

## **Purpose**

The purpose of this report is to provide the results of a third party review of several major service manager local rules as it relates to eligibility for rent-geared-to-income (RGI) assistance. The third party review was conducted by the Housing Services Corporation (HSC), which is an Ontario-based non-profit organization that provides business expertise to all 47 service managers in Ontario as it relates to community housing. The local rules that were the focus of this review include: community safety (refusals by housing providers), tenant transfers between housing providers, applicant refusal of offers, selections & overhoused households, RGI calculation simplification, and occupancy standards.

## **Background**

This review was requested from Community Services Committee (CSC) during the December 2<sup>nd</sup>, 2019 meeting (resolution # CS2019-25) as a result of the report titled, "Updates to the *Housing Services Act, 2011*".

## **HSC Review Summary**

Attached to this report is Appendix A, the report entitled "Third Party Review of Occupancy Standards and Local Eligibility Rules that was conducted by HSC. This report contains three (3) main sections:

1. Summary of the legislation – as it relates to occupancy standards under the *Housing Services Act, 2011* (HSA) and Ontario Regulation 367/11 (O. Reg. 367/11);
2. Identification of industry best practices – analysis of local eligibility rules and occupancy standards of five (5) service managers with services areas comparable to the City of Greater Sudbury; and
3. Memorandum of legal analysis and opinion – from Gowling WLG (Canada) LLP regarding legal implications of establishing alternate local rules and the application of human rights law to eligibility rules. This legal analysis is included in Appendix A.

The review indicated that as a service manager under the *Housing Services Act, 2011*, the City of Greater Sudbury has an important responsibility to administer RGI assistance in an equitable and consistent manner. In addition, the review of occupancy standards across the City of Greater Sudbury and the five (5) service managers indicated that there is a great deal of consistency in the application of legislative references, occupancy standards and criteria for an additional bedroom, and appropriately implements the requirements of the HSA and *Ontario Regulation 367/11*.

The three (3) recommendations that were provided by HSC review and legal opinion of Gowling WLG were the following:

1. Consider the legal opinion of Gowling WLG when reviewing and updating any local rules. It is important to note that any provincial requirements/regulations take precedence over an occupancy standard adopted by a service manager;
2. The City of Greater Sudbury should continue to administer, implement, and distribute RGI assistance in an equitable and consistent manner, with particular consideration to overhoused and underhoused households, and reference local municipal occupancy by-laws; and
3. Update all relevant existing policies, directives, and procedures to reflect changes to the HSA and its regulations (including O. Reg. 367/11 and Ontario Reg. 298/01) and to ensure consistent application of these requirements and local rules.

### **Relation to Provincial Rules for Occupancy Standards**

As stated in s. 42 of O. Reg. 367/11 of the HSA, local rules for service managers must comply with provincial occupancy standards. This provincial regulation states that a household may only be granted a larger unit that is reasonably necessary due to a disability or medical condition of the household. In addition, the occupancy standards must treat a child as a member of a household if it satisfies all three conditions: 1. is in attendance at a recognized educational institution, 2. lives with the household while not attending that educational institution, and 3. the child is dependent in whole or in part on the household for financial support.

The determination if a child is to be included as part of the household is conducted by verifying that there is a declaration signed by the parent and/or legal guardian or a signed legal court order that indicates sole custody. In situations where custody is unclear, children are deemed a part of the household if the parent and/or legal guardian is in receipt of the Child Tax Benefit for the child/children.

Any contradiction to these regulations, unless otherwise stated, would be in non-compliance of the *Housing Services Act, 2011*. As stated by the legal opinion of Gowling WLG, all provincial regulations take precedence over any local service manager local rules. In addition, as it is outlined by the legal opinion of Gowling WLG, s. 14 of the *Human Rights Code* permits the landlord or service manager to impose rules that are rationally connected to the goal of providing housing to as many eligible applicants as possible. Limiting an additional eligibility criteria based on age of household members would be in non-compliance of the HSA and *Human Rights Code*.

## **Next Steps**

Housing Services staff will amend its related local rules to ensure they are in compliance with the recent changes in provincial legislation.

## **References**

*Housing Services Act, 2011*

<https://www.ontario.ca/laws/statute/11h06>

*Ontario Regulation 367/11: General*

<https://www.ontario.ca/laws/regulation/110367>

*Human Rights Code, R.S.O. 1990, c. H.19*

<https://www.ontario.ca/laws/statute/90h19#BK16>

Community Services Committee Meeting, December 2<sup>nd</sup>, 2019, Updates to the *Housing Services Act, 2011*

<https://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&attachment=28068.pdf>