income if they believe that there may be an entitlement (such as Ontario Works or child support) unless there are compelling reasons for not doing so - failure to comply with such a request could result in a loss of a tenant’s subsidy



The new law has not changed some things. For example, the percentage of a tenant’s income that will be charged for rent is still 30 percent. CHAN is still the entry/access point for applicants for housing.

For more information on the changes and how they may affect you, contact your local legal clinic.

THE HAMILTON TENANT EDUCATION PROJECT

is an initiative undertaken by the Solutions for Housing Action Committee (SHAC) in response to recommendations made in the Community Action Plan on Homelessness in Hamilton. It will include outreach, research and education to provide tenants with information and resources to find and maintain rental housing and prevent homelessness. If you or your organization provides services and has knowledge of the unique needs of tenants we would like to hear from you. A questionnaire has been developed to identify any gaps in housing and tenant services. All of the information that is provided will be confidential and used for the purpose of this project. To obtain a copy of the questionnaire or for more information on the Tenant Education Project, please contact Donna or Robin at the Housing Help Centre at 905-526-8100.



Community legal clinics welcome the participation of individuals and organizations who share their aims and objectives. We encourage you to become a member of the clinic in your area. Members are kept informed of clinic activities. Once

a year an election is held to fill vacancies on the boards of directors. Becoming a member of your local clinic is easy. Contact us! We look forward to hearing from you.