

THE CORPORATION OF THE CITY OF WINDSOR
Social Development, Health and Culture Standing Committee
Administrative Report

**MISSION STATEMENT:**

"The City of Windsor, with the involvement of its citizens, will deliver effective and responsive municipal services, and will mobilize innovative community partnerships"

LiveLink REPORT #: 15243 MU2011	Report Date: April 18, 2011
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To: Social Development, Health and Culture Standing Committee

Subject: CQ9-2011 Protection of Residential Tenants

1. RECOMMENDATION: City Wide: X Ward(s): _____

That this report of Senior Legal Counsel responding to CQ9/2011 **BE RECEIVED** for information.

2. BACKGROUND:

At the January 24, 2011 council meeting Councillor Sleiman asked CQ9-2011 as follows:

"That the Legal Department look into the legality of a by-law to protect residential tenants from being thrown out on the street in the middle of the month and in the coldest time of the year just because the landlord did not pay the utility bill or maintain the building. The by-law that I am proposing is:

- 1. Utility companies (Gas, hydro, water) must give residential tenants at least one month notice before the utilities are being cut off, and the cut off date must coincide with the first of the month.*
- 2. The intent of this by-law is to protect tenants from being thrown out on the street during the month with no place to go and especially during the winter.*

If such a by-law is beyond the power of the municipality, then the by-law would stipulate that the City must step in and pay the utilities for that month and add the bill to the property taxes. What happened last week to those helpless tenants must not happen again."

This council question was asked shortly after an article appeared in the January 19, 2011 edition of the Windsor Star, about an east side apartment building that had to be vacated because Enwin shut off the water and electricity due to non payment of the utility bills.

Prior to this event happening, staff from the Residential Support Services in Housing and Children's Services and Building Department personally attended several times at the premises and provided the tenants with information about the pending shut-off, emergency shelter options, and other accommodation. Further details about this are found in the "Discussion" part of this report.

3. DISCUSSION:

Generally, legislation concerning residential tenants is found in the Residential Tenancies Act, 2006 (RTA).

In particular, sections 215 to 223 of the RTA authorize municipalities to pass Vital Services By-laws. "Vital services" means hot or cold water, fuel, electricity, gas or heat (from September 1 to June 15). A synopsis of these provisions is provided below, while the text of these sections and relevant sections of the Municipal Act are reproduced in Appendix "A" attached to this report.

Municipalities are authorized to pass by-laws requiring landlords to provide adequate and suitable vital services to rental units; prohibiting a supplier from discontinuing to provide the vital service unless the supplier gives 30 days written notice thereof to the clerk of the municipality; requiring a supplier to restore the vital service when directed by the official named in the by-law; upon failure of the landlord to provide the vital service, the municipality through the named official can arrange with the supplier to provide the vital service to the rental units.

Where the municipality arranges for the supply of the vital service, the municipality may recover the cost of the vital service and a ten percent administration fee, by registering a lien in the local land registry office. S. 219 of the RTA specifically provides that such a registered lien does not have the same status as municipal property taxes. That is, the registered lien does not have priority status and cannot be collected in the same manner as municipal property taxes (as described in s. 349(3) of the Municipal Act). Although municipalities are entitled to recover the costs of providing the vital services to rental units, the cost of the vital service cannot be added to taxes or collected in the same manner as taxes.

As council will recall, s. 349(3) of the Municipal Act provides that municipal property taxes have priority over all registered encumbrances on title (such as mortgages) except liens registered by the provincial and federal governments. In addition municipalities may sell properties which have accumulated tax arrears for the legislated periods of times, in order to recover the outstanding tax arrears. On a sale of property for tax arrears, municipalities are entitled to be paid first from the proceeds of sale, except for liens registered by the federal government.

Where a municipality arranges to have the vital service provided to a rental unit, the official named in the by-law may direct tenants to pay all or part of their rent for the rental unit to the municipality. S.221 of the RTA provides that this does not result in a breach of the lease by the tenant. The funds so received by the municipality are then to be used to pay for the requested vital service, and the municipality has to provide the landlord with an accounting of the funds so received and spent.

The provisions of a vital services by-law passed under the RTA are different from the provisions of s.398 of the Municipal Act.

S. 398 of the Municipal Act allows utility providers who are a municipality or a local board, such as the Windsor Utilities Commission (water), and supply a defined public utility, to request that the municipality add the outstanding fees and charges for the supply of such a public utility, to the taxes of the property for which the public utility was supplied. This applies to all properties that are supplied with the public utility, and is not limited to residential rental units. S. 398 of the Municipal Act only applies to municipalities and local boards that provide the defined public utilities, so it does not apply for example, to Union Gas. "Public utilities" are defined by a regulation under the Municipal Act. These include water, gas, steam or hot water, sewage system and waste management. Electricity is excluded from the definition of public utilities. This may explain why Enwin shut off the electricity to the east side apartment, since it could not add the outstanding electricity charges to the property taxes.

Generally in circumstances where a landlord is in arrears for utilities and a shut off is pending the utility company advises the Building Department of the anticipated date of the shut off. This information is then conveyed to the Manager of Residential Support Services in Housing and Children's Services. In advance of the shut off and a do not occupy order being posted by the Building Department, Housing and Children's Services staff provide information and flyers to the tenants advising them of emergency shelter options and of an agency who will assist them with finding other permanent accommodations in the City. The tenants are also given an opportunity to contact 211 for further support if needed. On the day of the order being posted staff from Housing and Children's Services are available on site to assist tenants through the provision of information and transportation if needed. All of these procedures were implemented in January 2011, for the benefit of the tenants of the east side apartment.

Through provincial, municipal and other funding sources a program is available to the community called "Keep the Heat" that provides emergency financial assistance for heat and energy for those experiencing financial difficulties and in receipt of a notice of termination by a utility company. However landlords are not eligible for this program.

Although there is legislation which the City could implement to provide protection for tenants in the event of a utility shut-off for non-payment of bills by landlords, the City already takes active steps through the Residential Support Services in Housing and Children's Services, Building Department and in some cases the Fire Department to provide assistance and support for such tenants.

4. FINANCIAL MATTERS:

The costs of administering the by-law and any related accounting would be additional costs to the municipality which may not be entirely set off by the ten percent administrative charge authorized by the RTA.


5. CONSULTATIONS:

City Solicitor
Executive Director of Housing and Children's Services

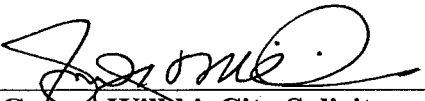
6. CONCLUSION:

Based on the review of the relevant legislation, Council is authorized to pass a vital services by-law under the provisions of the Residential Services Act, 2006. Such a by-law can address the following matters:

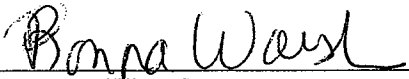
- 1) Requiring the provision of vital services to tenants, by landlords;
- 2) Council may arrange to provide vital services where the landlord fails to do so, and may recover the costs thereof plus an administration charge by; a) registering a lien in the local land registry office, and b) directing the tenants to pay rent to the municipality and providing an accounting to the landlord. The costs of providing the vital services cannot be added to the tax roll or collected as municipal property taxes; and
- 3) Before discontinuing to provide the vital services, the service providers are to give the clerk 30 days written notice thereof. There is no obligation to notify the tenants directly, nor does the notice have to be provided on the first day of the month.



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Community Development and Health
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Social Development, Health, Recreation
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/jlb

APPENDICES: Appendix "A" – Extracts from Provincial legislation

DEPARTMENTS/OTHERS CONSULTED:
Name:
Phone #: 519 ext.

NOTIFICATION :				
Name	Address	Email Address	Telephone	FAX

APPENDIX "A"

Extracts from Provincial legislation

Residential Tenancies Act, 2006, S.O. 2006, c.17

Interpretation

2. (1) In this Act,

"municipal taxes and charges" means taxes charged to a landlord by a municipality and charges levied on a landlord by a municipality and includes taxes levied on a landlord's property under Division B of Part IX of the *Education Act* and taxes levied on a landlord's property in unorganized territory, but "municipal taxes and charges" does not include,

- (a) charges for inspections done by a municipality on a residential complex related to an alleged breach of a health, safety, housing or maintenance standard,
- (b) charges for emergency repairs carried out by a municipality on a residential complex,
- (c) charges for work in the nature of a capital expenditure carried out by a municipality,
- (d) charges for work, services or non-emergency repairs performed by a municipality in relation to a landlord's non-compliance with a by-law,
- (e) penalties, interest, late payment fees or fines,
- (f) any amount spent by a municipality under subsection 219 (1) or any administrative fee applied to that amount under subsection 219 (2), or
- (g) any other prescribed charges; ("redevances et impôts municipaux")

"vital service" means hot or cold water, fuel, electricity, gas or, during the part of each year prescribed by the regulations, heat. ("service essentiel") 2006, c. 17, s. 2 (1).

Application of Act

3. (1) This Act applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary. 2006, c. 17, s. 3 (1).

PART XIII MUNICIPAL VITAL SERVICES BY-LAWS

Definition

215. In this Part,

"vital services by-law" means a by-law passed under section 216. 2006, c. 17, s. 215.

By-laws respecting vital services

216. (1) The council of a local municipality may pass by-laws,

- (a) requiring every landlord to provide adequate and suitable vital services to each of the landlord's rental units;
- (b) prohibiting a supplier from ceasing to provide the vital service until a notice has been given under subsection 217 (1);
- (c) requiring a supplier to promptly restore the vital service when directed to do so by an official named in the by-law;

- (d) prohibiting a person from hindering, obstructing or interfering with or attempting to hinder, obstruct or interfere with the official or person referred to in subsection 218 (1) in the exercise of a power or performance of a duty under this section or sections 217 to 223;
- (e) providing that a person who contravenes or fails to comply with a vital services by-law is guilty of an offence for each day or part of a day on which the offence occurs or continues;
- (f) providing that every director or officer of a corporation that is convicted of an offence who knowingly concurs in the commission of the offence is guilty of an offence;
- (g) authorizing an official named in the by-law to enter into agreements on behalf of the local municipality with suppliers of vital services to ensure that adequate and suitable vital services are provided for rental units. 2006, c. 17, s. 216 (1).

Exception

(2) A vital services by-law does not apply to a landlord with respect to a rental unit to the extent that the tenant has expressly agreed to obtain and maintain the vital services. 2006, c. 17, s. 216 (2).

Contents of vital services by-law

- (3) A vital services by-law may,
- (a) classify buildings or parts of buildings for the purposes of the by-law and designate the classes to which it applies;
 - (b) designate areas of the local municipality in which the by-law applies;
 - (c) establish standards for the provision of adequate and suitable vital services;
 - (d) prohibit a landlord from ceasing to provide a vital service for a rental unit except when necessary to alter or repair the rental unit and only for the minimum period necessary to effect the alteration or repair;
 - (e) provide that a landlord shall be deemed to have caused the cessation of a vital service for a rental unit if the landlord is obligated to pay the supplier for the vital service and fails to do so and, as a result of the non-payment, the vital service is no longer provided for the rental unit. 2006, c. 17, s. 216 (3).

Notice by supplier

217. (1) A supplier shall give notice of an intended discontinuance of a vital service only if the vital service is to be discontinued for the rental unit because the landlord has breached a contract with the supplier for the supply of the vital service. 2006, c. 17, s. 217 (1).

Same

(2) The notice shall be given in writing to the clerk of the local municipality at least 30 days before the supplier ceases to provide the vital service. 2006, c. 17, s. 217 (2).

Inspection

218. (1) An official named in a vital services by-law or a person acting under his or her instructions may, at all reasonable times, enter and inspect a building or part of a building with respect to which the by-law applies for the purpose of determining compliance with the by-law or a direction given under subsection 221 (1). 2006, c. 17, s. 218 (1).

Same

- (2) Despite subsection (1), the official or person shall not enter a rental unit,
- (a) unless he or she has obtained the consent of the occupier of the rental unit after informing him or her that he or she may refuse permission to enter the unit; or
 - (b) unless he or she is authorized to do so by a warrant issued under section 231. 2006, c. 17, s. 218 (2).

Services by municipality

219. (1) If a landlord does not provide a vital service for a rental unit in accordance with a vital services by-law, the local municipality may arrange for the service to be provided. 2006, c. 17, s. 219 (1).

Lien

(2) The amount spent by the local municipality under subsection (1) plus an administrative fee of 10 per cent of that amount shall, on registration of a notice of lien in the appropriate land registry office, be a lien in favour of the local municipality against the property at which the vital service is provided. 2006, c. 17, s. 219 (2).

No special lien

(3) Subsection 349 (3) of the Municipal Act, 2001 and subsection 314 (3) of the City of Toronto Act, 2006 do not apply with respect to the amount spent and the fee, and no special lien is created under either subsection. 2006, c. 32, Sched. C, s. 56 (4).

Certificate

(4) The certificate of the clerk of the local municipality as to the amount spent is proof, in the absence of evidence to the contrary, of the amount. 2006, c. 17, s. 219 (4).

Interim certificate

(5) Before issuing a certificate referred to in subsection (4), the clerk shall send an interim certificate by registered mail to the registered owner of the property that is subject to the lien and to all mortgagees or other encumbrancers registered on title. 2006, c. 17, s. 219 (5).

Appeal

220. An affected owner, mortgagee or other encumbrancer may, within 15 days after the interim certificate is mailed, appeal the amount shown on it to the council of the local municipality. 2006, c. 17, s. 220.

Payments transferred

221. (1) If the local municipality has arranged for a vital service to be provided to a rental unit, an official named in the vital services by-law may direct a tenant to pay any or all of the rent for the rental unit to the local municipality. 2006, c. 17, s. 221 (1).

Effect of payment

(2) Payment by a tenant under subsection (1) shall be deemed not to constitute a default in the payment of rent due under a tenancy agreement or a default in the tenant's obligations for the purposes of this Act. 2006, c. 17, s. 221 (2).

Use of money

222. (1) The local municipality shall apply the rent received from a tenant to reduce the amount that it spent to provide the vital service and the related administrative fee. 2006, c. 17, s. 222 (1).

Accounting and payment of balance

(2) The local municipality shall provide the person otherwise entitled to receive the rent with an accounting of the rents received for each individual rental unit and shall pay to that

person any amount remaining after the rent is applied in accordance with subsection (1). 2006, c. 17, s. 222 (2).

Immunity

223. (1) No proceeding for damages or otherwise shall be commenced against an official or a person acting under his or her instructions or against an employee or agent of a local municipality for any act done in good faith in the performance or intended performance of a duty or authority under any of sections 215 to 222 or under a by-law passed under section 216 or for any alleged neglect or default in the performance in good faith of the duty or authority. 2006, c. 17, s. 223 (1).

Same

(2) Subsection (1) does not relieve a local municipality of liability to which it would otherwise be subject. 2006, c. 17, s. 223 (2).

O. Reg. 516/06 Residential Tenancies Act, 2006

Definition of "vital service"

4. (1) For the purpose of the definition of "vital service" in subsection 2 (1) of the Act, September 1 to June 15 is prescribed as the part of the year during which heat is a vital service. O. Reg. 516/06, s. 4 (1).

MUNICIPAL ACT, 2001, S.O. 2001, c. 25

Recovery of taxes

349. (1) Taxes may be recovered with costs as a debt due to the municipality from the taxpayer originally assessed for them and from any subsequent owner of the assessed land or any part of it. 2001, c. 25, s. 349 (1).

Interpretation

(2) Subsection (1) does not affect the taxpayer's or owner's recourse against any other person. 2001, c. 25, s. 349 (2).

Special lien

(3) Taxes are a special lien on the land in priority to every claim, privilege, lien or encumbrance of every person except the Crown, and the lien and its priority are not lost or impaired by any neglect, omission or error of the municipality or its agents or through taking no action to register a tax arrears certificate. 2001, c. 25, s. 349 (3).

Proof of debt

(4) In any action to recover taxes, the production of the relevant part of the tax roll purporting to be certified by the treasurer as a true copy is, in the absence of evidence to the contrary, proof of the debt. 2001, c. 25, s. 349 (4).

Separate action

(5) The municipality may treat each year's taxes as a separate amount owing to the municipality and may bring separate actions for the purposes of recovering each amount. 2001, c. 25, s. 349 (5).

Debt

398. (1) Fees and charges imposed by a municipality or local board on a person constitute a debt of the person to the municipality or local board, respectively. 2001, c. 25, s. 398 (1); 2006, c. 32, Sched. A, s. 170 (1).

Amount owing added to tax roll

(2) The treasurer of a local municipality may, and upon the request of its upper-tier municipality, if any, or of a local board whose area of jurisdiction includes any part of the municipality shall, add fees and charges imposed by the municipality, upper-tier municipality or local board, respectively, to the tax roll for the following property in the local municipality and collect them in the same manner as municipal taxes:

1. In the case of fees and charges for the supply of a public utility, the property to which the public utility was supplied.
2. In all other cases, any property for which all of the owners are responsible for paying the fees and charges. 2001, c. 25, s. 398 (2); 2006, c. 32, Sched. A, s. 170 (2).

O. Reg. 581/06 Municipal Act

Certain public utility fees and charges

1. Fees and charges that are imposed by a municipality or local board under the Act for the following services and added to the tax roll under subsection 398 (2) of the Act have priority lien status as described in section 1 of the Act:

1. For the supply of water.
2. For the supply of artificial or natural gas.
3. For the supply of steam or hot water.
4. For the use of a sewage system..
5. For the use of a waste management system. O. Reg. 581/06, s. 1; O. Reg. 566/07, s. 1.