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# Apartment Licensing in Toronto

## A solution in search of a problem?



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# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY   Apartment Licensing in Toronto .....</b>	<b>iii</b>
<b>CHAPTER ONE   WHY LICENSE APARTMENT BUILDINGS? .....</b>	<b>1</b>
1.1 Why we undertook the study.....	1
1.2 How to evaluate regulatory programs .....	1
1.3 What we did .....	1
<b>CHAPTER TWO   THE RENTAL SITUATION IN THE CITY OF TORONTO .....</b>	<b>3</b>
2.1 The social and economic context of the Toronto rental sector .....	3
2.2 Provincial and municipal legislation and by-laws .....	4
2.3 Previous systems for maintaining apartment quality in Toronto.....	5
2.4 The current system.....	5
2.5 The push to license apartments .....	7
2.6 Justifying the proposal for licensing .....	8
<b>CHAPTER THREE   THE MANY APPROACHES TO REGULATION.....</b>	<b>10</b>
3.1 Toronto's proposed menu of options.....	10
3.2 Other options from elsewhere .....	13
<b>CHAPTER FOUR   CASE STUDIES .....</b>	<b>14</b>
4.1 Comparing Toronto with other cities .....	14
4.2 Cities with licences: overview of research findings .....	15
4.3 What was the problem that licensing was supposed to solve?.....	20
4.4 Did licensing solve the problem?.....	21
4.5 The unintended or unanticipated consequences of licensing.....	23
4.6 Lessons from other cities.....	25
4.7 Keys to a successful program .....	26
4.8 Perspectives from cities without licences .....	27
<b>CHAPTER FIVE   COMPARING RENTAL CHARACTERISTICS OF CITIES WITH AND WITHOUT LICENSING PROGRAMS .....</b>	<b>28</b>
5.1 Amount of rental housing.....	28
5.2 Building conditions and licensing .....	29
5.3 Vacancy rates and licensing.....	30
5.4 Average rents .....	31
5.5 What we can learn from housing statistics .....	32
<b>CHAPTER SIX   INCENTIVE PROGRAMS TO CREATE OR UPGRADE RENTAL HOUSING .....</b>	<b>33</b>
6.1 Canadian rental housing quality programs.....	33
6.2 American rental investment programs/grants.....	33
<b>CHAPTER SEVEN   CONCLUSIONS .....</b>	<b>35</b>
7.1 Would a regulatory program yield the intended benefits?.....	35
7.2 Would the costs exceed the resulting social benefits? .....	37
7.3 Could the same results be achieved more cheaply and effectively using another method?.....	39
<b>Appendix A: Areas covered by different policies .....</b>	<b>40</b>
<b>Appendix B: Comparative data .....</b>	<b>42</b>
<b>Appendix C: Rental unit quality funding programs in Canada and the U.S. ....</b>	<b>45</b>
<b>Appendix D: What would it take to implement licensing in Toronto?.....</b>	<b>48</b>
<b>Works Cited.....</b>	<b>51</b>



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## **EXECUTIVE SUMMARY | Apartment Licensing in Toronto**

The City of Toronto is currently considering a new Multi-Residential Apartment Buildings Regulatory Strategy, which consists of 10 policy options. Two of those options involve licensing either apartment owners or apartment units. This report, prepared for the Greater Toronto Apartments Association, provides an evaluation of some of the likely costs and benefits of licensing rental apartments, based on the experiences of other North American cities that have licensing programs, as well as data on housing quality in those cities and comparisons with cities that do not license rental apartments.

Regulatory regimes can be evaluated in terms of economic efficiency by asking three main questions:

1. Would a regulatory program yield the intended benefits?
2. Would the costs exceed the resulting social benefits?
3. Could the same results be achieved more cheaply and effectively using another method?

According to documents prepared by the City of Toronto and statements by the chair of the City's Municipal Licensing and Standards division, the new strategy is intended to solve the following problems:

- the failure of the existing complaint-based system to ensure adequate enforcement of property standards, including a perceived leniency in the treatment of landlords who violate property standards;
- the reluctance of some low-income or immigrant rental tenants to use the complaint-based system;
- a critical shortage of trained inspection staff;
- a high proportion of aging building stock, some of it in poor repair.

Our research suggests that a universal licensing system that applied to all apartment building owners or operators would not be effective in dealing with the minority who do not adequately maintain their properties. Although three U.S. cities with licensing programs claim that their programs have stimulated investment in upgrading rental housing, these three cities all have much higher vacancy rates than Toronto (an incentive for landlords to upgrade) and access to funding programs that help pay for improvements. Also, statistics on housing quality do not show a clear relationship between the existence of a licensing program and marked improvements in overall rental housing quality.

The problem of tenants who cannot or do not complain about legitimate problems could be solved without a licensing program, simply by enhancing the current system to make it more user-friendly.

The shortage of trained inspection staff certainly hampers the effectiveness of the existing system, but imposing a fee on all apartment buildings, which would be passed through to tenants in the form of rent increases, is an inappropriate and regressive way to pay for this City responsibility. Since the rental sector houses most of Toronto's low-income households, the fee would in many cases be paid by those who could least afford it.



The aging of the rental stock is not a problem that a licensing program can solve. Toronto's stock is aging because the programs that stimulated the creation of new rental housing have been abolished and very little new rental stock is being created. This is a problem for senior orders of government, and calls for a national housing strategy.

We conclude not only that a universal licensing program would not address the problems it is supposed to solve, but also that the cost of licensing would outweigh the social benefits of solving these problems. Moreover, in interviews with officials in cities that have licensing programs, we heard about some disadvantages of licensing programs, such as the fact that they penalize good landlords, push up rents, run over budget, and may even lead to the loss of rental housing. Furthermore, licensing apartments in the City of Toronto would create inequities between tenants and homeowners and between tenants in the City of Toronto compared to those elsewhere in the Greater Toronto Area.

Alternative, cost-effective solutions to the problems do exist. A targeted program that imposes extra costs on landlords who do not comply with City standards would deal with those who consistently fail to maintain and repair their properties, and could cover some of the cost of hiring additional inspectors. An enhanced multilingual hotline for tenants, with an appropriate public awareness campaign, could encourage more of them to use the complaint-based system. As for the problem of conserving the aging rental stock, intervention by the provincial or federal government is needed, in the form of an expanded Rental Rehabilitation Assistance Program, or the rapid creation of new affordable housing for those who would be displaced by the demolition of buildings that cannot be brought up to City standards.

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## CHAPTER ONE | WHY LICENSE APARTMENT BUILDINGS?

### 1.1 Why we undertook the study

The purpose of this study is to provide the Greater Toronto Apartment Association with an independent assessment of the effectiveness and impact of apartment licensing regimes in Canadian and American cities. The City of Toronto is currently considering a new Multi-Residential Apartment Buildings Regulatory Strategy, and of 10 policy options, two involve licensing either apartment owners or apartment units.

### 1.2 How to evaluate regulatory programs

Relatively little research has been done on municipal apartment licensing regimes, but one useful study suggests a framework for evaluating them. *Going by the Book: The Problem of Regulatory Unreasonableness* by Eugene Bardach and Robert Kagan<sup>1</sup> suggests that regulatory regimes can be evaluated in terms of economic efficiency. This would mean asking three questions:

1. Would a regulatory program yield the intended benefits?
2. Would the costs exceed the resulting social benefits?
3. Could the same results be achieved more cheaply and effectively using another method?

In this study, therefore, we looked at whether or not apartment licensing programs in Canadian and American cities had achieved the benefits that they were intended to achieve. We considered the costs of compliance for those who pay for the licence and those who administer the programs, and whether these costs exceed the benefits derived from the programs. Finally, we identified potential ways of achieving similar benefits more cost-effectively.

### 1.3 What we did

We carried out primary research on three Canadian and six American municipalities. Of these nine cities, six had licensing programs and three did not. In each jurisdiction, we interviewed representatives of either the apartment association or the municipal office that administers the licence. We also compiled data on rental housing for another six cities, with and without licensing, to compare them to the nine cities where we conducted interviews.

In speaking to people in other cities, we focused on several key questions:

- What was the problem that licensing was supposed to solve?
- Did it solve that problem?
- Were there unintended or unanticipated consequences of implementing licensing?
- What advice would they give to other municipalities considering implementing a licensing program?

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<sup>1</sup> Temple University Press, 1982, revised and updated, 2000.

**Table 1: Data collected for the licensing study**

	<i><b>Interviewed, Data Collected</b></i>	<i><b>Data Collection Only (no interviews)</b></i>
<i><b>With Licensing</b></i>	Vancouver, Edmonton, Los Angeles, Minneapolis, Philadelphia, San Jose	Calgary, Phoenix, Raleigh
<i><b>Without Licensing</b></i>	Montreal, Boston, Chicago	Toronto, Houston, New York City

For each city with a licensing system, we identified the type of licensing regime, its objectives, and the original reason for its implementation, as well as the context within which the system functions, and the legislative framework at different levels.

For cities without licences, we asked about the tools used to regulate apartment maintenance, affordability, and rental unit quality.



## CHAPTER TWO | THE RENTAL SITUATION IN THE CITY OF TORONTO

The City of Toronto has more than 464,000 rental units in over 3,670 buildings, housing roughly half a million people (about half the population of the City). About three-quarters of the rental housing is primary rental housing, that is, housing constructed specifically to be rented out. The rest is in the secondary market – rental housing in the form of rented houses and condominium apartments or rental units created within single-family houses (secondary suites).

The City of Toronto represents only one part of a larger housing market. The Greater Toronto Area as a whole (which includes the regional municipalities of Halton, Peel, York, and Durham) has a stock of 601,280 rental units. Therefore, any program to regulate rental apartments in the City of Toronto would apply to just over three-quarters of the rental units in the Greater Toronto Area.

### 2.1 The social and economic context of the Toronto rental sector

A full appreciation of the likely effects of a licensing program requires an understanding of the wider context of rental housing in Toronto, in particular, the changing demographics of renters, rising rents, the loss of rental stock due to demolitions or conversions to condominium tenure, and the low level of new rental construction.

#### Renters tend to have lower incomes than homeowners

Over the past two decades, the GTA housing market has experienced a greater demand for ownership units rather than rental units. Low interest rates, attractive financing options, and economic prosperity have encouraged condominium ownership of apartment units. In 2005, only about 3 in every 10 Canadian households rented, compared with 4 in every 10 in 1986. A study by Statistics Canada found that households that have moved from renting to owning in recent years tend to have higher incomes, therefore the pool of renters consists largely of lower-income households.<sup>2</sup> At the same time, the income and wealth gap between homeowners and renters is wide and growing wider each year, as homeowners build up equity while rental tenants are unable to do the same.<sup>3</sup>

#### Rents in privately owned units are rising

Current provincial legislation allows landlords to raise rents on a rental unit whenever a tenant leaves that unit. Turnover is high in the Toronto area – according to 2001 Census Data, 58 percent of renters in the City of Toronto moved in the previous five years. As a result, average rents have risen faster than inflation and faster than average wages. Toronto continues to have the highest-priced rental housing in Canada.<sup>4</sup> Given the shortage of affordable rental housing, 67,063 Toronto households are on the waiting list for social housing.<sup>5</sup>

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<sup>2</sup> Statistics Canada. *Changes and Challenges for Residential Real Estate Lessors*. Catalogue No. 63F0002XIE - No.052, 2007

<sup>3</sup> Hulchanski, J. David, *A Tale of Two Canadas: Homeowners Getting Richer, Renters Getting Poorer: Income and Wealth Trends in Toronto, Montreal and Vancouver, 1984 and 1999*, University of Toronto, Centre for Urban and Community Studies, Research Bulletin #2, August 2001.

<sup>4</sup> Based on 2001 census data. Statistics Canada will release average dwelling costs from the 2006 census on May 1, 2008.

<sup>5</sup> City of Toronto, Shelter, Support, and Housing Administration, *Toronto Social Housing by the Numbers*, [www.toronto.ca/housing/social\\_housing/pdf/shbbynumbers.pdf](http://www.toronto.ca/housing/social_housing/pdf/shbbynumbers.pdf), November 2007 (this was the length of the waiting list on December 31, 2006).



## Toronto's rental stock is dwindling

Toronto is not adding new rental stock and loses more rental units every year because of demolitions or conversions to condominium tenure. The number of rental households in the City dropped by 3.8 percent, or 17,600 units, during the 2001 to 2006 census period.<sup>6</sup> The City has taken steps to limit conversions in recent years because of concerns that economic growth requires an adequate supply of rental housing.

About a quarter of Toronto's rental stock is in the secondary market, in the form of rented condominium units or secondary suites. These units can be converted back to owner occupation at any time. (These secondary units would not be subject to the City's proposed Multi-residential Apartment Buildings Regulatory Strategy.)

## Very little new stock is being built

Of the rental buildings constructed in the 1960s and 1970s, many were created under now-defunct federal subsidy programs such as the Limited Dividend program or the Multi-Unit Residential Building (MURB) program. These programs effectively stimulated the creation of affordable rental units by the private sector.

Between 2000 and 2004, on average only 68 primary rental units were created a year; slightly more than half of these by the private sector. The City has repeatedly noted the need to create thousands of new units a year, particularly affordable units, but so far, this goal remains elusive.<sup>7</sup>

## 2.2 Provincial and municipal legislation and by-laws

### Provincial legislation

The key piece of provincial legislation relating to rental apartments is the *Residential Tenancies Act*, 2006, which came into force January 1, 2007, replacing the *Tenant Protection Act*. The act deals with relations between landlords and tenants and responsibilities and rights on each side, as well as provisions relating to rent levels.

The *Residential Tenancies Act* allows for "vacancy decontrol" in section 113: "The lawful rent for the first rental period for a new tenant under a new tenancy agreement is the rent first charged to the tenant." In other words, whenever a tenant leaves a unit, the landlord can increase the rent for that unit to whatever the market will bear. With vacancy decontrol, landlords are able to pass any increased costs on to tenants whenever the apartment changes hands.

Landlords can also increase rent during a tenant's residency under the provisions of section 126:

A landlord may apply to the Board for an order permitting the rent charged to be increased by more than the guideline for any or all of the rental units in a residential complex in any of the following cases:

<sup>6</sup> Statistics Canada Community Profiles (2001 & 2006). These numbers do not identify the reason for the decline in the number of tenants. Tenants may be doubling up or buying units, either voluntarily or in response to the conversion of a property to condominium tenure.

<sup>7</sup> See, for example, City of Toronto, *Unlocking the Opportunity for New Rental Housing: A Call to Action*, Urban Development Roundtable, Rental Working Group, City Planning Division, Policy and Research, June 2001.

1. An extraordinary increase in the cost for municipal taxes and charges or utilities or both for the residential complex or any building in which the rental units are located.
2. Eligible capital expenditures incurred respecting the residential complex or one or more of the rental units in it.
3. Operating costs related to security services provided in respect of the residential complex or any building in which the rental units are located by persons not employed by the landlord.

Section 130 of the Act offers some relief to tenants when they fail to receive needed services: “A tenant of a rental unit may apply to the [provincial Landlord and Tenant] Board for an order for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex.”

Other provincial laws affect apartment units, including the *Elevating Devices Act*, the *Technical Standards and Safety Act*, and the *Fire Prevention and Protection Act*.

### The Toronto Municipal Code

Chapter 629 of the Toronto *Municipal Code* contains property standards by-laws for property owners and occupants, as well as standards for maintenance and building quality. Tenants are encouraged to notify the City about violations to the Code or related concerns with maintenance in apartment buildings. Landlords are expected to comply with the Code and tenants are protected under Code (see Appendix A for a side-by-side comparison of provincial and municipal legislation).

## 2.3 Previous systems for maintaining apartment quality in Toronto

Before amalgamation, cities within Metropolitan Toronto had various ways of regulating apartment buildings. Inspectors in the former City of Etobicoke used to issue Certificates of Compliance with Property Maintenance Standards for multi-residential rental units. Fees for the certificates depended on the number of dwelling units. The former City of Scarborough had an Apartment Building Inspection Program, whereby buildings were audited and ranked in terms of quality and buildings at the lower end of the ranking were subject to more frequent inspections. The City of North York had a similar program. After amalgamation, these systems were dismantled.

The Order Prohibiting Rent Increase (OPRI) applied to landlords who had outstanding work orders on a rental property. The OPRI prevented landlords from increasing the rent until they complied with the work order, and provided an incentive for landlords to make repairs. The OPRI was abolished by the *Tenant Protection Act* in 1998,<sup>8</sup> but reinstated when the *Residential Tenancies Act* came into effect.

## 2.4 The current system

At present, the City of Toronto’s system of apartment regulation is largely complaint-based. If a tenant has a complaint about the state of repair or maintenance of the building, he or she must first inform the landlord in

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<sup>8</sup> The OPRI was section 38 of Part 1 of the *Rent Control Act*, 1992. The Act was repealed in June 1998.



writing. If the issue is not resolved, the tenant can notify the Municipal Standards and Licensing Office. If the matter goes to arbitration, it is handled by the Toronto Licensing Tribunal. Information on the complaint process is available in 24 languages on the City of Toronto's website.

In the rest of the GTA, most municipalities have by-law enforcement offices to enforce property standards; these systems operate on a complaint-based system as well. In communities without property by-law standards, a tenant may approach the Enforcement Unit of the Ministry of Municipal Affairs and Housing with a complaint (see Figure 1). Arbitration is handled by the provincial Landlord and Tenant Board. Regional police departments, such as Peel Regional Police, may also deal with landlord-tenant disputes.

The City of Toronto's response to complaints depends on the extent to which health and safety are at risk. Any potential threat to health and safety is treated as a priority. However, the current system does not automatically allow inspectors access to self-contained units without the permission of the tenant.

Tenants can apply to the Ontario Landlord and Tenant Board (formerly the Ontario Rental Housing Tribunal) for an order requiring the landlord to make repairs, or an order requiring the landlord to return all or part of the rent paid during the period when maintenance was inadequate. However, as the City noted in a 2006 report, "tenants have to pay an application fee (\$45) and the hearings are often not scheduled as fast as expected."<sup>9</sup> Procedural changes at the Board in 2007 may have alleviated some of these problems.

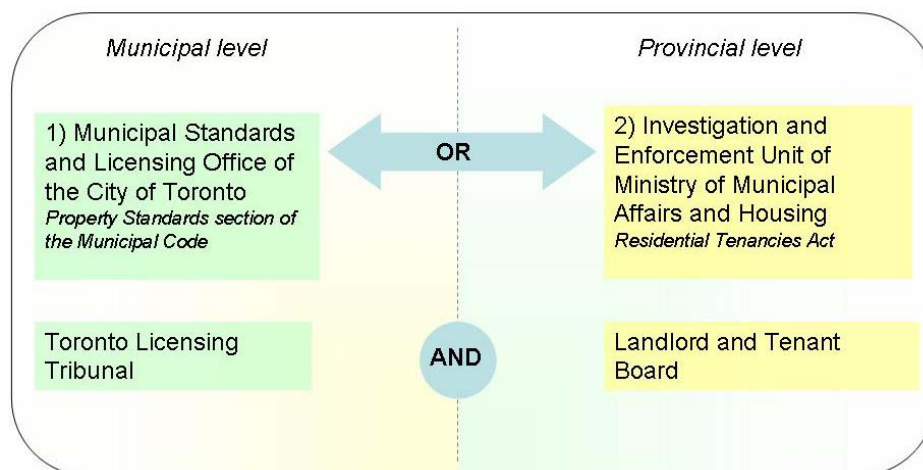
In 2004, the City introduced a "Protocol for Enforcement of Property Standards and Other By-laws in Residential Rental Apartment Buildings" that allows for "proactive enforcement."<sup>10</sup> This is directed at buildings with "a history of non-compliance or inadequate maintenance," and allows the City to "achieve compliance on an ongoing basis, rather than relying on the complaint mechanism." In other words, the City can deal directly with landlords who have a bad record of maintaining their properties or who do not respond appropriately to complaints.

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<sup>9</sup> *Rental Housing in Toronto: Facts and Figures*, Toronto Shelter, Support and Housing Administration, <http://www.toronto.ca/housing/pdf/rental-housing-facts-figures-2006.pdf>.

<sup>10</sup> "Protocol for Enforcement of Property Standards and Other By-laws in Residential Rental Apartment Buildings" Planning and Transportation Committee Report No. 3, Clause No. 4, May 18, 19, and 20, 2004.

**Figure 1: Methods of filing complaints available to Toronto tenants**



In December 2005, the City of Toronto created a web page that allows tenants and prospective tenants to identify landlords who are in violation of orders to maintain or repair their properties. The web page, which is searchable by street address, lists work orders on private rental apartments in Toronto posted within the last two years. The information applies only to buildings containing four or more dwelling units.<sup>11</sup>

## 2.5 The push to license apartments

For several years, the City of Toronto has been considering ways to regulate multi-residential apartment buildings more effectively and ensure that units meet the standards of the Municipal Code. A 1999 report on the subject proposed a licensing system and was adopted by Toronto City Council, but rejected by the Province, which refused to give permission to the City to implement licensing. In 2004, City Council adopted a report titled, "A Framework Strategy to Ensure that Privately-Owned, Multi-Unit Residential Buildings are Maintained in Accordance with the Provisions of the Toronto Municipal Code,"<sup>12</sup> but again, the Province turned down its request for licensing powers.

When the *City of Toronto Act, 2006*, came into effect in January 2007, the City was finally in a legal position to enact a licensing regime. Since then, it has prepared a list of 10 options for regulation, two of which involve licensing, and in May 2007 held a series of public open houses to gather feedback on the 10 options. It also convened an internal stakeholders' group, made up of representatives from the Affordable Housing Unit; Toronto Building; City Planning; Fire Services; Public Health; Shelter, Housing and Support; Social Services; Solid Waste Management Services; and the Police Department. A final report will be presented to the City's Executive Committee in late spring 2008.

City Councillor Howard Moscoe, head of the City's Municipal Licensing and Standards Division, has spoken publicly about his support for a tougher regulatory system for apartments, and made comparisons with the

<sup>11</sup> <http://app.toronto.ca/ApartmentStandards/setup.do?action=init>

<sup>12</sup> Report to the Planning and Transportation Committee, December 10, 2003.



system currently in use for restaurants, which rates them using coloured notices: green for acceptable, yellow for warning, and red for failure.<sup>13</sup> This is one of the 10 options currently being considered by the City.

In January 2007, Moscoe even suggested a “media tour” of some of the worst-run buildings.<sup>14</sup> This is noteworthy, because it suggests that the Municipal Licensing and Standards Division is clearly familiar with the worst offenders and has ready access to some poorly maintained buildings.<sup>15</sup>

## 2.6 Justifying the proposal for licensing

On December 7, 2006, in a *Toronto Star* article, Councillor Moscoe was cited as stating that “building standards are difficult and time-consuming to enforce and an incentive program is needed as an ‘adjunct’ to the city’s enforcement powers.”<sup>16</sup> The article introduced the proposal for licensing apartment buildings. The comment is interesting, since the fact that “building standards are difficult and time-consuming to enforce” does not appear to be an obvious reason to support proposals for an even more complex and demanding regulatory system. Nor is it clear how licensing would represent an “incentive program.” Licensing is unlikely to entice new rental providers to enter the field; if anything, it might deter them.

A City report prepared in December 2003 mentioned “concerns that many tenants may not use the complaints system due to barriers related to language, culture, or out of fear of retaliation from their landlord.”<sup>17</sup> This problem is impossible to verify or quantify, although it is frequently mentioned. Some tenants may indeed be prevented from complaining by language barriers or fear of reprisals, but the fact that the worst landlords appear to be well-known to the City (hence Councillor Moscoe’s offer of a “media tour”) suggests that many tenants have no qualms about contacting the City to complain about badly maintained buildings. At the time of the announcement, several tenants were more than happy to talk to the media,<sup>18</sup> so it can be assumed that they were not hesitant to talk to the City, either. Even if some tenants hesitate to speak up, this is unlikely to be true of every single tenant of a large building.

However, an interview with a former employee of the Municipal Licensing and Standards division revealed that the problem is not so much that people do not complain, but that when they do, they may not identify the most serious problems. Tenants complain about what they can see (such as peeling paint), but many threats to health and safety are not visible (such as mould accumulating above a dropped ceiling or a carbon monoxide leak). Also, tenants may complain about problems caused by other tenants (such as graffiti or litter) but be unaware of problems caused by poor maintenance (such as a malfunctioning fire alarm system). Tenants are not trained

<sup>13</sup> “Councillor wants restaurant-like rating for apartment buildings,” *City News*, January 17, 2007, [www.citynews.ca/news/news\\_6995.aspx](http://www.citynews.ca/news/news_6995.aspx).

<sup>14</sup> Vincent, Donovan, “Moscoe calls for tour of squalor; Chair of licensing and standards committee to take media to see worst apartments around the city,” *Toronto Star*, January 22, 2007, p. E4.

<sup>15</sup> The Greater Toronto Apartment Association acknowledges the existence of a minority of bad landlords, who do not carry out needed repairs, and estimates that about 5 to 10 percent of the City’s rental stock is affected. Brad Butt, quoted in Moloney, Paul, “Tenants back licensing landlords; Councillor among those rallying at Weston building with spotty repair record,” *Toronto Star*, December 22, 2006, p. B7.

<sup>16</sup> Moloney, Paul, “Moscoe touts licence fee for landlords,” *Toronto Star*, December 7, 2006, page A18.

<sup>17</sup> City of Toronto. “A Framework Strategy to Ensure that Privately-Owned, Multi-Unit Residential Buildings are Maintained in Accordance with the Provisions of the Toronto Municipal Code.” Planning and Transportation Committee, 2003.

<sup>18</sup> See, for example, “Should city apartments be inspected like restaurants?” *CityNews*, April 12, 2007, [www.citynews.ca/news/news\\_9732.aspx](http://www.citynews.ca/news/news_9732.aspx).

inspectors, after all, and cannot be expected to know about the structural condition of the building or its history of maintenance.

The report also stated that “the penalties for non-compliance of violations are perceived as lenient.” This problem may not be entirely within the City’s control. In the past, when the Municipal Licensing and Standards division has brought landlords to court, courts have sometimes decided in favour of the landlords. It may be that judges believe that enforcing the rules too severely could lead to the closure of an entire apartment building, and at a time of low vacancy rates in Toronto, this would be catastrophic for some tenants.

Another point mentioned in the report is that “resources are limited in being able to respond to non-emergency complaints in a timely manner.” It is true that the section responsible for apartment inspections is understaffed. Of the 373 full-time employees in the Municipal and Licensing Standards Division, fewer than a dozen are rental apartment inspectors. For example, there are only two apartment inspectors for all of Scarborough, which has a huge stock of apartment buildings. Moreover, inspectors often need to visit apartment buildings in pairs, in order to be sure that they get a complete picture of the state of the building. There is a clear need for more inspectors and staff to carry out building audits and follow up on complaints.

City reports on rental housing also cite the aging of the rental apartment stock, and the fact that almost no new rental units are being built in the City. This is indisputable. More than 20 years ago, the City of Toronto issued a report noting that little new rental stock was being created, and that a large stock of highrises was in need of repair and maintenance. The report stated that about 313,000 apartment units had been created between 1957 and 1984; a period in which 92 percent of all new dwellings created were rental apartments.<sup>19</sup> Although some buildings have been converted to condos or demolished, that stock still represents the majority of Toronto’s rental housing.

These, then, are the problems for which licensing is proposed as a solution. They are not the only problems facing the rental sector, but they are the problems that are mentioned in connection with licensing:

- the failure of the existing system to ensure adequate enforcement of property standards, including a perceived leniency in the treatment of landlords who violate property standards;
- the reluctance of some low-income or immigrant rental tenants to use the complaint-based system and the fact that those who do complain may not identify the most serious problems in a building;
- a critical shortage of trained inspection staff;
- a high proportion of aging building stock, some of it in poor repair.

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<sup>19</sup> “Preserve or Perish: The Issue of Conservation: High-rise Apartments in the City of Toronto,” Research Bulletin 27, City of Toronto Planning and Development Department, December 1986, p. 3.



## CHAPTER THREE | THE MANY APPROACHES TO REGULATION

Apartment regulatory systems take many forms. In cities with identifiable problem areas, a targeted system may be applied, either to a geographic area or a certain category of apartment buildings. Other cities use a universal system that regulates all rental apartment units.

A licence can be applied to the building, to individual units, or to the owner or agency responsible for the maintenance of the property. Licensing the building is useful in cases where there is high landlord turnover – or when specific buildings that have aged at the same rate can be targeted. Other options may be appropriate for cities in which ownership is more stable, but tenant turnover is high.

Licensing systems may or may not be combined with proactive inspection programs. Some cities require apartment owners to purchase a licence, but maintain only a complaint-based system to deal with problems. Others systems require routine inspection of all units. The latter systems require considerable resources, including a sizable staff of well-trained inspectors to carry out regularly scheduled visits, as well as respond to specific problems.

### ***3.1 Toronto's proposed menu of options***

During public consultations for the Multi-Residential Apartment Buildings Regulatory Strategy in May 2007, the City of Toronto presented 10 “ideas [that] could be used individually or in combination.”<sup>20</sup> The definition of a “Multi-Residential Apartment Building” is a building with six or more units.<sup>21</sup>

#### **1. Create a property standards review team and implement a building audit program**

This represents a return to the system previously used in Scarborough and North York. A proactive approach would require the City to hire additional inspectors to do the audits as well as follow-up visits to ensure compliance with work orders. The more frequent the audits, the more inspectors would be needed.

#### **2. License rental providers**

The owner of an apartment building would hold the licence, and a condition of maintaining the licence would be compliance with property standards. The owner could be asked to self-audit his or her buildings in a standardized manner to ensure a basic level of compliance, or the City might have inspectors do this. Presumably, persistent failure to comply with property standards would lead the City to revoke the owner's licence. Revoking a licence would call for a set of legal measures to ensure due process for the owner, and some means of ensuring that repairs are eventually made without having to close the building.

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<sup>20</sup> “Multi-residential Apartment Buildings Regulatory Strategy: Ideas for a Strategy,” May 14-22, 2007, [http://www.toronto.ca/licensing/pdf/pdf\\_mrab/mrab\\_ideas\\_for\\_strategy.pdf](http://www.toronto.ca/licensing/pdf/pdf_mrab/mrab_ideas_for_strategy.pdf).

<sup>21</sup> “Multi-residential Apartment Buildings Regulatory Strategy: Background,” Toronto, May 2007.



### 3. License the building

Apartment landlords would pay an annual fee per rental unit to the City, which could allow for regular visits by City inspectors. The landlord would have to comply with standards and provide the necessary resources to resolve complaints. In principle, the fees would cover the costs of administration and inspections. The system would no longer rely on tenants to initiate action against landlords who do not maintain their buildings, although tenant complaints would still need to be accommodated. The consultation document notes that an “adjudication and appeals body will need to be identified to address issues when rental providers do not comply.”<sup>22</sup>

The annual fee might be a flat fee for all units, or it might vary according to the size of the unit, or even the condition of the unit. Councillor Moscoe mentioned the latter option to the media, and suggested that per-unit fees for well-kept buildings could be as low as \$10, and for poorly maintained buildings, as high as \$400.<sup>23</sup> The idea behind this option would be to offer an incentive for apartment building owners to upgrade units so that they would be in the highest category and pay the lowest fees. The implication for the city is that inspectors would have to conduct a full audit of all units before the fees could be levied, and that City administrative staff would likely spend a great deal of time processing requests from landlords to have their units classified in a lower-paying category.

### 4. Evaluate buildings and units based on points

Property units could be assessed based on the state of their building or enforcement history and assigned a number of points, up to a certain maximum. According to the public consultation document, the ranking would take into account not only the results of a building audit, up-to-date certificates for equipment such as boilers and elevators, and proof of insurance, but could also include a bonus point system to reward buildings that offer wheelchair accessibility, a waste recycling program, or an energy conservation program. Presumably the bonus points would not be awarded until the basic points for maintenance and state of repair were awarded, otherwise a badly maintained building could improve its ranking by offering a wheelchair ramp and low-flush toilets.

Like the previous option, this one appears administratively complex. Every change to a building could lead to the addition or subtraction of points. Furthermore, the inclusion of incentives for recycling and energy conservation suggests that the City may be trying to overload the program with multiple, potentially conflicting goals.

### 5. Rate buildings and units based on categories

This simpler option has been likened to Toronto’s restaurant rating system, which has only three categories: pass, warning, and fail. Although the public consultation document does not specify the consequences for the landlord, it is possible that different renewal periods or fees could be associated with each rating. A building with a good track record might be inspected every five years, while one with a worse track record inspected every year or two. In theory, public disclosure of the rating system would attract tenants to high-quality buildings, thus

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<sup>22</sup> “Multi-residential Apartment Buildings Regulatory Strategy: Ideas for a Strategy,” May 14-22, 2007, [http://www.toronto.ca/licensing/pdf/pdf\\_mrab/mrab\\_ideas\\_for\\_strategy.pdf](http://www.toronto.ca/licensing/pdf/pdf_mrab/mrab_ideas_for_strategy.pdf).

<sup>23</sup> Moloney, Paul, “Moscoe touts licence fee for landlords,” *Toronto Star*, December 7, 2006, page A18.



providing an incentive to landlords to maintain their units (although when vacancy rates are low, as they are now, few landlords have difficulty attracting tenants).

The main beneficiaries of this method would be apartment hunters, who would seek out buildings in the top category. The system would be of little use to people who are already in a building in one of the other categories and who are not in a position to move. Further, it is not clear what the implications of a “fail” designation would be. Either the City would need a way to force owners to make necessary repairs, or a “failing” building might have to be closed, forcing the tenants to find housing elsewhere.

## **6. Self-regulation and inspection**

This option provides for routine inspection by rental providers themselves, either annually or whenever a unit becomes vacant. Professional management firms and the managers of public rental housing already carry out routine building audits and use them to prepare maintenance plans. The key to making this option work would be a way to ensure that all landlords, including those with a record of poor maintenance, do so.

## **7. An independent organization would regulate rental providers and apartments**

The task of inspection and enforcement might be relegated to an association that represents apartment owners and managers. It would be up to that association to set fees, hire inspectors, maintain accessible records, and inform the public about problems. It would also have to deal with non-complying owners through some sort of disciplinary procedure. This option would spare the City the expense of administration and of hiring additional inspectors, and transfer the cost to an outside organization. However, the independent organization would either need a subsidy from the City, or would have to set fees high enough to cover the cost of the program from the outset.

## **8. Set up an escrow account**

If property standards are not followed, the City could set up an escrow account to manage the work. Tenants would pay their rent directly into the account, and the City would withhold the money from the landlord until repairs are complete. This option, which is used in Los Angeles, is the only one that deals directly with the issue of how to deal with persistently non-complying landlords while maintaining the rental stock.

## **9. Training rental providers**

The proposal of training programs (mandatory or voluntary) for landlords and apartment managers implies that the reason for non-compliance among some landlords may be a lack of knowledge. Although training could be useful for less experienced operators, mandatory training would waste the time of able and experienced building managers, while their non-complying colleagues might avoid voluntary training.

At present, training is available in Toronto for landlords and for owners of second suites, through the Landlord Self-Help Centre, a non-profit agency established in 1975. The Greater Toronto Apartment Association (GTAA) also offers training in building improvement, from workplace health and safety to increasing recycling rates in buildings.

## 10. Communication program for tenants

The city document is vague about the nature of such a program, but it might take the form of a hotline in multiple languages for tenant complaints and inquiries. The service could be rolled into the proposed 3-1-1 community telephone service line, as it is in Minneapolis, which would make it more user-friendly for those who might otherwise hesitate to contact a municipal official. This service requires appropriate promotion, to ensure that tenants are aware of the number to call.

Tenant communications could include web-based information. If the rating system were to be implemented, the information could be added to the City's current database, so that tenants could identify the rating or number of points assigned to any given apartment building in the city. However, this information would chiefly be of value to apartment hunters, rather than settled tenants. Moreover, many tenants do not have easy access to the Internet.

### 3.2 Other options from elsewhere

Our research identified at least two other options used in other cities. One is similar to the licensing systems proposed, and the other is a program targeted at non-complying landlords.

#### 1. Business licence/registration

A city may license the "business" of operating an apartment building. All units have to be registered, so the city is able to identify all rented units in its jurisdiction, although the fee applies to the building as a whole, and is not levied by the number of units. The penalty of not having a licence would be a fine. There may or may not be inspections involved with this option, and the registration system may be connected to an apartment database. This system is used in Edmonton and Vancouver. The City of Toronto report suggested that this system "is not likely to generate sufficient revenues to embrace a pro-active inspection system, and does not deal with constant changes in property management."<sup>24</sup>

#### 2. Probationary rental occupancy permit

In Raleigh, North Carolina, if a landlord violates property standards, a citation is sent to the property owner, who is given a set number of days to resolve the problem. If he or she fails to do so, the city puts the owner on probation. The landlord must pay a yearly fee during the probationary period. The probation expires if within a certain period of time (such as two years) there are no further violations reported for the property. Variations to this mechanism include invoking an automatic probation if repeated problems occur at the same address (even if resolved), and requiring the landlord to attend a training program during the probationary period. The proposals by the City of Toronto do not mention a program of this nature.

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<sup>24</sup> "A Framework Strategy to Ensure that Privately-owned, Multi-unit Residential Buildings are maintained in accordance with the Provisions of the Toronto Municipal Code", staff report to the Planning and Transportation Committee, December 10, 2003, p.3.



## CHAPTER FOUR | CASE STUDIES

### 4.1 Comparing Toronto with other cities

We began by comparing Toronto to other cities with and without licensing regimes in terms of population, rental housing as a proportion of all housing, the age of the rental stock, vacancy rates, and average rent. As the following tables show, with two exceptions, licensing appears to be a feature of cities with a lower proportion of rental housing than Toronto. Of the 14 cities studied, eight have a higher proportion of stock dating from before 1960 relative to Toronto. Relative to the four other Canadian cities studied, Toronto has the highest vacancy rate, but it is still well below that of all the American cities in the study. And of all 14 cities, Toronto has the second-highest average rent for a two-bedroom apartment (second only to Los Angeles).

Of these factors, vacancy rates are of particular interest. In cities with high vacancy rates, landlords face some competition in finding tenants, and have a greater incentive to ensure that their units are of good quality, with or without a regulatory program.

**Table 2: Rental Stock, Vacancy Rates and Average Rent  
for Cities without Licensing**

	City of Toronto				
	2,481,494	49%	33.8%	2.4%	\$1,315
Cities Without Licensing	Population	% Rental Housing	% Rental Stock Older Than 1960	Vacancy Rate (City-Wide)	Average Rent (2-Bed)*
City of Montreal	1,039,534	72%	54.2%	2.1%	\$645
New York	7,956,113	67%	69.0%	12.3%	\$1,422
Chicago	2,701,926	52%	69.8%	7.7%	\$1,049
Houston	1,941,430	52%	32.0%	4.8%	\$865
Boston	520,702	64%	80.8%	13.0%	\$1,557

\*Average Rents are for the year 2006, and shown in Canadian Dollars

**Table 3: Rental Stock, Vacancy Rates and Average Rent  
for Cities with Licensing**

	City of Toronto				
	2,481,494	49%	33.8%	2.4%	\$1,315
Cities With Licensing	Population	% Rental Housing	% Rental Stock Older Than 1960	Vacancy Rate (City-Wide)	Average Rent (2-Bed)*
City of Calgary	878,866	31%	20.4%	0.5%	\$960
City of Edmonton	666,104	41%	20.6%	1.2%	\$808
City of Vancouver	545,671	56%	35.9%	0.7%	\$1,241
Los Angeles	3,731,437	60%	62.3%	8.3%	\$1,496
Philadelphia	1,406,415	43%	80.1%	7.2%	\$1,102
Phoenix	1,377,980	41%	20.0%	7.4%	\$896
San Jose	887,330	39%	20.5%	6.0%	\$1,516
Minneapolis	350,260	47%	83.5%	7.9%	\$1,027
Raleigh	315,249	46%	8.5%	13.8%	\$1,009

\*Average Rents are for the year 2006, and shown in Canadian Dollars

## 4.2 Cities with licences: overview of research findings

Table 4 presents an overview of our findings for the six cities we studied that have licensing programs.

Three cities require apartment operators to have a business licence, two require the building to be licensed, and one does both. Some levy fees by the unit, some by the building as a whole. Most apply to all rental buildings in the city.

**Table 4: Overview of six cities with licensing programs**

Licensing Programs by City (Responses from Interviews)						
Cities With Licensing	License Type	Year Introduced	Annual Fees*	Full Cost Recovery	Objective	Scope
<b>City of Edmonton</b>	Business License	1995	\$162/building	N	Inventory of Rental Buildings	Universal
<b>City of Vancouver</b>	Business License	-	\$125/building	-	Revenue Generation	Universal
<b>Los Angeles</b>	Inspection + Enforcement of Standards + Escrow + Business License	1999	Building Lic. Fee: \$30.71/unit Complaint Call: \$190.73/call	Y	Housing Quality and Safety Issues	SCEP Program Universal Rent Registration for pre-1979
<b>Philadelphia</b>	Inspection + Enforcement of Standards + Building Lic. + Suitability Certificate	2005	Rental Inspection Lic: \$33.05/unit; Business Lic: \$236.05 (one time); Certificate: \$23.60 after each vacancy	Y	Housing Quality Issues	Universal
<b>San Jose</b>	Building License + Business License	Before 1990	Rental Permit: \$31.77/unit Business Lic: \$145.41 + \$4.72/unit to \$4,721 max	Y	Housing Quality Issues, Inventory of Rental Buildings	Universal
<b>Minneapolis</b>	Building License	1991	\$51.93 (first unit) + \$17.94/extra unit	Y	Housing Quality and Safety Issues	Universal (Public Housing Authority Exempted)

\*All Fees are shown in Canadian dollars, based on exchange rates as of June 8, 2007 (0.9442 CAN cents/\$1US)

### Edmonton: Provincial Standards Enforcement and Business Licence

The City of Edmonton is responsible for implementing the Province of Alberta's Housing Regulations and Minimum Housing and Health Standards and carrying out inspections when tenants leave their units, in accordance with the *Alberta Residential Tenancies Act*.

In Edmonton, inspections are administered and performed by a private firm, Capital Health, which inspects for adherence to the fire code, building code, planning permits and zoning, and the possession of an up-to-date business licence. The penalty for not having a permit is \$400 for each business (or building) being operated without a licence. Edmonton's business licence program, created by By-Law 13138, requires that those who "provide accommodation other than within a private residence" pay an annual fee of \$162 to continue operating. There is no per-unit charge.

### **Vancouver: Provincial Standards Enforcement and Business Licence**

City of Vancouver By-Law 4450 requires most businesses operating in the municipality to obtain a business licence for a fee, for the “regulation of business, trades, professions, and other occupations, within the City of Vancouver.” *The General Fees and Licensing By-Law* explicitly states that a licence will be provided to an applicant only if the applicant is in compliance with all other municipal by laws (such as minimum standards for housing quality).

Since landlords are considered to be operating a business, they must comply with all housing-quality legislation before the city will issue a licence. Section 4.4 of the By-Law states that applicants “shall comply with all relevant by-laws of the City before any such licence is granted; and the applicant shall, upon request, produce certificates or letters of approval as may be required by federal, provincial or municipal authorities.”

### **Calgary: Provincial Standards Enforcement and Business Licence**

Like Edmonton, the City of Calgary operates under the Province of Alberta’s Housing Regulations and Minimum Housing and Health Standards, which require either systematic or complaint-triggered inspections. An excerpt from the Minimum Housing and Health Standards states that “minimum housing and health standards are enforced by inspections of housing premises by Public Health Inspectors...on a systematic or complaint basis [depending on the municipality].”

Regular, provincially mandated inspections are required by the Alberta *Residential Tenancies Act* for each apartment unit after a tenant leaves a unit and before a new tenant takes up residence. The use of a business licence ensures that building owners have complied with the province’s regulations. To obtain a licence, the business owner must consult with the city’s fire department and planning department. The licence costs \$114 the first year and \$85 each year after with no per-unit fee.

### **Los Angeles: Regulation (Systematic Code Enforcement Program) and Business Licence**

Los Angeles has the most extensive system of regulation, coupled with incentive programs and penalties to encourage landlords to maintain their properties: the *Systematic Code Enforcement Program* (SCEP), the *Rent Escrow Program* (REAP), and the *Urgent Repair Programs* (URP).

Properties with two or more dwelling units are inspected every three to five years. Properties that have a record of frequent code violations are inspected more frequently. If a building is in violation of the Municipal Code and/or the state’s public health legislation, tenants can apply to have their rents reduced or even suspended entirely until the problems have been fixed (at which point, back rent may be due).

For the most run-down buildings and for landlords who repeatedly fail to comply with requirements, the city can force the property into the REAP (Rent Escrow Account Program). The City then collects rent from tenants. Repairs must be completed before the funds will be turned over to the landlord, and any outstanding inspection fees or other municipal fees will be taken from the amount before the owner receives it.



If major renovations are required by municipal order, the landlord may be required to pay the costs of temporarily moving the tenants off-site. Regulations prevent landlords from increasing rents following repairs conducted as a result of an order or enrolment in the REAP program.

If violations that represent a potential threat to health or safety are identified during a municipal inspection, the landlord has 48 hours to bring the building into compliance or demonstrate diligence in trying to do so within the timeframe. Failure to do so triggers the city's *Urgent Repair Program* (URP) whereby the building is placed automatically into the REAP program and the City may become involved in organizing immediate repairs.

The City of Los Angeles also requires landlords within the city to obtain a business licence for taxation purposes.

### **Philadelphia: Apartment Licence (Certificate of Rental Suitability)**

Philadelphia recently instituted the Certificate of Rental Suitability. Landlords must ensure the unit is suitable for a new tenant before a tenancy begins. The landlord must apply online, using a credit card, and pay a fee of \$25 per unit, plus a \$3 service charge.

The housing inspection program is operated and administered by the Licensing and Inspections Department of the City of Philadelphia. The Department maintains a list of “critical violations” that allow tenants to withhold rental payments. The licence and inspection fees are \$30 per unit for the inspections, and \$250 for the Business Privilege Licence, up to a maximum of \$12,000 per building. Inspections are designed to test apartment dwellings and structures against the 2003 International Property Maintenance Code.

Each time a dwelling unit is rented to a new tenant, the owner must give the tenant a written statement certifying that the rental unit is licensed and listing the licence number.

### **San Jose: Apartment Licence (Residential Occupancy Permit) and Business Licence**

In order to operate a multi-unit rental building, the owner or manager must obtain a Residential Occupancy Permit (licence) from the municipality, as part of the city's Multi-Family Code Inspection Program. Buildings that do not meet the requirements of the California Civil Code and the San Jose Housing Code for quality and safety will be denied a permit or have their permit revoked. Court-ordered education programs and liens on real property are additional penalties for non-compliance. A permit will also be denied if the requisite business taxes have not been paid.

Each year the owner must conduct a self-survey and submit it with an annual permit renewal application. Random spot inspections take place every three or four years as well as complaint-based inspections, to ensure compliance. Permits cost \$33.65/unit. Landlords in San Jose also require a business licence to operate a rental apartment building. All businesses in the city are required to hold a licence, which they acquire after paying a



business tax. To obtain a licence, the owner must pay taxes of \$150 per unit for the first 30 units and \$5 per unit for remaining units, to a maximum of \$5,000.

### **Minneapolis: Apartment licence (Residential Rental Licensing Program)**

The City of Minneapolis created its Residential Rental Licensing program in 1991 to ensure that landlords adhere to public safety laws. The City maintains an inventory of building owners and managers, along with an inventory of building types and sizes to help administer the inspection program. The licence costs \$55 for the first unit, and each additional unit costs \$20. To obtain a licence, the landlord must demonstrate that the building complies with housing standards, building codes, fire codes, and other issues of public concern, such as graffiti laws. Tenants with questions about licensing and housing regulations, or those who want to report a code violation, may call the city's 311 line to be connected with an operator or translator who can help. Random inspections take place at least every five years.

### **Phoenix: Business Tax**

The City of Phoenix charges owners or managers of rental buildings a Rental Leasing Privilege Tax; each multi-unit building is taxed separately. This tax does not appear to be connected to licensing. The owner may continue to lease the property or units on that property as long as taxes are paid each year in full.

### **Raleigh, N.C.: Probationary Rental Occupancy Permit**

A Property Rental Occupancy Permit (PROP) is required for properties that have been cited multiple times for violations of the building code, zoning, or minimum housing standards, or for properties that have failed to respond to a citation within a "grace period," in order avoid condemnation and closure.

When a building is subject to a PROP, the landlord must pay a \$500 (per year) fee within 10 days, and tenants are notified that the building will either be closed or subject to a PROP. Landlords are expected to attend a landlord training program within the first year of the permit period. If the problems are solved and no more violations occur over the next two years, the PROP ends, and the building can operate as normal.

If more violations occur, the first violation results in an immediate \$50 fine and a further fine of \$50/day until the violation is corrected. Second and third violations incur fines of \$250. By the third violation, the city reserves the right to revoke the landlord's permit to operate and shut the building down, along with any other properties owned by the landlord in the city which are subject to PROPs.

Property maintenance and tenant behaviour (measured in police calls) are grounds for putting a property into the PROP program. However, for inspectors to enter a building, they must have "probable cause evidence" or a warrant issued by the courts. "Probable cause evidence" may include tenant complaints.



### 4.3 *What was the problem that licensing was supposed to solve?*

Interviewees (including city staff, tenant associations, and landlord associations) were asked to explain the rationale behind their city's creation of a licensing program. Four main reasons were used to justify the creation of a licensing program (listed in order of the frequency with which they were mentioned):

- improving housing quality;
- increasing safety and preventing crime;
- creating an inventory of rental units;
- generating revenue for the city.

Interviewees in all the cities we studied emphasized that specifying the purpose of a licensing program in advance of its implementation is very important. They noted that defining goals and objectives in advance not only provides indicators that can be used to evaluate the success of the program, but can also help initiate a debate about other options that could solve the same problem more effectively.

Furthermore, landlord support for licensing is common in cities where the program's goals were predefined and remained unaltered over the life of the program, and where those goals were shared by the city, the public, and the landlord associations (such as the eradication of slums and the elimination of bad landlords).

#### **Improving housing quality**

Interviewees in Los Angeles, Minneapolis, and San Jose all stressed that the main purpose of their licensing programs was to protect housing quality and the "integrity of communities." Furthermore, they all said that using licensing to improve housing quality was working successfully and that the goals were being achieved. The following excerpts from interviews demonstrate the rationale for creating licences to protect housing quality:

- "Citizens were beginning to live in ... slum conditions"
- "The licence was created to make sure that there would be no unintended or unexpected substandard housing..."
- "There [was] a disparity between home owners and rental tenants in terms of housing quality."

#### **Increasing safety and preventing crime**

Some cities chose to use a licensing program to help solve problems with safety and crime. Safety includes building code-related issues (weak railings, unsafe elevators, etc.) and crime means reducing or preventing criminal behaviour within rental buildings and reducing the number of police calls to a specific building.

Concern about safety was more frequently mentioned by interviewees in cities with large stocks of older housing and where slum conditions were perceived to be a problem, or in cities where disaster prevention was considered important. An interviewee in San Jose said, "We're in earthquake country out here, so there is a real and valid reason to be concerned." San Jose landlords have to be vigilant about gas, electrical, and hot water system installations and therefore a formal inspection and licensing program helps protect landlords, their tenants, and their neighbours from disaster.

In Minneapolis, licensing had been expected to help reduce crime. The number of police calls associated with a single property can affect the status of that property's licence. Reducing crime was not an original goal of the program, but an added "layer" of policy applied to a pre-existing program.

### **Creating an inventory of rental units**

Some cities use licensing to collect information about the number of rental buildings, the size of each building, the structure of management, and the locations of buildings within the city. This inventory can provide building inspection teams with the information they need to execute an audit program, or to record information for community profiles (as in Edmonton).

In the United States, some cities with rent control programs use licensing to track buildings that fall under rent control programs in order to check their compliance; these cities may charge rent-control fees to building owners (this is the case in San Jose).

Interviewees in cities that use licences to produce building inventories said things like: "[Licensing was introduced] to get a sense of the number of properties operating as rentals. Quality does not appear to be a real issue," or "[Licensing was introduced] to produce an accurate inventory of which units were under rent control and which were not."

### **Generating revenue for the city**

Lastly, some cities use licensing mainly to generate revenue. Vancouver was the only city in which the interviewee cited revenue generation as the sole purpose for the program. However, almost all interviewees indicated that full cost recovery was a goal of the licensing program, indicating that revenue generation is, at least, a secondary reason for the licensing program. These interviewees said things like: "[licensing]... was created as a revenue generator," or "The business licence is exclusively a general revenue maker."

## ***4.4 Did licensing solve the problem?***

Interviewees were asked to provide the research team with both an opinion and, where possible, evidence to indicate whether or not the licensing program was achieving its goals.

### **Improving housing quality**

Interviewees in Los Angeles stated that their program had been successful in upgrading rental unit quality. The Los Angeles program is comprehensive and includes a business licence, the Systematic Code Enforcement Program (SCEP) program, a Rent Escrow Account Program (REAP), and an Urgent Repair Program (URP). The interviewees provided statistics that showed that since the introduction of the program in 1999, landlords had reinvested \$1,593,000,000 in 772,406 rental units. The comprehensive range of programs and penalties is likely the cause of the success of the Los Angeles model. A representative of the Apartment Association of Greater Los Angeles (AAGLA) also claimed that the program was on track to eliminate slum landlords in the city within 10



years, because such landlords would either be closed down or be brought into compliance. AAGLA has a practice of contacting landlords in the REAP program to offer training and connections to vendors who can help bring their properties up to the necessary standards.

Interviewees in San Jose and Minneapolis also reported success in improving rental housing quality, although not at quite the same level as Los Angeles.

It is important to put these results in context. All three cities have a relatively high vacancy rate (8.3 percent in Los Angeles) and therefore landlords have more incentive to improve their properties. Landlords in U.S. cities also have access to funding to help carry out upgrades (see Chapter 6 and Appendix C for a description of these programs). Finally, Los Angeles, which has the most comprehensive program, also has the second-highest average rents of all the cities studied (after San Jose).

### **Increasing safety and preventing crime**

Interviewees reported that licensing programs were successful in reducing unsafe living conditions. In San Jose's earthquake-prone location, the additional inspections have helped to ensure that gas lines, hot water heaters, and other potentially hazardous systems have been installed properly. The program gives the city, tenants, and owners an extra layer of certainty that potential risks have been minimized.

Criminal activity, however, is not reduced by penalizing landlords. In Minneapolis, landlords find themselves caught between a licensing system that threatens to revoke their licence for poor tenant behaviour and an eviction process that can take months. The interviewees said that grafting this component onto the original licensing process was a failure.

Most interviewees did not feel that licensing reduced the incidence of criminal behaviour in rental buildings. Our interviewees suggested that it was an inappropriate and ineffective use of the property licence. Crime, they said, needs to be solved by other means and not by landlords – who may be penalized even after eviction notices have been filed against offending individuals.

One interviewee noted: "Dominantly, there was an aging housing stock.... but in the last 20 years we've seen a shift and the licence requirements have gone from just maintenance and property care to include other issues such as behaviour and crime. This is key – you have to know the purpose and if it is something like crime, are there better methods to solve that problem than apartment licences."

### **Creating an inventory of rental units**

Results regarding the benefits of Edmonton's business licensing program are inconclusive. None of the interviewees we spoke to were able to confirm or deny its success or failure in creating the hoped-for inventory of rental units.

The City of Los Angeles explicitly rejected licensing as a tool to produce an inventory of rental buildings. Interviewees in Los Angeles noted that some building owners operate without licences because they are already in violation of other codes and laws. Therefore, an inventory of buildings assembled from licence records is only as accurate as the compliance rate of the owners. Property assessment records are considered to be a more accurate tool for assembling a rental building inventory.

### Generating revenue for the city

Both Vancouver and Edmonton use business licences to generate revenue. No one in Vancouver could comment on the success of this aspect of the licensing program. In Edmonton, one interviewee suggested that the program likely generates more administrative costs associated with multi-unit rental buildings than it generates from them.

### Overall results

Licensing programs, if implemented with sufficient resources, appear to have a beneficial effect on improving housing quality (at least in a high-vacancy-rate environment) and housing safety, are ineffective in preventing crime, and are not the best available method for creating a rental housing inventory. As for revenue generation, the jury is out.

## 4.5 *The unintended or unanticipated consequences of licensing*

### Good landlords are penalized

A number of interviewees found that while the programs usually helped to improve housing quality, they penalized “good” landlords, who were already maintaining their properties in order to reach a few “bad” ones. This is a common complaint about uniform regulatory regimes, which use a one-size-fits-all approach to impose order on reality. As Bardach and Kagan put it:

Centralized, detailed and programmed regulation can be a powerful social instrument, but it is not a subtle one. By requiring all enterprises to take a prescribed set of protective measures, it assumes a certain uniformity in problems to be controlled. The world to be regulated, however, is diverse, changeable and ambiguous. The causes of harmful events are not entirely predictable; risks arise in different degrees; and solutions are not always ready-made.<sup>25</sup>

Interviewees in Los Angeles said that “ma-and-pa landlords” (owners with only a few rental units) were hardest hit by their system, since they had more difficulty absorbing the costs of upgrading units. They also noted the system of fines did not distinguish between fairly minor infractions (cracked sidewalks) and major problems, such as fire safety violations.

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<sup>25</sup> *Going by the Book*, 1982, p. 58.



## Rents go up

Interviewees also pointed out that in many jurisdictions, rents rise when a city introduces licences, as the fees are passed on to tenants. Nevertheless, we were told that the longer the licensing system is in operation, the less noticeable the licensing fees and costs of required upgrades become. At first, they represent a significant step up in operational costs for the landlord and a noticeable rent increase for tenants, but over time, they are subsumed into the landlord's cost of doing business and automatically factored into rents. The increase is most noticeable when coupled with other special fees, or where apartment landlords are subject to several different licensing programs at the same time.

## Programs may run over budget, especially during the start-up period

Cities may find that licensing programs run over budget or are ineffective in their early years of operation. This is largely because of the cost of initial inspections, if they are required for licensing all units in the city, and the number of re-inspections required to ensure that licence holders are in conformity with the requirements. This was certainly the experience in Los Angeles during the start-up of its program. There may also be costs associated with legal proceedings against landlords who are unwilling or unable to meet the requirements.

## Revoking a licence may lead to the loss of rental housing

Interviewees noted that when landlords of rent-controlled units are found in violation of the licence provisions and must make major repairs, they may not be able to raise rents high enough to cover the additional cost in the capital budget and may have to remain in violation of the licence requirements. (This same point was raised in a briefing note prepared by the Toronto Network of Non-Profit Housing Providers: non-profits have very limited options for raising capital for unexpected repairs.<sup>26</sup>) In these cases, the city must use its power to revoke the licence, even when vacancy rates are low, if the licensing program is not to lose all credibility. Presumably the tenants of such units are left scrambling to find alternative housing – if it is available.

This situation illustrates another common problem identified by Bardach and Kagan: a formal licensing program leaves little room for negotiation. Landlords are either in compliance or in violation of the requirements; there is no middle ground. Without such a program, experienced inspectors may treat infractions as problems to be solved rather than offences to be penalized, and can work with landlords to find solutions that do not lead to legal repercussions. Bardach and Kagan quote an inspector who points out that formal programs demand adherence to rules, even when they get in the way of constructive problem-solving: “Public agencies exist in a fishbowl, so it’s safer to stick to the rules that back you up. There’s no advantage to discretion, to being reasonable.”<sup>27</sup>

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<sup>26</sup> Toronto Network of Non-Profit Housing Providers, “Multi Residential Apartment Building (MRAB) Regulatory Strategy,” Briefing note, February 26, 2007.

<sup>27</sup> *Going by the Book*, 1982, p. 206.

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### **Adding new regulations causes problems**

A pitfall of licensing programs is that they evolve with time, and each time the program is changed, new layers of requirements are added. Interviewees in Minneapolis told us that the addition of crime-prevention measures to an existing licensing scheme was unsuccessful. Criminal activity within a building is not necessarily the fault of a building owner and eviction processes can take many months; meanwhile landlords are forced to pay fines each time the police are called. Bardach and Kagan call this the “regulatory ratchet.” Regulation tends to be additive. When new measures are added, old ones are not removed. Some cities try to do too much with a regulatory program.

### **Licensing may create inequities**

Licensing may also be inequitable. Revenue-generating programs, such as requiring apartment operators to have business licences, often include a per-unit fee, a cost that is transferred to tenants. This means that renters pay a business tax that private homeowners are not required to pay, therefore creating an inequity.

Licensing can also create inequities among landlords. Larger operators are in a better position to absorb additional costs caused by a licensing program than smaller ones. Landlords in Los Angeles have also found that some landlords have more difficulties than others in passing on licensing fees to tenants, although they are permitted to do so.

## ***4.6 Lessons from other cities***

During the interview process, each interviewee was given the opportunity to talk about the lessons which their own municipalities, apartment associations, and tenant groups had learned as a result of introducing a licensing program. We heard about five main “lessons learned.”

### **Selective inspections can save money and time**

Because of the high cost associated with inspecting every rental unit, some method of targeting the worst offenders with more frequent inspections is considered helpful. These offenders may be identified during inspections or by counting the number of violations for buildings. If the goal of the licensing program is to improve the quality of the housing stock, this method may both achieve the goal and reduce inspection fees for good landlords (and even tenants) while providing cost and time savings for the municipality.

### **Different types of landlords have different needs and problems**

Small landlords often rely on property income as a source of personal income, while the professional operators of large, more profitable buildings are usually more aware of their legal obligations and therefore more frequently in compliance with the law. Non-profits operate within a constrained financial situation. Cities must take into account the income-generating needs of the small landlords, as well as the constraints of the non-profit sector, and not expect big-building landlords to subsidize the inspections of small, independently operated buildings.



## **Inventories created through licensing are only as accurate as compliance rates**

When cities implement a licensing program to create an inventory of rental buildings, the inventory will be only as accurate as the compliance rate. Landlords who ignore compliance rules may ignore licensing requirements as well. (Toronto has already had this problem with rooming houses; if the operator does not apply for a licence, the rooming house cannot be inspected.) Using property assessment records to identify buildings and building types is a better way to build an inventory.

## **Programs are best phased in slowly**

Our interviews indicated that most apartment associations support licensing programs in principle, but are concerned about their administration. When a new licence is introduced, it introduces a new fee. In rent-controlled cities, where rents cannot immediately be increased by the cost of the fee, the money for the fee is often drawn from the building's operating budget or reserve fund. In other words, money is drawn away from maintenance and building upkeep until rents can be increased enough to cover the cost of the fee. Cities that aim for full cost recovery in the program should be willing to operate the program at a loss in the initial years in order to not penalize tenants and owners.

## **Rates of re-inspection are often higher than expected**

Most cities discover that there are more violations of building and health codes than they expect to find, even in otherwise well-run buildings. Due to high rates of re-inspection, the cities that had planned for annual or three-year inspection cycles found themselves needing an additional year or two to complete the first round, which reduces the effectiveness of the program while frustrating the tenants and owners who pay the annual fees for a program that is not being implemented in the way they expect.

## **4.7 Keys to a successful program**

Respondents were also asked to offer advice for a city that is considering licensing as an option. One piece of advice that we heard often was, "Before using a licensing system you must know what problem you are trying to solve and if there is a better way to do it!" Interviewees also offered three other pieces of advice.

### **Inspect the buildings and enforce the rules**

With or without a licensing program, municipalities must use the rules that already exist to enforce buildings standards to their fullest extent. Once a licensing program is in place, the city must inspect the buildings within the timeline established and use the powers it has to force compliance. All too often cities have powers, such as the ability to conduct renovations and invoice the building owner, but hesitate to use them for fear of litigation. If owners believe that the provisions of a by-law can safely be ignored, compliance rates plummet.

### **Communication is key**

Apartment associations and reputable building owners want to work with cities to preserve the integrity of communities, eliminate slum landlords, and enhance their reputations with tenants and the public. Cities must "explicitly delineate the rules and definitions" that landlords must follow, so that there are no misunderstandings



when licensing programs are created. Education and partnership between the city, owners, and tenants is critical: as one interviewee put it, “No one wants to be caught by surprise due to a misinterpretation or misunderstanding.”

### **Seek and maintain political support**

The decision to institute a licensing program is usually a political one. A licensing program should be implemented only if the long-term political climate of a city will support it. The immediate political concerns of a city’s council members or pressure from certain voters must be considered, but the city as a whole must support the long-term purpose of the program. A program that does not have continued support from the public and council will simply generate bureaucratic inefficiencies and added costs for tenants and building owners. A long-term strategy, along with clearly defined fixed goals, as well as program evaluation targeted at improving the program, are all necessary components, and each requires commitment on the part of everyone involved.

## ***4.8 Perspectives from cities without licences***

Montreal has two provincial bodies and one municipal body that regulate and enforce housing standards. The Quebec Rental Board was created to deal with all landlord-tenant issues. The Board also functions as an escrow agency and is authorized to collect rent from tenants to hold in escrow until landlords resolve outstanding code violations. The province’s building department, Régie du Batiment du Québec, is responsible for inspecting buildings for code violations and safety issues. The City of Montreal is responsible for public health and cleanliness. One interviewee said that “the Régie du Batiment is very efficient at issuing orders,” and if tenants have repeatedly identified problems, the landlord will be in “big trouble and can get fined, face a legal mortgage, or even have their building closed” by the Rental Board.

Our Boston interviewee suggested that Boston uses a complaint-based inspection system because 90 percent of rental units are in good condition and therefore the extra cost of human resources and administration to conduct universal inspections is not justified. A licensing system was seen to be simply an additional and unnecessary “hoop” for landlords to jump through, because the current system already provides tenants with certain powers, such as the ability to withhold rent from landlords until necessary repairs are made.

## CHAPTER FIVE | COMPARING RENTAL CHARACTERISTICS OF CITIES WITH AND WITHOUT LICENSING PROGRAMS

We collected data for five Canadian cities and ten American cities to understand the effect of apartment licensing on several characteristics of the rental housing market, such as vacancy rates, amount of rental housing, age of building, state of repair, and rental prices. Table 5 shows the cities we studied. For further information on data collected, see Appendix B.

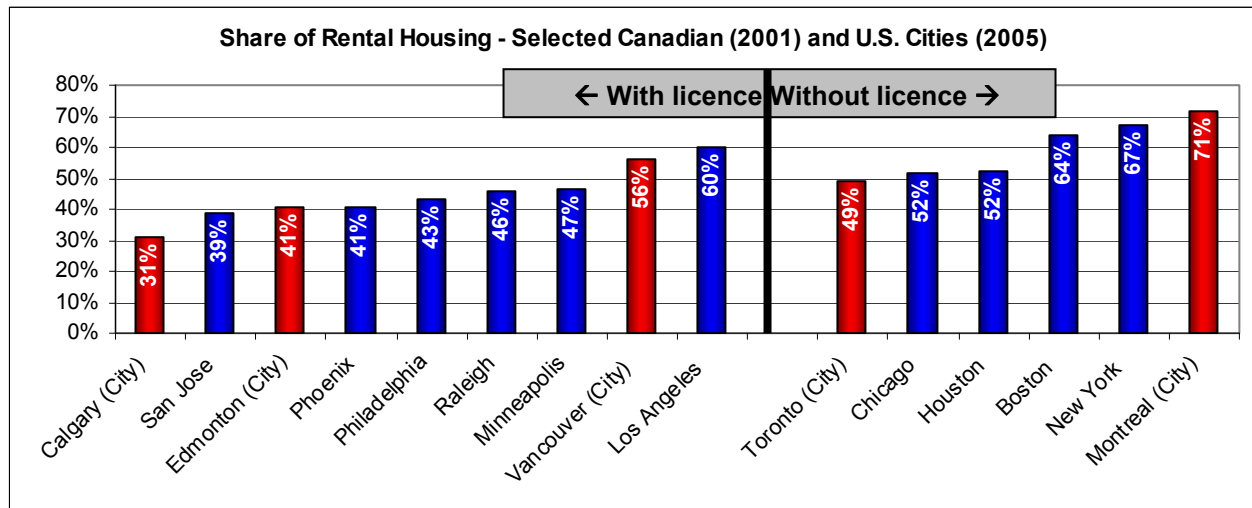
**Table 5: Cities used for statistical comparison**

	Canada	United States
With licensing	Vancouver, Calgary, Edmonton	Los Angeles, Minneapolis, Phoenix, San Jose, Philadelphia, Raleigh
Without licensing	Toronto, Montreal	New York City, Boston, Chicago, Houston

### 5.1 Amount of rental housing

Toronto, among the cities without licensing that we studied, has the smallest proportion of rental housing to total housing, at 49 percent (see Figure 2). Only two cities with licensing programs, Vancouver and Los Angeles, have larger proportions of rental housing. Apparently, cities with much larger proportions of rental housing are not currently using licences.

**Figure 2: Proportion of Rental Housing for Selected Cities, Canada and the United States**



## 5.2 Building conditions and licensing

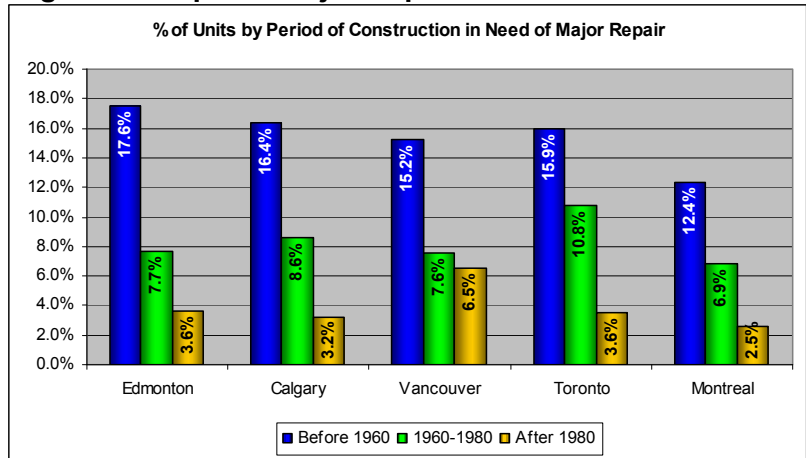
### Canadian cities

We undertook an analysis of building conditions for rental apartment buildings in Canadian cities using CMHC data on dwelling conditions by type of structure, age of structure and tenure. Among the five Canadian cities studied, there is a similar proportion of rental buildings in a poor state of repair, whether licensing is in place or not. In fact, Edmonton and Calgary each had the highest proportion of rental buildings built before 1960 in need of major repair (see Figure 3).

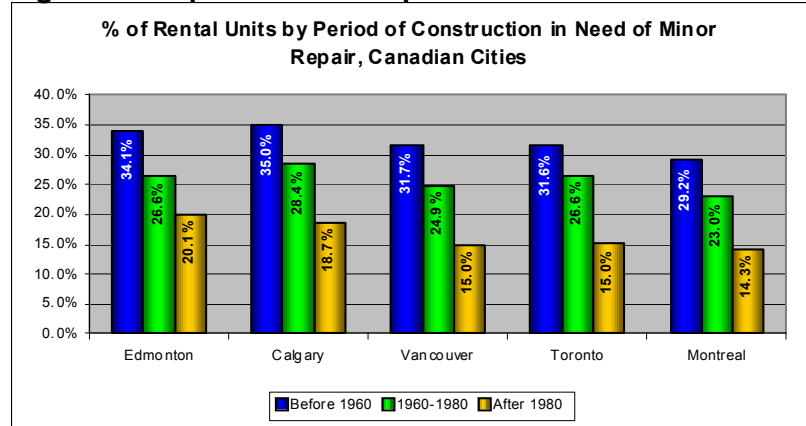
The three Canadian cities with some form of apartment licensing all had similar proportions of buildings across the three building periods that were in need of minor repair. Toronto and Montreal both had the smallest proportion of buildings built after 1980 and before 1960 in need of minor repair; neither city has a licensing program (see Figure 4).

The five cities also had similar levels of buildings in need of regular maintenance only, indicating that the presence of apartment licensing does not appear to have had a significant effect upon the proportion of properly maintained buildings (see Figure 5).

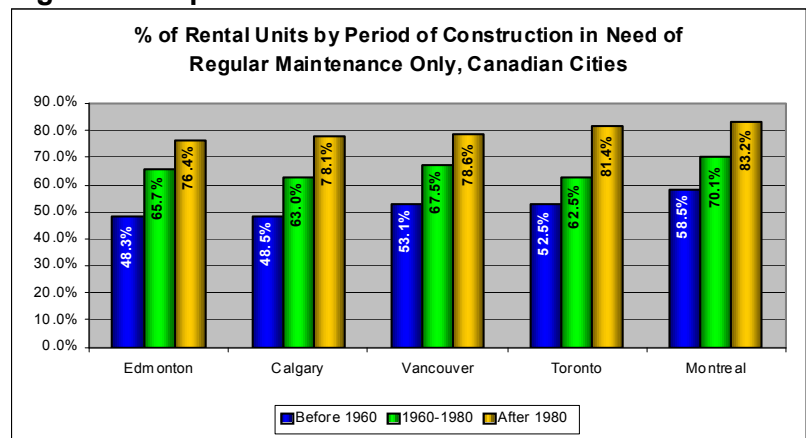
**Figure 3: Required Major Repairs**



**Figure 4: Required Minor Repairs**



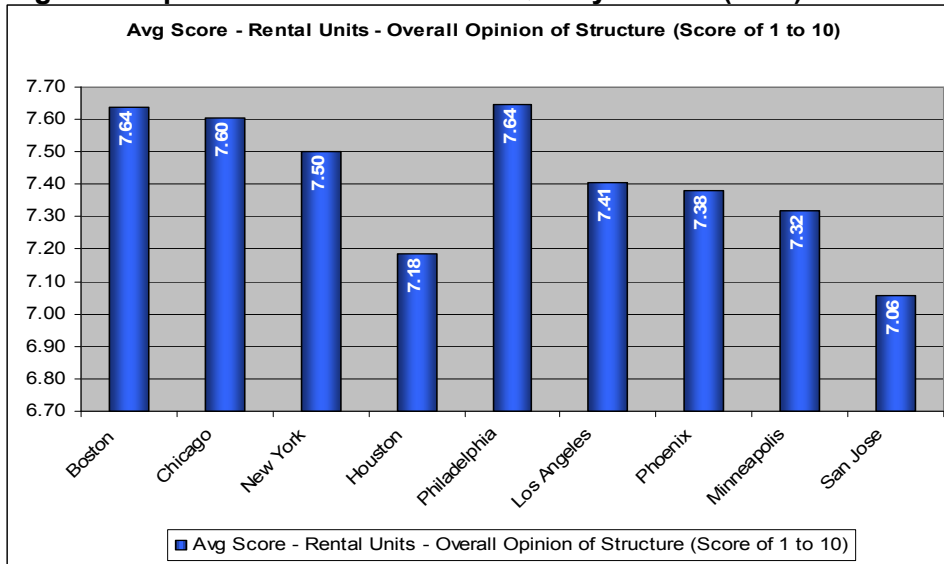
**Figure 5: Required Maintenance**



## American cities

The U.S. Census Bureau's American Housing Survey canvasses the opinions of tenants in urban areas. The survey sampled at least 4,000 tenants in each urban area, asking respondents to rank their overall opinion on the building structure on a scale of 1 to 10, with 10 being the most favourable response, and 1 being the least favourable. Boston and Philadelphia each had the highest average response, while Houston and San Jose each had the lowest average response, both falling below an average score of 7.2 (see Figure 6).

**Figure 6: Opinion Poll – Rental Unit Quality Scores (USA)**



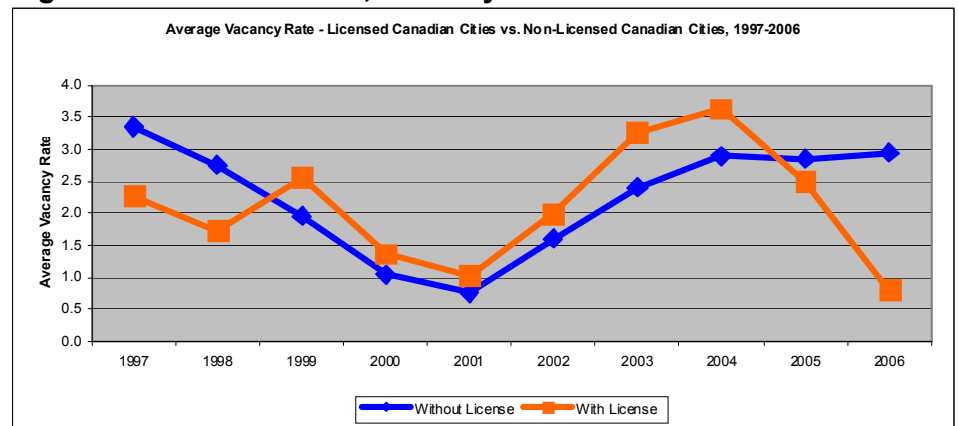
The average score for cities both with and without licensing was determined by summing the total number of apartment units across the individual cities in each group, and then determining the average score from the summed distribution of scores. The average score per apartment was slightly higher for cities without licensing. (7.50 to 7.41).

## 5.3 Vacancy rates and licensing

### Canadian cities

Vacancy rates, averaged across the two groups of cities, also reveal no significant differences for cities with and without licensing, except for the last two years, during which vacancy rates in Calgary and Edmonton dropped below 1 percent. However, for the six previous years, the vacancy rate for the three cities with licences was slightly higher than the two without a licensing program (see Figure 7).

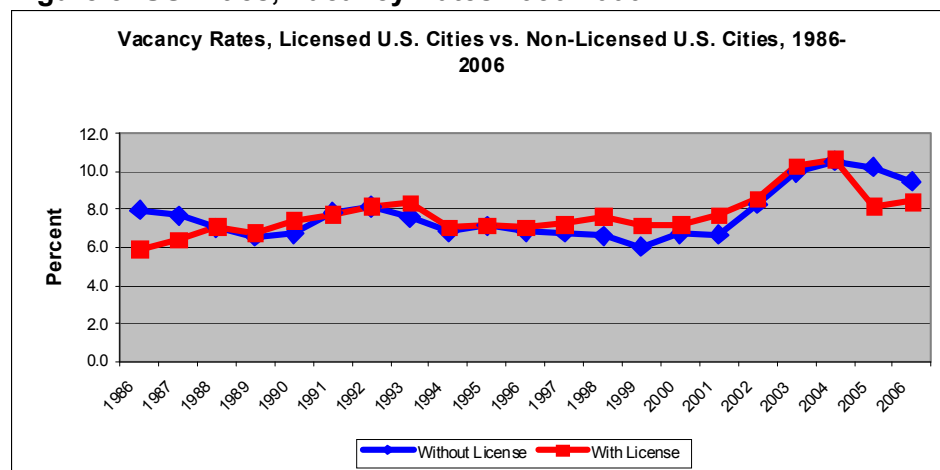
**Figure 7: Canadian Cities, Vacancy Rates 1997-2006**



## American cities

Vacancy rates, averaged across the two groups of cities, also reveal no significant difference in trends, and have moved in lockstep for all but the last two years. Because of the lack of raw data, these vacancy rates are not weighted according to city size, but instead are averages of the given vacancy rate for one-bedroom units in each city (see Figure 8).

**Figure 8: US Cities, Vacancy Rates 1986-2006**

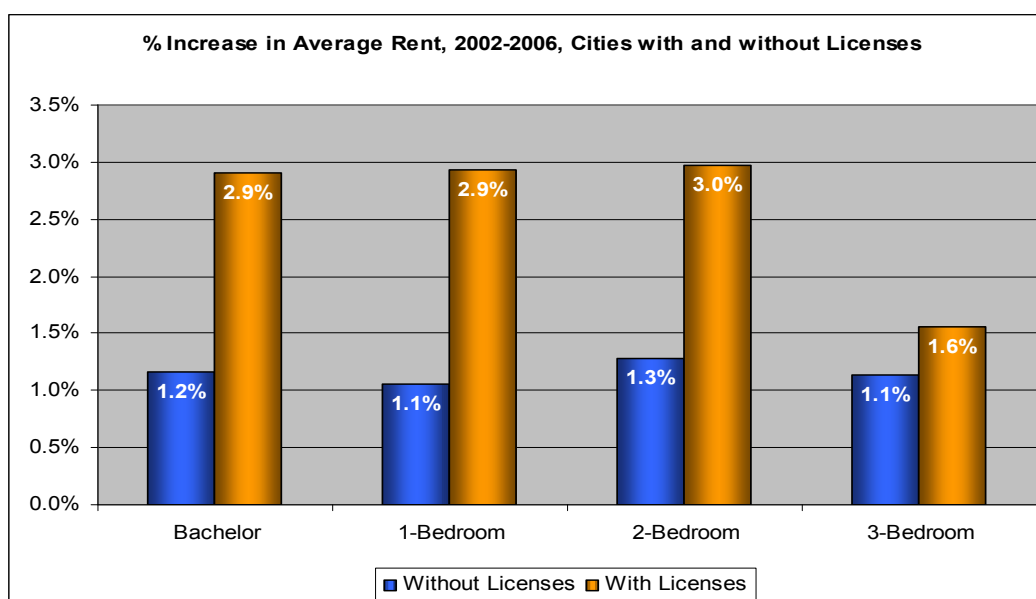


## 5.4 Average rents

### Canadian cities

Among the five Canadian cities studied, those with licensing schemes had experienced larger jumps in rent between 2002 and 2006 (see Figure 9).

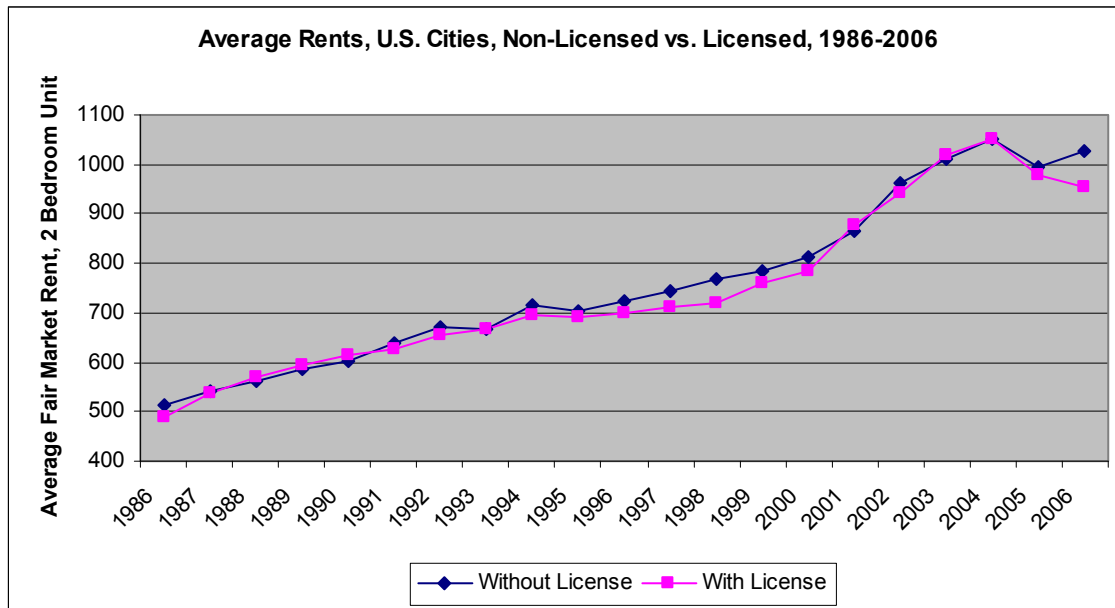
**Figure 9: Percentage increase in average rent for Canadian cities with and without licenses, 2002–2006**



## American cities

For the 10 American cities studied, there was no significant difference between the rental prices (as determined by the U.S. Census Bureau's Fair Market Rent data) in licensed cities versus those without a licensing program (see Figure 10).

**Figure 10: Average rents in U.S. cities with and without licensing programs, 1986–2006**



## 5.5 What we can learn from housing statistics

The available data do not indicate a clear relationship between licensing and the quality of rental housing in any of the cities studied. Two Canadian cities with licensing (Calgary and Edmonton) have a higher proportion of pre-1960 rental buildings in need of major repair than the two cities without licensing (Toronto and Montreal). As for the United States cities, despite the assurances of city officials in Los Angeles that licensing has improved the rental stock, this improvement is not reflected in the perceptions of tenants. Three cities without licensing programs were perceived as having higher quality rental stock.

Canadian cities with licensing programs have higher average annual increases in rent (this difference is not apparent among the American cities studied), and in the most recent year for which statistics are available (2006), lower vacancy rates, which may suggest a slowing down in the creation of new rental stock. Vacancy rates are much higher in all the American cities studied, which suggests a healthier economic environment for creating new rental housing.

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## **CHAPTER SIX | INCENTIVE PROGRAMS TO CREATE OR UPGRADE RENTAL HOUSING**

Despite Councillor Moscoe's claim that licensing itself represents a form of incentive program for apartment owners, there is a need to match licensing with programs that will support landlords who are required to make repairs, particularly the landlords of smaller building and non-profit housing operators, who have limited resources. At present, Canada offers relatively little support to rental housing operators, which is one reason why so little rental housing is being built. The United States offers much more generous support for preserving rental housing and creating new rental stock.

### ***6.1 Canadian rental housing quality programs***

#### **Rental Residential Rehabilitation Assistance Program**

The Rental Residential Rehabilitation Assistance Program (RRAP) offers financial assistance to landlords of affordable housing to pay for mandatory repairs to self-contained units occupied by low-income tenants to bring properties up to minimum levels of health and safety. Assistance is available in the form of a fully forgivable loan, covering up to 100 percent of the cost of mandatory repairs. Landlords must also place a ceiling on the rents charged after the repairs are completed, and limit rent increases during the term of the agreement. To be eligible for this program, rents for the building (both pre- and post-RRAP) must be at or below the median market rent for the local area, based on CMHC market rent information.

The program also provides funding for housing repairs, housing modification, the creation of secondary suites, and the conversion of non-residential buildings into new rental housing.

At present, the affordable rental housing component of the RRAP program in Toronto cannot meet demand. Funding for this component has remained steady for several years at roughly \$6.5 million a year. Every year 500 to 1,000 eligible units are left without funding. The addition of a licensing program is bound to further stimulate demand for this program, so successful implementation might hinge on the availability of funding to support rehabilitation of rental units.

### ***6.2 American rental investment programs/grants***

The United States offers a larger array of programs to help landlords maintain the quality of rental housing.

#### **The Low Income Housing Tax Credit**

The Low Income Housing Tax Credit (LIHTC) is the single largest source of support for affordable rental development and rehabilitation in the US. It allocates tax credits that are sold to investors, and the proceeds are used to provide equity investment in targeted affordable housing projects. The LIHTC allocates new credits totalling more than \$300 million each year, and has so far helped to rehabilitate 1.15 million rental units, an



average of 75,000 per year. Most new construction and rehabilitation projects are eligible for a 9 percent tax credit, equal to 9 percent of the qualified costs each year, for 10 years. After the credits have been awarded, the developer typically hires a broker to market them at a value of between 75 to 85 percent on the dollar, helping to raise equity for the housing project. The IRS provides funds to the state on a \$1.75 per capita basis.

### **Tax-exempt bond financing**

State and local governments are authorized to raise capital for various purposes, including housing development by for-profit and not-for-profit corporations, by issuing tax-exempt bonds – generally with terms of 10 to 30 years. This provides a source of below-market, long-term, fixed-rate financing. Since 1995, this program has supported the development of almost 170,000 units (just under 100,000 of which are new construction). In 2000, more than \$1.6 billion in financing from this source supported the development or rehabilitation of almost 55,000 rental units in properties targeted for affordable housing. The interest earned from these bonds is exempt from federal taxation, creating an incentive for developers to create decent, safe, and sanitary housing. These bonds cannot be used for the acquisition of property, or refinancing purposes.

### **Community Development Block Grants**

A Community Development Block Grant (CDBG) provides a formula-based federal block grant to municipalities for community redevelopment and revitalization activities – although only a small portion is used to assist new rental development. These funds may be used for the acquisition of real property or rehabilitation of residential structures. All grants awarded must meet at least one of the following three national objectives: 1) benefit low- and moderate-income persons; 2) aid in the prevention or elimination of slums or blighting conditions; 3) meet other urgent community development needs where existing conditions pose a serious and immediate threat to the public health and welfare and where other financial resources are not readily available to meet such needs.



## CHAPTER SEVEN | CONCLUSIONS

Let us return to the three questions we posed at the beginning of this document:

1. Would a regulatory program yield the intended benefits?
2. Would the costs exceed the resulting social benefits?
3. Could the same results be achieved more cheaply and effectively using another method?

We will use the information we have gathered to answer these questions.

### 7.1 *Would a regulatory program yield the intended benefits?*

The background reports and media stories on the proposed regulatory program focus on the following problems in the Toronto rental sector:

- the failure of the existing system to ensure adequate enforcement of property standards, including a perceived leniency in the treatment of landlords who violate property standards;
- the reluctance of some low-income or immigrant rental tenants to use the complaint-based reporting system;
- a critical shortage of trained inspection staff;
- a high proportion of aging building stock, some of it in poor repair.

#### **The failure of the existing system**

Councillor Moscoe has suggested to the media that the city needs licensing because the complaint-based system has failed to deal effectively with landlords who consistently fail to meet the required property standards, or appear to ignore those standards entirely. He (and other groups, such as the Parkdale Tenants Association<sup>28</sup>) have offered a tour of inadequate rental units to interested journalists.

The failure of some landlords to comply with property standards is a persistent problem, but how large is the problem? In all cities, inspectors know that a minority of the landlords create a majority of the headaches. A study in New York in 1971 found that 65 percent of recorded violations were attributed to 12 percent of all multiple dwelling buildings.<sup>29</sup> Bardach and Kagan refer to the “80/20 rule” – that about 80 percent of the problems are caused by 20 percent of non-complying individuals (the actual proportion might be 90/10 or 75/25, but inspectors assume that they will spend a majority of their time on a minority of violators). The Greater Toronto Apartment Association has suggested that about 5 or 10 percent of the City’s rental units are in serious breach of property standard requirements.<sup>30</sup> In this case, a licensing program that imposes costs on both those who comply and those who do not would seem to be inequitable. Why should good landlords have to pay a fee that allows the city to go after bad landlords?

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<sup>28</sup> See, for example, the Lord of the Slums website, <http://www.torontoslumtourism.com>.

<sup>29</sup> Michael Teitz and Stephen Rosenthal, *Housing Code Enforcement in New York City*, New York: The Rand Institute, 1971, p. 34.

<sup>30</sup> Moloney, Paul, “Tenants back licensing landlords; Councillor among those rallying at Weston building with spotty repair record,” *Toronto Star*, December 22, 2006, p. B7.



Solving this problem would seem to call for a more targeted approach, such as the probationary rental occupancy permit described in section 3.2, or simply a building audit program that includes more frequent inspections of buildings with a record of frequent violations.

Further, Councillor Moscoe suggested that the program would be “targeting landlords with large holdings, not mom-and-pop operations” – that is, the program would apply to buildings with six or more units. However, as inspection staff know, many of the worst conditions are found in smaller buildings run by inexperienced or untrained landlords. Most of the larger buildings are operated by professional management companies with experienced and trained staff.

As for the perceived leniency shown by courts and tribunals towards non-complying landlords, licensing would have no effect one way or the other.

### **Tenants who don't complain**

It has been suggested that a complaint-based system is inappropriate for Toronto's diverse tenant population, many of whom may not speak English well enough to negotiate the system, or who may be afraid to speak up because they fear their landlords. However, judging from the media coverage of the proposed regulatory strategy, the City is well aware of which landlords are not maintaining their buildings. The real problem may be that tenants are not in a position to identify many potential threats to health and safety, and that their complaints do not reflect the most serious problems in the rental stock.

The first problem could be solved by making the complaint-based system more user-friendly for tenants and more accessible to a multi-lingual population. This approach could make use of existing resources, such as the 311 community information line, or the simultaneous translation services offered by the TTC for providing information in many languages.

The second problem requires a program of building audits, carried out by City inspectors, or by an independent organization, or by landlords themselves (overseen in some way by the City). Buildings with a history of poor maintenance can be targeted for more frequent audits. The audits can be implemented without licensing, as they were in Scarborough and North York before amalgamation.

### **Not enough inspectors**

There is no question that Toronto does not have enough inspectors to follow up on complaints promptly. Inspections cost money, and inspectors need training, administrative support, and considerable resources, from vehicles to legal backup.<sup>31</sup> Moreover, inspectors are not technical specialists or engineers, and need to consult with such specialists when they identify certain kinds of problems in buildings.

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<sup>31</sup> For an estimate of the personnel required to implement a licensing program, see Appendix D.

Is a licensing regime, the cost of which will likely be borne by the tenants, the best and most appropriate way to pay for more inspectors and the resources they require? Since many tenants have relatively low incomes, licensing represents a form of revenue generation which disproportionately affects the poor. The social benefit of improving living conditions for these low-income households should be paid for in the same way as other social programs: through general, progressive taxes.

### Aging building stock

Many municipal (and even some provincial) reports over the years have noted the aging of Toronto's rental apartments. In fact, it is not the age of the stock *per se* that is the problem, but its original quality and the level of maintenance over time. Cities like New York and Boston have much larger proportions of much older stock, some of it dating back to the 19<sup>th</sup> century. Most of Toronto's apartments were built in the 1960s and 1970s, in some cases with funding from programs intended to stimulate the rapid creation of rental housing. Many of these buildings are not aging well. A 1986 report spoke of the need for a "conservation" program, and made a clear distinction between conservation and routine maintenance. *Conservation* requires "long-term repairs and improvements to preserve the life of a building."<sup>32</sup>

More recently, a study by architects at the University of Toronto noted that upgrading Toronto's stock of aging highrises could even help the city achieve some of its environmental goals. "Upgrades that result in carbon and energy reductions, when multiplied across the city's entire slab apartment stock, would cut greenhouse gas production by hundreds of thousands of tonnes a year."<sup>33</sup>

Building audits, rigorous enforcement of standards, and arrangements such as escrow accounts to ensure necessary repairs, can help improve the quality of rental buildings. However, if buildings require massive interventions to prolong their useful life, then a different program may be called for that will subsidize any major renovations required and re-house those who are displaced because of the demolition of unsustainable buildings.

## 7.2 Would the costs exceed the resulting social benefits?

At the time of its public consultations on the Multi-residential Apartment Buildings Regulatory Strategy, the City of Toronto did not provide cost estimates for any of the 10 ideas put forward.

A 1999 report adopted by City Council "suggested a fee structure based on a class system, ranging from \$0.40 to \$0.70 per unit, per month [\$48 to \$84 per unit per year] based on the provision of a management plan, the past enforcement history and level of competence and experience of the operator. The 1999 report projected revenues in the order of \$3.25 million."<sup>34</sup> More recent media reports have suggested that the fee could be as low

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<sup>32</sup> "Preserve or Perish: The Issue of Conservation: High-rise Apartments in the City of Toronto," Research Bulletin 27, City of Toronto Planning and Development Department, December 1986, p. 1.

<sup>33</sup> Graeme Stewart, "Faulty Towers," *Toronto Star*, March 25, 2007.

<sup>34</sup> "A Framework Strategy to Ensure that Privately-owned, Multi-unit Residential Buildings are maintained in accordance with the Provisions of the Toronto Municipal Code," staff report to the Planning and Transportation Committee, December 10, 2003, pp.3-4.



as \$10 per unit per year in well-maintained buildings, and as high as \$400 in poorly maintained buildings.<sup>35</sup> Setting these fees would require an initial inspection of each building. The fees would be paid indirectly by tenants, through their rents.

The revenue generated would need to cover the cost of inspections, as well as improved communications with tenants through a multilingual hotline and possible enhancements to the City's website.

The main social benefit to be achieved would be the upgrading of units that do not now meet City property standards requirements, which probably represent between 10 and 20 percent of the stock. Tenants in well-run buildings would not notice any benefits, although they would find themselves paying a higher rent to cover the cost of the licence. In other words, tenants in good buildings would be subsidizing their less-fortunate fellow tenants. This situation fails the test of economic efficiency and social equity.

Tenants might also bear another, less obvious cost – the potential loss of privacy. The *City of Toronto Act* includes a provision that would allow inspectors access to self-contained units as part of the enforcement of a licensing program.<sup>36</sup> This provision is untested, and it is not yet clear how far the inspectors' rights of access would extend, but there may be cause for concern that tenants might be subject to provisions that allow them less privacy than homeowners.

The worst situation that could arise, from a tenant's point of view, is that prosecution of a non-complying landlord under a licensing scheme leads to the closure of an apartment buildings and the eviction of the tenants. Regulatory schemes, if they are to have any credibility at all, must ensure that rules are enforced as prescribed in the legislation that governs them. Inspectors in a licensing program do not have the discretion to negotiate with a non-complying landlord to make necessary repairs; they can only report the violation and let the law take its course.

There is a further inequity that might arise in the Toronto situation, in which a single jurisdiction in a large rental housing market imposes a cost that does not apply to all jurisdictions within that market. In other words, licensing would put landlords and their tenants in the City of Toronto at a disadvantage relative to those elsewhere in the Greater Toronto Area. Much has already been written about the extra costs borne by commercial landlords and tenants in the City compared to those in the suburbs<sup>37</sup>; licensing would extend the same problem to residential landlords and tenants.

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<sup>35</sup> Moloney, Paul, "Tenants back licensing landlords; Councillor among those rallying at Weston building with spotty repair record," *Toronto Star*, December 22, 2006, p. B7.

<sup>36</sup> *City of Toronto Act*, section 376.3.

<sup>37</sup> See, for example, *Business Competitiveness in the GTA: Why Toronto is Losing Ground*, Canadian Urban Institute for the Toronto Office Coalition, June 2005.

### 7.3 *Could the same results be achieved more cheaply and effectively using another method?*

The most important benefits to be achieved appear to be the enforcement of property standards and adequate building maintenance among a minority of landlords who do not maintain their buildings, and improved communications between tenants and the Municipal Licensing and Standards division of the City of Toronto. A system that targets the non-complying landlords specifically (such as a probationary licensing system or an enhanced program of building audits), coupled with an enhanced tenant hotline to identify non-complying landlords, might be sufficient to deal with these problems.

The remaining risk is that these two components would still fail to identify buildings or units within buildings that are inadequate or unsafe, and that are occupied by tenants who are unwilling or unable to report the problems. Reinstating the building audit program would go a long way towards minimizing this risk. This program should be paid for out of general municipal revenues, rather than a licensing program that would be paid for by tenants, many of who have low incomes.

Finally, there is an urgent need to conserve and upgrade the rental stock, and replace buildings that cannot be upgraded with alternative forms of affordable rental housing. The city needs to lobby the provincial and federal government to expand the Residential Rehabilitation Assistance Program, to help landlords bring aging buildings into conformity with property standards. And, as many other reports have argued,<sup>38</sup> Canada needs a national housing strategy with a steady source of funding that provides annual allocations to support new affordable rental housing in all its forms.

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<sup>38</sup> See, for example, *Finding Room: Policy Options for a Canadian Rental Housing Strategy*, J. David Hulchanski and Michael Shapcott, editors, Toronto: Centre for Urban and Community Studies, 2004.



## Appendix A: Areas covered by different policies

<b>Sections</b>	<b>City of Toronto Property Standards Section of the Municipal Code</b>	<b>Province of Ontario – Residential Tenancies Act</b>
<b>Offices/Boards</b>	Property Standards Committee; four panels, with 4 members in each	Investigation & Enforcement Unit at Ministry of Municipal Affairs and Housing
<b>Arbitration/adjudication</b>	Toronto Licensing Tribunal	Landlord and Tenant Board
<b>Compliance</b>	Municipality can take landlord to court, do the work and add the cost to the landlord's property taxes; or both	Province can arrange for an inspection for standard violations; issue a provincial work order
<b>Emergency contact</b>	Sign in the front lobby with contact info	
<b>Tenant duties</b>	Repair, maintain and keep unit clean	Keep rental unit clean
<b>Higher standards</b>	If conflict with another policy, higher standard prevails	
<b>Standards (landlord duties)</b>		<i>must meet all municipal standards and specifically:</i>
Maintenance of yards and property	•	
Landscaping, drainage, and grading	•	•
Accessory buildings	•	
Enclosures	•	
Retaining walls	•	•
Signs	•	•
Structural adequacy	•	
Buffering	•	
Exterior walls, columns, and beams	•	
Stairs, guards, handrails, and other structures	•	
Roofs and roof structures	•	•
Exterior openings, doors, windows and skylights	•	



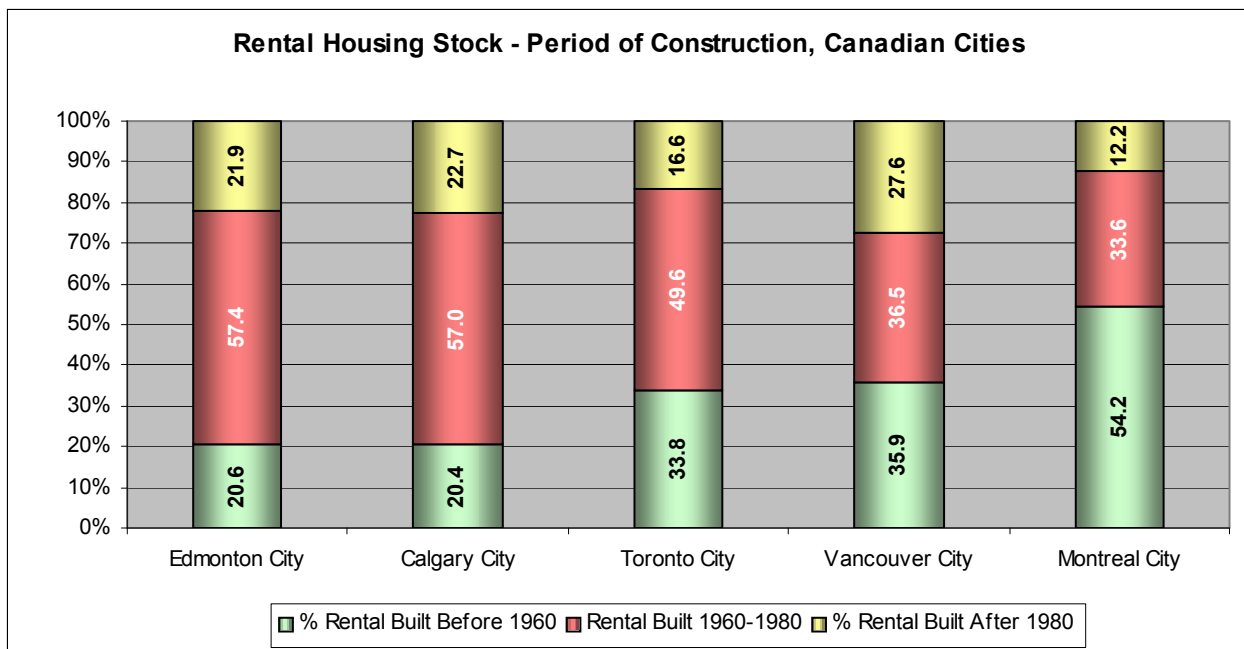
Garbage and debris storage and disposal	●	●
Steps, walks, driveways, parking, and loading areas	●	●
Vacant buildings and property	●	
Occupancy standards	●	
Floors, stairs, and landings	●	
Walls and ceilings	●	
Doors, passageways, and exits	●	●
Multiple-dwellings entrances and exits	●	●
Ancillary rooms	●	
Mail	●	
Kitchen facilities	●	●
Electrical service and outlets	●	●
Lighting	●	●
Plumbing	●	●
Heating and air conditioning	●	●
Ventilation	●	
Parking or storage garages	●	
Garage exit doors	●	●
Garage exit door signs	●	
Pest control	●	
Services and utilities	<b><i>Elevating Devices Act, enforced by Technical Standards and Safety Act</i></b>	
Fire	<b><i>Fire Protection and Prevention Act</i></b>	

● = mentioned in the policy

## Appendix B: Comparative data

### Age of housing stock and licensing – Canadian cities

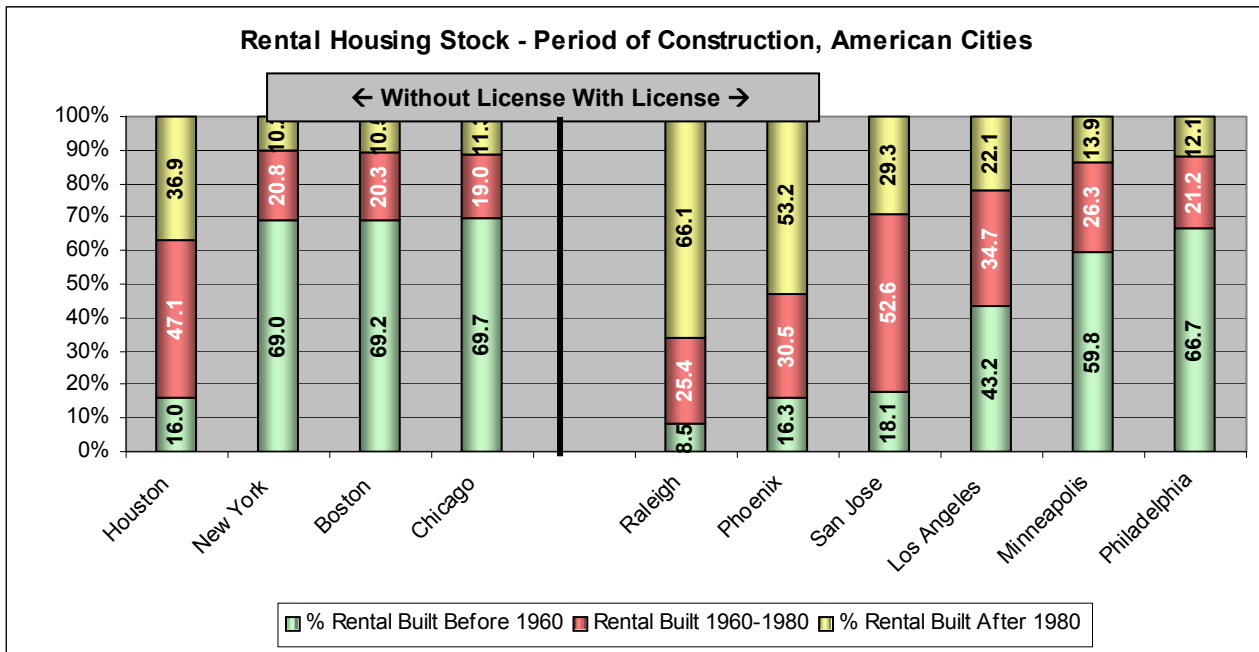
The two Canadian cities in this study without apartment licensing, Toronto and Montreal, each have a much older stock of apartment buildings than their three licensed counterparts in Western Canada. In Montreal, more than 54 percent of the apartments were built before 1960, and in both Montreal and Toronto, more than 80 percent of the stock was built before 1980. In Vancouver, Calgary, and Edmonton, between 21 and 27 percent of the apartment building stock has been built since 1980.



### Age of housing stock and licensing – American cities

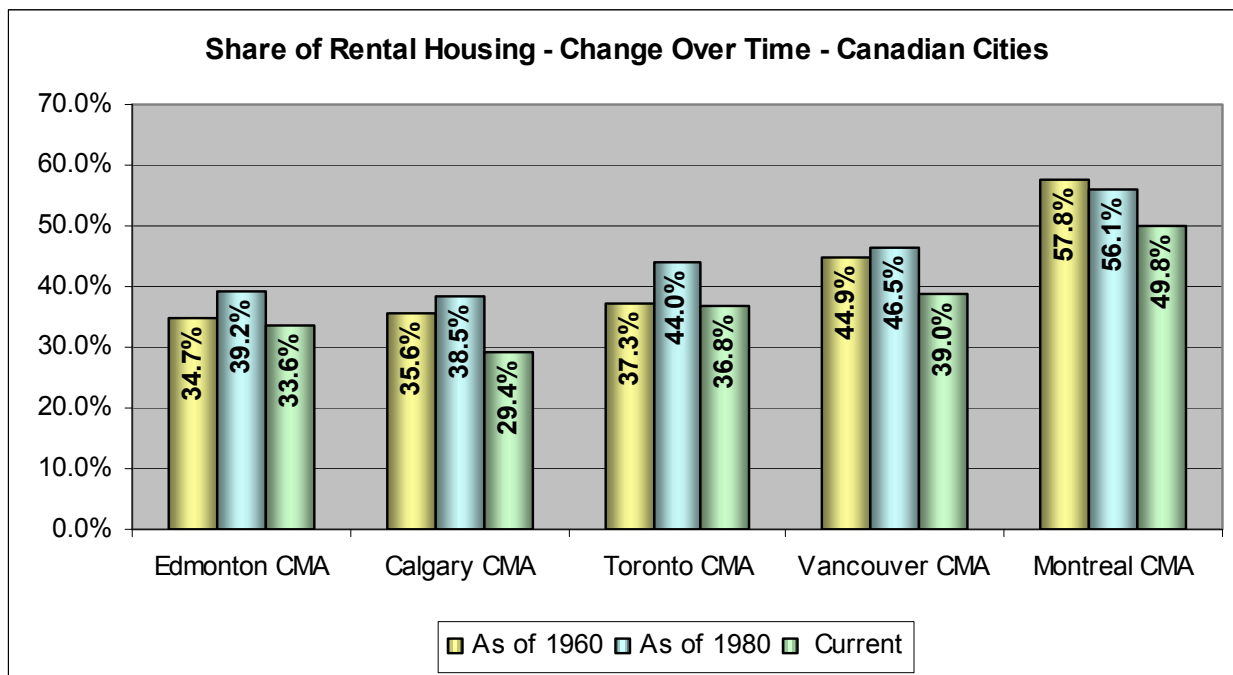
Similar to the Canadian cities, three of the four non-licensed American cities all have much older apartment stock (except Houston). In New York City, Boston, and Chicago, over 69 percent of the apartment stock was built before 1960. The five licensed cities all have a wide range of rental stock portfolios, ranging from predominantly older (Minneapolis, Philadelphia), to relatively new (Phoenix). There is no clear relationship between an aging apartment stock and the need for, or presence of, apartment licensing.



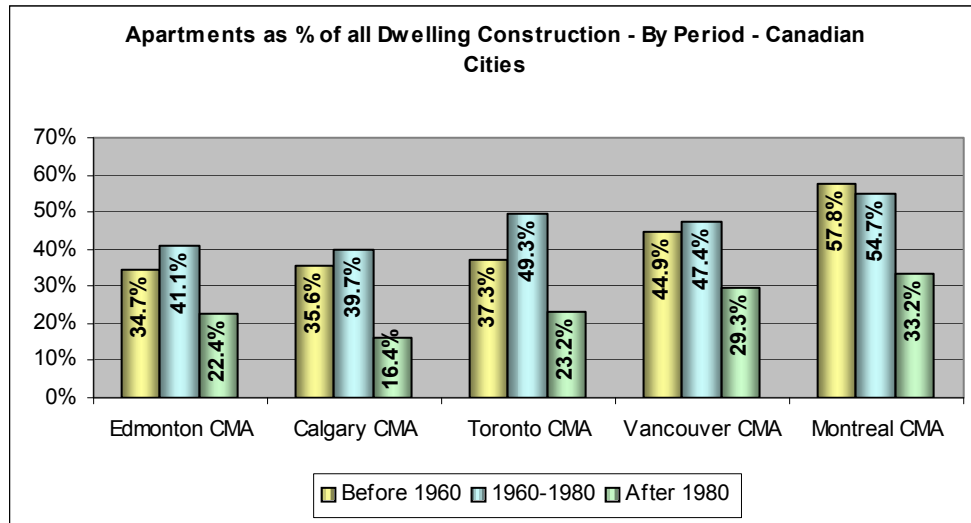


### Amount of rental housing and licensing – Canadian cities

All five Canadian cities studied have seen a drop in the proportion of rental housing within their overall housing stock, whether a licensing program is present or not. In all five Census Metropolitan Areas, the share of rental housing has dropped between 6 percent and 9 percent since 1980.



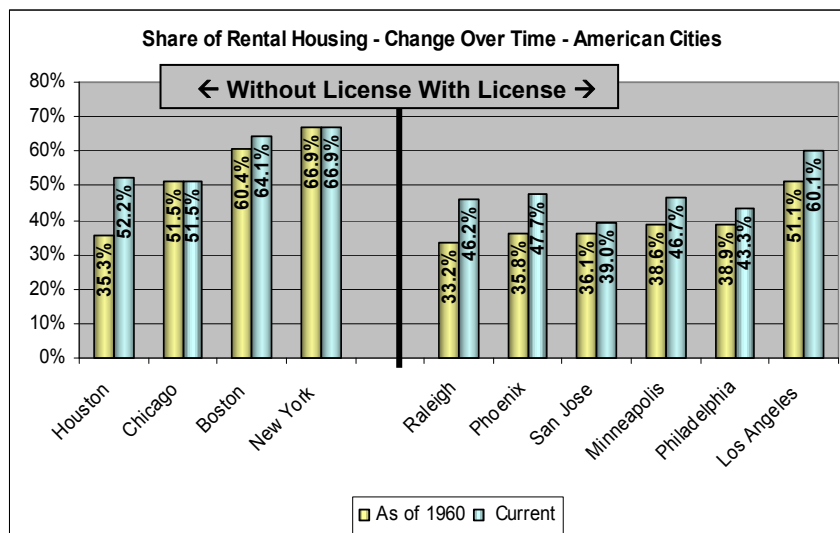
Apartment licensing does not appear to have created either an incentive for the construction of new rental units or an additional disincentive to construction (beyond the homeownership-friendly market conditions that have existed across the country over the past several years). All five cities have seen similarly significant drops in the number of apartments built as a percentage of new housing units since 1980.



### Amount of rental housing and licensing – American cities

Among the 10 American cities we studied, apartment licensing has not hindered the development of rental housing, given the increasing importance of rental housing across all cities. It is worth noting that of the five cities in which greater than 50 percent of the housing stock is rental housing, four do not have apartment licensing schemes (Los Angeles is the exception).

The presence of apartment licensing also has not had a noticeable impact on the amount of apartments as a percentage of all new housing construction for the 10 American cities we studied.



## Appendix C:

### Rental unit quality funding programs in Canada and the U.S.

#### Canadian Rental Residential Rehabilitation Assistance Program

The Rental RRAP offers financial assistance to landlords of affordable housing to pay for mandatory repairs to self-contained units occupied by low-income tenants, required to bring properties up to minimum levels of health and safety. It also provides funding for housing repairs, housing modification, to create secondary suites, or to convert non-residential buildings into new rental housing.

#### *Owners (landlords) may apply if:*

- the household incomes of their tenants are at or below the established ceilings (based on household size and the area of the country);
- both pre- and post-RRAP rents are at or below the median market rent for the local area, based on CMHC market rent information;
- the property lacks basic facilities or requires major repair in one or more of the following five categories: structural, electrical, plumbing, heating, and fire safety.

#### *Assistance Available*

Assistance is available in the form of a fully forgivable loan, covering up to 100 percent of the cost of mandatory repairs, with certain conditions attached. Landlords must also:

- agree to place a ceiling on the rents that may be charged after the repairs are completed;
- limit rent increases during the term of the agreement.

#### *Maximum forgivable loan available:*

Zone 1: Southern Areas of Canada:	\$24,000/unit
Zone 2: Northern Areas of Canada:	\$28,000/unit
Zone 3: Far northern areas:	\$36,000/unit

#### *The maximum rents for Toronto in 2006 are:*

Rooming house bed-unit:	\$531
Bachelor and one-bedroom unit:	\$885
Two-bedroom unit:	\$1,035
Three-bedroom unit:	\$1,255
Four-bedroom unit:	\$1,530

#### *Tenant income thresholds, Toronto 2006:*

Single person:	\$35,500
Two or three persons:	\$41,500
Four or five persons:	\$50,500
Six or more persons:	\$61,500

#### *Housing Conversion*

- Up to 100 percent of the cost of creating each self-contained rental unit, to a maximum of \$24,000.
- Up to 100 percent of the cost of creating each rooming house bed-unit to a maximum of \$16,000.



## American Rental Investment Programs/Grants

### *The Low Income Housing Tax Credit*

This is the single largest source of support for affordable rental development and rehabilitation in the United States. It allocates tax credits which are sold to investors, with the proceeds used to provide equity investment in targeted affordable housing projects. The LIHTC allocates new credits totalling more than \$300 million each year, and has been used to rehabilitate 1.15 million rental units, an average of 75,000 a year.

The IRS permits each state to allocate LIHTCs equal to 1.75 times the state population, now adjusted for inflation as of 2003. Each state designates an agency to administer the tax credit program that must develop a plan for allocating the credits consistent with the state's consolidated plan. Most new construction and substantial rehabilitation projects are eligible for a 9 percent tax credit, that is, credit equal to 9 percent of the qualified costs each year, for 10 years. After a project has been awarded tax credits, the owner or developer usually hires a broker to market them. The credits, which must be taken over a 10-year period, are sold to investors on the basis of their current value.

For example, a project may be awarded \$1 million in tax credits. Because the credits must be spread over 10 years, investors typically discount the value to 75 to 85 percent on the dollar. Thus, a \$500,000 project would generate \$450,000 in tax credits, and between \$337,500 and \$382,500 in equity for the project, minus the brokerage costs. Investors in tax credit projects can use the credits to reduce their tax liability, dollar for dollar, each year for 10 years.

The application process for LIHTC is very competitive in most states, and applications are awarded points for criteria outlined in the state's allocation plan (for example, a state may give priority to projects with units for tenants with special needs or units affordable to very low-income tenants)

### *Tax-Exempt Bond Financing*

State and local governments are authorized to raise capital for various purposes, including housing development by for-profit and not-for-profit corporations by issuing tax-exempt bonds – generally with terms of 10 to 30 years. This provides a source of below-market, long-term, fixed-rate financing. Since 1995, state and local governments have supported the creation of almost 170,000 units (just under 100,000 of which were new construction). In 2000, more than \$1.6 billion in financing from this source supported the development or rehabilitation of almost 55,000 rental units in properties targeted for affordable housing.

Tax-exempt bonds, also known as municipal bonds, are exempt from federal taxation. The lower interest cost resulting from tax-exempt bond transactions is an incentive for developers to create decent, safe, and sanitary housing. The bonds cannot be used for the acquisition or refinancing of property.

### *Community Development Block Grants*

This provides a formula-based federal block grant to localities for a variety of community redevelopment and revitalization activities – although only a small portion is used to assist new rental development. These funds may be used for activities such as the acquisition of real property or the rehabilitation of residential structures.



## Appendix D: What would it take to implement licensing in Toronto?

We used an audit of the Los Angeles Systematic Code Enforcement Program (SCEP), to develop projections for a hypothetical apartment licensing program in Toronto. The data for the SCEP was scaled down proportionally to account for the difference in the amount of rental stock in Los Angeles relative to that in Toronto. The Los Angeles SCEP is run on a three-year mandatory review cycle. A similar three-year basis was assumed for Toronto in the various scenarios shown.

We modelled two types of systems: a universal system, and a selective inspection process, whereby a pre-determined percentage of units in each building would be inspected. The universal system is currently used in Los Angeles – each of the nearly 772,000 apartment units across the city is supposed to be inspected every three years. However, this requirement has led to a shortfall in the number of inspections completed, because of inadequate staffing levels and a high rate of required re-inspections for the units that do receive an inspection.

Given the size of Toronto's rental market, a universal system with Los Angeles' levels of resources would require a staff of 45 inspectors (see Table A). At this level of staffing, with a similar inspections-per-day rate and re-inspection rate, about 112,000 of the 464,000 units in the City of Toronto would receive a thorough inspection, a shortfall of more than 350,000 units. Toronto would need 187 inspectors to carry out all the inspections for the entire Toronto rental stock within the three-year review timeline.

A selective inspection process (see Table B) appears to be a more realistic approach and would lower the staffing requirements drastically. Assuming a staff complement of 45 inspectors, a program designed to inspect roughly a quarter (24.2 percent) of the units in each building in the city would see the program reach its goal on the three-year mark. A 10 percent inspection requirement would meet its three-year timeline with about 19 full-time inspectors.

**Table A: Universal Model Scenario**

Description	Los Angeles	Toronto
Total Number of Rental Units	771,325	464,530
(1) Total Inspectors	75	45
Inspections per Inspector per 3 Year Cycle	4,525	4,525
(2) Inspections Per Inspector Per Day	6.3	6.3
(3) New Inspections Completed (3 years)	186,696	112,438
(4) Re-Inspections Completed (3 years)	152,712	91,971
Total Inspections Completed (3 years)	339,408	204,408
New Units Not Inspected	584,629	352,092
Projected Number of Re-Inspections Not Completed	478,210	288,002
Total Number of Missed Inspections/Re-Inspections	1,062,839	640,094
Total New Inspections Required	771,325	464,530
Projected Number of Re-Inspections Required	630,922	379,972
Total Inspections Required	1,402,247	844,502
Percentage of Total Required Inspections Completed	24.2%	24.2%
Additional Inspectors Required to Meet Deficit:	235	141
Total Inspectors Required To Do All Inspections:	310	187
Total Number of Years Needed to Fulfill Inspection Workload, at Current (or Projected) Staffing Levels	12.4	12.4

**Assumptions:**

- (1) Toronto would set its initial staffing allotment in the same proportion to the size of the rental housing stock as in Los Angeles.
- (2) Toronto would have a similar rate of inspections per day, per inspector.
- (3) Toronto would be on a three year review cycle, similar to Los Angeles
- (4) Toronto's re-inspection-to-new inspection ratio would be equal to Los Angeles' (0.81 to 1)



**Table B: Targeted Model Scenario**

Description	Toronto Targeted Approach Scenarios			
	10%	20%	30%	40%
% of Units Eligible for Inspection				
(1) Total Inspectors	18.7	37.3	56.0	74.7
Inspections per Inspector per 3 Year Cycle	4,525	4,525	4,525	4,525
(2) Inspections Per Inspector Per Day	6.3	6.3	6.3	6.3
(3) New Inspections Completed (3 years)	46,453	92,906	139,359	185,812
(4) Re-Inspections Completed (3 years)	37,997	75,994	113,991	151,989
Total Inspections Completed (3 years)	84,450	168,900	253,350	337,800
Total New Inspections Required (3 years)	46,453	92,906	139,359	185,812
Projected Number of Re-Inspections Required (3 years)	37,997	75,994	113,992	151,989
Total Inspections Required (3 years)	84,450	168,900	253,351	337,801
Percentage of Total Required Inspections Completed	100.0%	100.0%	100.0%	100.0%
Total Inspectors Required To Do All Inspections	18.7	37.3	56.0	74.7
Total Number of Years Needed to Fulfill Inspection Workload, at Current (or Projected) Staffing Levels	3.0	3.0	3.0	3.0

Assumptions:
(1) Toronto would set its initial staffing allotment in the same proportion to the size of the rental housing stock as in Los Angeles.
(2) Toronto would have a similar rate of inspections per day, per inspector.
(3) Toronto would be on a three year review cycle, similar to Los Angeles
(4) Toronto's re-inspection-to-new inspection ratio would be equal to Los Angeles' (0.81 to 1)



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