



Ombudsman Report

Housing Matters

Investigation into the Toronto Community Housing Corporation's Proposed Eviction of a Tenant

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Ombudsman
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1 Summary

In February 2009, Mr. P, a long-time market rent tenant, received three notices from the Toronto Community Housing Corporation (TCHC) telling him that his tenancy was being terminated because he had committed an “illegal act”. He tried unsuccessfully to have the notices withdrawn.

He complained to the Ombudsman that he had been unfairly treated, saying that the TCHC had not investigated properly and had no proof to support their action.

The Ombudsman decided to investigate because if supported, it could lead to recommendations that would improve the system for Toronto Housing tenants.

The Ombudsman concluded that the TCHC did not fulfil its duty of fairness in issuing the notices. The TCHC overreacted by threatening eviction. It accepted allegations without a thorough investigation.

It did not provide Mr. P with an opportunity to respond to the serious allegations made against him. It did not tell him clearly the reason for the notices. It said it wanted to send a warning to Mr. P through the notices.

The TCHC did not respond appropriately to his questions and failed to explain why its complaint and human rights policies did not apply. The TCHC did not establish that the allegations against Mr. P constituted grounds for eviction.

The Ombudsman made 12 recommendations to ensure that TCHC will act fairly when dealing with complaints of serious misconduct against a tenant and in the eviction process.

2 The Complaint

- 1 On June 19, 2009, Mr. P made a complaint to my office that the TCHC acted unfairly in serving him notice that his tenancy was being terminated as a consequence of an “illegal act” on his part. He asserted that the TCHC conducted no investigation of the alleged illegal act and had no evidence to support its action.

3 Summary of Events

- 2 Mr. P is a long-time market value resident of a building managed by the TCHC.
- 3 In November 2008, TCHC management served Mr. P with a Notice of Entry (NOE) in order to conduct a routine fire safety inspection. Mr. P believed the NOE was not properly completed because it did not specify the date and time of the inspection. He refused entry and the inspection was not conducted. The TCHC later acknowledged that the NOE had been filled out improperly, apologized to Mr. P and issued a corrected NOE. The inspection was then completed.
- 4 Between January 18 and 20, 2009, Mr. P’s building was without heat as a result of a furnace break-down. He advised the TCHC of the problem. On January 20, 2009, there was a verbal altercation between Mr. P and the contractor who attended to repair the furnace. The contractor left without doing the repairs. He returned later in the day with a special constable and completed the repairs.
- 5 On January 20, 2009, Mr. P noticed a leaking radiator pipe in his building. He attended the office of the Building Superintendent and requested that she take action to repair the problem. A verbal altercation between Mr. P and the Building Superintendent ensued. The Building Superintendent alleges that Mr. P uttered a racial slur during that exchange. Mr. P denies the allegation.
- 6 On February 23, 2009, the TCHC issued and delivered three notices to Mr. P, advising that his tenancy was being terminated. These included:

Form N5 – Notice to Terminate a Tenancy Early

Form N6 – Notice to Terminate a Tenancy Early –
Illegal Act or Misrepresentation of Income

Form N7 – 10-day Notice to Terminate a Tenancy Early

7 Form N5 stated that the notice was void if the problem described was corrected within seven days. Form N6 stated that there was no opportunity to correct the problem and void the notice. Form N7 did not address the matter of correction.

8 Each notice referred to an attached Schedule "A," which set out reasons for the issuance of the Notice. The contents of the Schedules "A", which were all identical, read as follows:

On October 23, 2003, you behaved abusively towards the building superintendent and another staff member while they were completing an annual fire and smoke detector inspection. As a result of your conduct, the inspection could not be completed.

On or about the 20th day of January, 2009, you were verbally abusive toward the contractor who attended at the residential complex to investigate a problem that you claimed to have in respect of the heat in your unit, in that, you screamed and yelled profanities at the contractor. In addition, you behaved in a menacing and threatening manner towards the contractor. In light of your conduct, the contractor was forced to leave the residential complex and call our security constables to report the incident and the reported heat problem was not rectified.

On or about the 20th day of January, 2009, you were verbally abusive to our superintendent, [Ms X], in that, among other things, you yelled the following at her: "you damn nigger, you don't know [how] to do your job." As well, you continued to harass [Ms X] that day by phoning her repeatedly and telling her, "I am going to get you fired."

This is not the first time you have been abusive towards Toronto Community Housing Corporation tenants or staff. Despite our repeated demands that you refrain from such intolerable behaviour, you have refused to comply. Your conduct is interfering with the ability of the landlord to fulfill its obligations to provide a safe and comfortable environment for its tenants and your continuous abusive behaviour is frightening the tenants and the landlord's staff members.

9 The notices advised that Mr. P was required to move out of the rental unit by March 22, 2009. The accompanying cover letter from TCHC's counsel also informed the complainant that "... you must move out of the above-noted rental unit on or before March 22, 2009."

10 Mr. P contacted the Operating Unit Manager and asked to meet with him to discuss the issuance of the notices. The Operating Unit Manager initially agreed

to meet, but subsequently declined after Mr. P asked that the meeting be held at a Tim Hortons and that Mr. P be permitted to tape record the discussion.

- 11 Mr. P contacted TCHC's counsel and arranged to meet with him on April 1, 2009. On March 30, 2009, after TCHC counsel learned that Mr. P had retained his own lawyer, he informed the complainant that it would not be appropriate for them to meet without Mr. P's counsel present, and cancelled the meeting.
- 12 Mr. P applied to the Landlord and Tenant Board (LTB), asking to have the notices withdrawn and an apology issued by the TCHC. His application was dismissed by the LTB on April 20, 2009, on the grounds that there was no provision in the legislation that would give the LTB authority to grant the remedies requested.
- 13 On May 12, 2009, following the LTB decision, the Acting Chief Executive Officer of the TCHC wrote to Mr. P advising that the TCHC believed their actions had been appropriate and that they would not issue an apology. She advised that the process under the *Residential Tenancies Act* does not require that the TCHC provide proof of its allegations unless and until it applies to the LTB to evict, and it would abide by that process. She advised that the TCHC was not prepared to withdraw the notices of termination. She also stated that two of the three notices were no longer in effect, and that the remaining notice would not be acted on if there was a sustained improvement in Mr. P's behaviour.
- 14 In June 2009, Mr. P asked the City of Toronto's Human Rights Office for assistance in having the notices withdrawn. That office passed his inquiry on to the TCHC's Human Rights and Equity Unit (HREU), which administers the TCHC's Human Rights, Harassment and Fair Access Policy (Human Rights Policy). The HREU's Manager conducted an audit of the TCHC's file and commenced inquiries to determine why the policy had not been applied. The TCHC informed the Manager that, because my Office was reviewing Mr. P's complaint, it would prefer to await the outcome of the Ombudsman's review before commenting on the application of the Human Rights Policy.
- 15 Mr. P disputes the allegations made by the TCHC in support of its notices of termination and contends that the TCHC has not provided any evidence to support their allegations. Furthermore, he strongly believes that TCHC intends to use the incidents cited in Schedule "A" and the notices of termination as justification to terminate his tenancy in the future. He would like all records of the January 20, 2009 incidents, including the notices of termination, removed from his file.

4 The Investigation

- 16 My staff conducted extensive preliminary inquiries with TCHC staff in person, by telephone and in writing. A notice of intent to conduct a formal investigation was sent to the TCHC on October 5, 2009. My staff interviewed the Acting Chief Operating Officer (COO), the current and former Operating Unit Managers for Grange Bathurst St. Lawrence, the Manager of the TCHC Human Rights and Equity Unit and Mr. P's Building Superintendent. My investigator reviewed Mr. P's tenant file, the TCHC's policies and information from its EasyTrac database. My staff also conducted the relevant legal and policy research including a review of LTB Interpretation Guidelines and decisions that address what is considered an 'illegal act' sufficient to justify terminating a tenancy.
- 17 The results of my investigation and my tentative conclusions and recommendations were communicated to the TCHC in a draft report. The TCHC was invited to provide its representations. I have considered the response and representations received from the TCHC in formulating my final conclusions and recommendations.

5 Allegations and Findings

Allegation 1: Notices of Termination

October 23, 2003 Incident

- 18 Mr. P advised that the TCHC improperly cited an incident that occurred more than five years earlier as a reason for its application to terminate his tenancy. He stated that he was unaware that the TCHC had concerns about his conduct on that date.
- 19 The TCHC was asked to provide my office with all written records of the October 23, 2003 incident. The documents provided included an incident report dated October 23, 2003 and a letter to the complainant dated October 24, 2003 from the Operating Unit Manager.
- 20 The incident report states that:
- “Super reported that tenant was very abusive to him during annual unit inspection. Verbally abusive and kicked staff out of his unit so inspection was not completed. Warning letter to be sent at advice of Super. Incident happened October 23/03.”

21 The letter describes the conduct as follows:

“The Toronto Community Housing Corp. has received reports of your abusive behaviour towards the building staff. On October 23rd, the Building Superintendent and another staff attempted to do an Annual Fire and Smoke Detectors check to your unit. However, you refused entry and the required work was not carried out.”

22 The letter advised Mr. P that:

“Obstruction and direct refusal to allow staff to perform the necessary maintenance is in contravention of the law and will not be tolerated. Please consider this letter as a written warning. If similar attitude is reported in the future, a legal action will commence which could result in eviction. Please be advised that abusive conduct from tenant towards staff or other tenants will not be tolerated. We would like to ask you to reserve proper respect for staff as you would like to be treated.”

23 The TCHC advised that the October 24, 2003 letter would have been sent by regular mail, and there was no way to verify that it was received.

24 Mr. P says he did not receive the October 24, 2003 letter. He initially advised my office that he was unaware of the October 23, 2003 incident. He subsequently clarified that he recalled the event, but did not know that his conduct on October 23, 2003 was considered inappropriate. He advised that the Operating Unit Manager had confirmed to him that the NOE for the inspection in question had been filled out incorrectly, and had apologized. It was his understanding that the matter had been resolved.

25 The TCHC acknowledged that the NOE that was delivered to Mr. P in October 2003, in advance of the proposed inspection, was flawed, and that it apologized to Mr. P for the error. The inspection was subsequently completed.

26 My staff interviewed the employee who was the Operating Unit Manager for Grange Bathurst St. Lawrence from 2000 to 2008. She advised that she established a reasonable working relationship with Mr. P after the October 2003 incident.

27 The Operating Unit Manager was aware that he was not comfortable with strangers entering his unit, in part due to a bad experience with Cityhome, the previous building management organization. She advised that during her tenure she tried to accommodate Mr. P by providing more notice of inspections than was strictly required. She also stated that Mr. P had asked about coordinating the different inspections that were required, but that she had informed him this

was not possible because inspections were conducted by different departments for different purposes.

- 28 The former Operating Unit Manager advised that there were many other instances of conflict between Mr. P and staff that were not documented. She said incident reports were not required and superintendents and custodians usually did not complete file notes. She acknowledged that she did not specifically document instances when she provided Mr. P with more notice than was strictly required. This pre-dated EasyTrac, the TCHC's information tracking system. Its predecessor yielded no information.
- 29 The TCHC advised that all information related to a tenancy is retained on the tenant's file throughout the tenancy and is considered relevant to the tenancy.

Ombudsman Findings

- 30 There is in my view sufficient evidence that the October 23, 2003 incident occurred as documented in the letter dated October 24, 2003. I am also of the opinion that the letter, which advised Mr. P that his behaviour was unacceptable and would not be tolerated, was an appropriate level of response to the incident.
- 31 Notwithstanding this view, it was improper in this case for the TCHC to rely on a six-year old report to demonstrate that there was a pattern of inappropriate conduct on the part of Mr. P that justified issuing termination notices.

January 20, 2009 Uttering of Racial Slur

- 32 Mr. P denies uttering a racial slur. He describes the incident as follows:

“A radiator pipe had burst on the ground floor of 145 [Y Street]. I had left my apartment for my workplace and came upon this scene, unattended by any TCHC staff. A thick fog obscured the exit. I blindly found my way out and ran to the superintendent's office, located next door behind 141 [Y Street], in the basement. Ms [X] did not open the door when I knocked. She remained inside, screaming “Leave me alone” over and over again. I was greatly disturbed by this but had already turned and was returning to 145 [Y Street] to protect my home. I clearly told her that she should come and ‘do her job’ as was her responsibility.”

- 33 The Building Superintendent advised my office that she discovered a broken radiator pipe in the lobby of Mr. P's building during the morning of January 20, 2009 while making regular rounds. She went directly back to her office at 141 [Y] Street and reported it to the service and maintenance company, so that a contractor could be sent. She then checked the location again and returned to

her office to call fire services, as she was concerned about water reaching the electrical panel. Before she had a chance to make that call, Mr. P attended her office. When she answered the door, he said loudly: “there is an emergency and you are not doing anything about it.” She tried to respond by saying that she was aware of the problem, but he would not let her speak and yelled to her, “you damn nigger, you don’t know [how] to do your job.” She closed the door at that point. As soon as she had completed the call to fire services, she received a call from Mr. P, who stated, “I am going to get you fired.”

- 34 The Building Superintendent is an African-Canadian woman. She advised that she was very shaken by the encounter and the racial epithet. She called her supervisor to report the incident. She advised that she also contacted the COO. She said that he contacted the Operating Unit Manager to inform him of the incident, following which the Operating Unit Manager called her to discuss the incident. The Building Superintendent stated that she advised them that “someone needs to speak with Mr. P.” She also completed a written report of the incident which she faxed to the Operating Unit Manager. The Building Superintendent said that, following the incident, she did not feel that her safety and security were seriously compromised, but she did feel she needed to be “cautious” and “watchful” in Mr. P’s presence.
- 35 The Building Superintendent said her difficulties with Mr. P began in November 2008, following two events: the improperly completed NOE which prompted Mr. P to refuse entry to his unit; and a telephone conversation between herself and Mr. P following a regular tenant-management meeting. In the telephone conversation, Mr. P seemed to take issue with her response to his dissatisfaction with management’s comments at the meeting.
- 36 The TCHC advised that it did not investigate the allegation of a racial slur apart from speaking with the Building Superintendent and establishing from her that it was a “he said-she said” situation with no witnesses.
- 37 The Operating Unit Manager advised my office that the Building Superintendent had completed a report of the incident. That report was a handwritten account faxed by the Building Superintendent to the Operating Unit Manager. The COO did not appear to be aware of this report, but did suggest that the Building Superintendent might have recorded something in her log book. Neither the COO nor the Operating Unit Manager had inspected the log book to determine whether there was in fact a record of the incident in the log. My investigator determined that the Building Superintendent had not recorded it in her log book.
- 38 The TCHC advised that, because of the lack of evidence to corroborate the incident, they looked for other evidence that would shed light on the matter. They took into consideration the history of complaints about Mr. P, and the absence of

complaints about the Building Superintendent, and reached the conclusion that the incident must have occurred as she described.

Ombudsman Findings

- 39 On balance, having reviewed the available information, I find the Building Superintendent's belief and accounting of the incident to be credible. That said, there are no witnesses to the exchange and therefore no definite conclusions can be made.
- 40 The fact remains that the TCHC should have conducted a more thorough review, including at a minimum, allowing Mr. P to respond to the allegations.
- 41 Even though the TCHC thought it had reason to believe the Building Superintendent, it ought to have made a thorough assessment of whether Mr. P's conduct provided sufficient grounds for terminating his tenancy, prior to issuing the notices of termination.

January 20, 2009 Furnace Repair

- 42 Mr. P states that he complained to the TCHC several times over a two day period that his dwelling was without heat. The weather was cold and he believed the superintendent had not treated the problem with sufficient urgency.
- 43 According to the complainant, on January 20, 2009, he had a brief encounter with the contractor who attended to complete repairs. Mr. P said the contractor had called and left a voice mail message for him, requesting access to the furnace room.
- 44 The contractor did not leave a call back number in his voicemail message. Mr. P encountered the contractor in the entrance of the building adjacent to his building. He asked the contractor why he had not left a contact number where he could be reached.
- 45 Mr. P acknowledged using profanity, but maintained that it was not directed at the contractor. In his words, "I asked him why he had not left a contact number, using a profanity conversationally. There was no remark or profanity directed at the employee. This was the only time in the encounter such language was used and I consider it appropriate. There is no law against swearing while at your private home."
- 46 Mr. P said he told the contractor to wait for TCHC staff to arrive in order to access the building. He stated that following this interaction, the contractor left the premises without fixing the furnace. He said that the boiler was not restarted

that night and that the temperature in the building remained at 46 degrees Fahrenheit overnight.

- 47 The security report of the incident, dated January 20, 2009, documents a disagreement between a contractor and a resident involving the lack of heat in the unit. It states that when the contractor arrived, Mr. P “was upset” because the contractor had not arrived sooner. Mr. P “began raising his voice stating that he will not provide access to the boiler room.” Mr. P “began screaming and using profanity.” The contractor “left the area” and contacted the heating company to provide a special constable to attend with him. A short time later, the contractor returned with a special constable. They “proceeded to the boiler room, the heat was adjusted and no further action was required.”

Ombudsman Findings

- 48 Schedule “A” characterizes Mr. P’s behaviour during this encounter as “menacing and threatening.” This is not consistent with the information concerning the incident that is set out in the security report. In the absence of any other supporting evidence, it appears that the TCHC may have exaggerated the level of threat.

Pattern of Behaviour

- 49 The TCHC informed my office that there was a pattern of inappropriate conduct by Mr. P and that there had been a great many instances when he acted in a rude and abusive manner.
- 50 The COO advised that he had spoken with Mr. P many times and regularly experienced such conduct during those conversations. He acknowledged that most of these conversations were not documented. The Operating Unit Manager stated that he had also experienced abusive behaviour by Mr. P on many occasions. The Building Superintendent had experienced it on more than one occasion. My investigator was advised that other TCHC staff have also reported inappropriate conduct.
- 51 My staff reviewed the documentary record of communications between the TCHC and Mr. P in the TCHC’s EasyTrac system. This system is designed to provide a consistent way to manage and record all service requests and questions received from tenants. All contacts with tenants are to be recorded in EasyTrac. The TCHC has advised that it is aware contacts are not always recorded.
- 52 EasyTrac contains a record of 45 entries relating to Mr. P between March 2006 and July 2009. Some of these document multiple conversations.

- 53 Most of the entries record questions and complaints from Mr. P about a wide range of issues including heat, waste management, an incorrect arrears letter, alleged drug activity in the building, staff inspection of his unit and laundry equipment rates. Several of the entries refer to Mr. P being 'annoyed', 'frustrated', 'concerned', 'anxious', 'very upset', 'not cooperative', 'very agitated' and 'very distressed' (when calling on February 25, 2009 following receipt of the notices of termination).
- 54 Only one entry makes reference to Mr. P being "threatening and abusive." This was entered by the COO on January 22, 2009 under the Subject Description "Harassing Behaviour." It notes that Mr. P had called and left numerous voicemail messages about various service matters including lack of heat, snow removal, too much salt, and the building superintendent's capability. It states that all issues were referred to the appropriate staff for follow-up. It does not appear to document direct conversations between the COO and Mr. P.
- 55 There is no indication that Mr. P was informed that his conduct was unacceptable during any of these contacts.
- 56 The TCHC's file also contained two log entries completed by the Building Superintendent on November 21, and 27, 2008. The November 21, 2008 entry states that: "Notice given to all tenants. Mr. [P] 145 Unit 5 left message refuse unit inspection. He phone (sic) again and was very argumentative very rude he tore up the notice."
- 57 The November 27, 2008 entry states: "Mr. [P] refuse unit inspection again. He said he does not want to see my face. When I see him I should not speak to him. He was very abusive."
- 58 There is no record that these incidents were raised with Mr. P.

Ombudsman Findings

- 59 The TCHC has not established that there was a documented pattern of threatening and menacing behaviour by Mr. P.
- 60 Schedule "A" cited three instances of inappropriate behaviour, one in October 2003 and two on January 20, 2009. This does not establish a pattern of behaviour, particularly when there was a gap of six years. The 2003 event appears to have been cited by TCHC because it was the only previous incident involving inappropriate conduct that had been documented and brought to Mr. P's attention.

61 There is virtually no documented support for the TCHC's statement in Schedule "A" that "Despite our repeated demands that you refrain from such intolerable behaviour, you have refused to comply." The letter, dated October 24, 2003, which was sent by regular mail and which Mr. P says he did not receive, appears to be the only clear record of a demand that he refrain from such behaviour.

Allegation 2: Addressing Unacceptable Tenant Behaviour

Communication with Complainant

62 Mr. P asserts that he received no information from the TCHC that he had committed an illegal act prior to receiving the notices of termination. Following receipt of the notices, Mr. P made a number of attempts to contact TCHC officials by telephone to complain and request further information about what the alleged "illegal act" was. It appears that he was not able to reach anyone who could help with his inquiry.

63 He subsequently tried to arrange a meeting with the Operating Unit Manager, which did not materialize because Mr. P stated that he wished to tape record the meeting.

64 Mr. P also arranged to meet with the TCHC counsel, but this meeting was cancelled by TCHC's counsel when he learned that Mr. P had retained his own counsel.

65 The TCHC did not initiate contact with Mr. P before or after the issuance of the notices of termination. The contact that occurred was initiated by Mr. P and did not yield the information he was seeking.

Ombudsman Findings

66 It was appropriate that the TCHC did not meet with Mr. P after he retained counsel.

67 The TCHC failed to initiate any contact with Mr. P prior to issuing the notices of termination.

68 As a matter of basic fairness, the TCHC should have ensured that Mr. P was given an opportunity to provide his side of the story. The TCHC should have been the one to initiate contact, and should have done so before making a decision on how to proceed. It should minimally have responded to the inquiries that Mr. P made after he was served with the notices of termination. He should have been told what specific actions were alleged to amount to illegal acts that

provided grounds for terminating his tenancy. His requests for information should have been answered clearly and unambiguously.

TCHC Policies

69 The TCHC administers a Tenant Complaint Policy (TCP) and the Human Rights Policy. The TCHC has advised that these policies apply to disputes with, or complaints by, tenants, and that it reviews tenant complaints in accordance with the TCP, the *Residential Tenancies Act* and the Rules of Practice of the LTB.

Tenant Complaint Policy

70 Mr. P sought to file a complaint under the TCP with respect to the superintendent's allegations that he had uttered a racial slur, but was not given that opportunity or an explanation as to why he could not.

71 When asked why the TCP did not apply to this matter, the TCHC advised that it was covered by the provisions of the *Residential Tenancies Act*.

72 The TCP states that it is intended to cover complaints relating to:

- requests for maintenance to which the TCHC has not responded in a timely fashion;
- actions on tenancy-related matters to which the TCHC staff has not responded in a timely fashion;
- events and/or issues that may be an infringement of tenant rights under legislation or TCHC policies governing the conduct of staff and tenant representatives, human rights and harassment.

Ombudsman Findings

73 The provisions of the TCP could be argued to include Mr. P's complaint about the Building Superintendent's allegations. Regardless, the TCHC should have explained to Mr. P why it believed the TCP was not an appropriate route through which to address this concern.

Human Rights, Harassment and Fair Access Policy

74 The Human Rights Policy states that the "TCHC will not tolerate, ignore, or condone any form of discrimination, harassment or barrier in employment, housing, contracting and delivery of its services. All employees, contractors, agents, tenants, Board Directors, volunteers, and appointees who serve on

committees established by the TCHC are bound by this policy in their dealings with the TCHC.”

- 75 The allegation of the racial slur was not referred to the HREU by management after it received the Building Superintendent’s report.
- 76 Mr. P spoke with the Manager of the HREU in June 2009. The Manager advised Mr. P that he would review his concerns from a human rights perspective to determine if there had been a violation of the *Human Rights Code*.
- 77 The Manager advised my staff that Mr. P informed him he had received notices of termination for committing an illegal act; that he did not know what the illegal act was; that he did not use the “n word” and that the TCHC could not prove that he did. He understood that Mr. P wished to have all references to the illegal act removed from his file and a change in TCHC process such that all staff was required to follow the TCHC’s complaint processes.
- 78 The Manager initially informed my investigator that:
- because of the nature of the allegation made against Mr. P, the matter was covered by the Human Rights Policy and should have been referred to his office to review;
 - the complaint process set out in the Human Rights Policy should have been followed and was not;
 - he completed an audit of the TCHC file, but could not find a record of the process the TCHC followed that indicated Mr. P had violated the *Human Rights Code*;
 - the file he reviewed did not provide a conclusive finding with respect to the uttering of a racial slur that indicated the TCHC should have moved forward with notices of termination;
 - the documentation in the TCHC file was done to support the termination notices rather than to show what had happened;
 - in this ‘he said-she said’ situation, the file he audited did not contain any documentation that showed a pattern of behaviour by Mr. P that would convince him that the TCHC should move forward with notices of termination;
 - it was his view that, had the complaint process been followed, the situation might not have escalated.

- 79 The Manager stated that he spoke with the Acting Director, Community Housing Central, and advised him that they “could have done better” and should have followed the human rights complaint process. The Acting Director told him that management wanted to wait to see the outcome of the Ombudsman’s investigation. In view of that position, the Manager did not complete his review.
- 80 Following my staff’s discussion with the Manager, the COO was asked to comment on the information provided by the HREU. He indicated that he did not believe the Manager would have advised Mr. P that there was no evidence to support the decision to issue the notices of termination.
- 81 Mr. P informed my investigator that the Manager of the HREU told him during a November 3, 2009 conversation that he would write to him confirming his view that there was no evidence to support the allegation that Mr. P had uttered a racial slur. He later received a letter from the Manager, dated the same day, which stated:

I write further to the process the Human Rights and Equity Unit was conducting in relation to the staff complaint that, in part, led to notices of termination served upon you on or about February 23, 2009, specifically the “illegal act” notice (Form N6).

In our last conversation, I reported to you that service of the Form N6 on the basis that you had conducted yourself in an illegal manner by using racist language was not carried out in a manner that was consistent with the Toronto Community Housing Human Rights, Harassment and Fair Access Policy (the Policy).

We have since had the opportunity to look further into this matter and write to advise you that we have confirmed the grounds for the notices. We were advised by Mr. [X], the Toronto Community Housing’s lawyer on this matter, that it was the threatening and menacing behaviour that you were alleged to have engaged in which served as the grounds in support of the illegal act (Form N6) and impairment of safety (Form N7) notices. Whether or not the threatening a menacing behaviour would constitute an assault or other illegal act, would be up to the determination of the Landlord and Tenant Board, had Toronto Community Housing pursued applications to the Board.

Until now, the Toronto Community Housing’s Human Rights and Equity Unit was misinformed as to the reason for the illegal notice. The Human Rights and Equity Unit was operating on the mistaken assumption that the racial slur was the “illegal act”. The allegation of the racial slur served only

to support the substantial interference with the reasonable enjoyment notice (N5) and is thus not a claim of discrimination that the Policy can respond to. (Although outside of my purview, I do note that the six (6) month period for a second N5 notice has now expired so that the N5 notice is no longer in effect.).

As a result, please be advised that the (sic) no further action is required by the Human Rights and Equity Unit and we are closing your file.

Ombudsman Findings

- 82 The TCHC has demonstrated a great deal of confusion in its management of this issue and the appropriate exercise of its human rights policy provisions. Mr. P was initially told that the policy applied to his claim and then five months later told otherwise. Mr. P was a victim of poor communication and management.

Notices of Termination

- 83 The TCHC initially informed my office that the alleged racial slur was the incident that prompted the issuance of the notices of termination and constituted the "illegal act." It subsequently took the position that the TCHC considered all three of the incidents described in Schedule "A" to be illegal acts, on the grounds that Mr. P's behaviour was threatening and menacing and amounted to assault.
- 84 The COO and the Operating Unit Manager advised my office that the decision to issue the notices was made by the TCHC following some discussion with its counsel. Neither individual was clear as to whether counsel had been asked to review the evidence to determine whether the alleged behaviour amounted to an illegal act, or had been simply directed to issue the notices. They advised that "we had a conversation about it, that threatening behaviour might constitute assault."
- 85 My investigator reviewed counsel's July 8, 2009 e-mail to the Operating Unit Manager. It does not state that counsel was asked to determine if there was sufficient basis for the notices of termination prior to service.
- 86 The TCHC's file contains a letter from counsel to the Operating Unit Manager, dated February 23, 2009, stating in part:

"Further to your instructions we have commenced eviction proceedings against [Mr. P] of 145 [Y] Street, Unit 5, Toronto. In this regard, I wish to confirm that we have served [Mr. P] with:

1. A Notice to Terminate a Tenancy Early (Form N5) (“Notice”) by mail on or about February 23, 2009. The reason given for this notice is that [Mr. P] has substantially interfered with the reasonable enjoyment of the residential complex by the other tenants or landlord. The termination date given in the Notice is March 22, 2009. As you are aware, because this is [Mr.P’s] first Notice, the same is rendered void if he ceases to engage in the disturbing activities set out therein within seven (7) days from the date that the Notice is served. It is therefore a necessary part of our case to demonstrate that the disturbing activities continued to occur between the following dates: February 28, 2009 to March 7, 2009.
2. A Notice to Terminate a Tenancy Early for Illegal Act or Misrepresentation of Income (Form N6) by mail on or about February 23, 2009. The termination date given in this notice is March 22, 2009; and
3. A Notice to Terminate a Tenancy Early for Impaired Safety (Form N7) by mail on or about February 23, 2009. The termination date given in this notice is March 22, 2009.”

87 The COO stated that he did not feel there was a conflict in using a notice that allowed for correction in conjunction with two that did not allow for correction. He indicated that they wanted to convey to Mr. P that they considered his behaviour a serious matter. He said that the situation “warranted an eviction letter, not an eviction. For this incident we went straight to serving the notices.” He supported the action that was taken and advised that it had the desired effect, as the superintendent now feels respected and able to do her job.

88 At the same time, the COO acknowledged that the matter could perhaps have been handled differently, and that there was a range of responses they could have chosen, including a letter to the tenant. He advised that notices of termination are often used as corrective measures if the situation is serious, involving, for example, threatening or abusive behaviour. The TCHC does not have a practice of advising the tenant if there has been improvement within the 7-day period referred to in Form N5.

89 In response to Mr. P’s concern that the TCHC intended to use the notices against him in the future, the COO stated that the TCHC does not intend to evict him.

90 In their representations to my office, the TCHC stated that it was, “at a minimum, interested in sending Mr. [P] a warning, and, hopefully, deterring Mr. [P] from engaging any further in the conduct that is described in the Notices.”

- 91 The COO was asked whether the TCHC would agree to Mr. P's request that all records of the January 29, 2009 allegation with respect to the uttering of the racial slur be removed from the TCHC's file. He indicated that the TCHC would be prepared to do this.
- 92 The Operating Unit Manager advised that Form N5 was the standard notice used for corrective action, and that Forms N6 and N7 addressed Mr. P's behaviour. He said that the intent was to be corrective rather than punitive, but that they would have evicted him if his behaviour had not improved.
- 93 The Operating Unit Manager stated that the TCHC did not consider writing to him, as had been done in 2003, because there was a "history" and this had been going on for three to five years. He advised that mediation was briefly considered, but ruled out. He said that the TCHC did not consider giving Mr. P an opportunity to respond to the allegations before deciding what action to take, and that the TCHC had jurisdiction to respond as it did.
- 94 The LTB's Notice of Termination Form instructions advise that:

Form N5 - Notice to Terminate a Tenancy Early – should be used for any of the following reasons:

- the tenant, the tenant's guest or other occupant of the rental unit wilfully or negligently damaged the rental unit or the residential complex
- the tenant, the tenant's guest or other occupant of the rental unit substantially interfered with the reasonable enjoyment of the residential complex by the landlord or other tenants, or interfered with another lawful right, privilege or interest of the landlord or other tenants
- the number of people living in the unit is more than permitted by health, safety or property standards

Form N6 - Notice to Terminate a Tenancy Early – Illegal Act or Misrepresentation of Income – should be used if:

- the tenant or other occupant of the rental unit has committed an illegal act or is carrying on an illegal business at the residential complex involving:
 - the production of an illegal drug
 - trafficking in an illegal drug, or

-possession of an illegal drug for the purposes of trafficking or the tenant has permitted someone else to do so

- the tenant or other occupant of the rental unit has committed an illegal act or is carrying on an illegal business, other than described above, at the residential complex, or the tenant has permitted someone else to do so
- the tenant lives in rent-geared-to-income housing and has misrepresented their income or that of family members who live in the rental unit

Form N7 – 10-Day Notice to Terminate a Tenancy Early – should be used if:

- the tenant, their guest or other occupant of the rental unit has seriously impaired the safety of another person, and this event occurred in the residential complex
- the tenant, their guest or another occupant of the rental unit has wilfully damaged the rental unit or the residential complex
- the tenant, their guest or another occupant of the rental unit has used the rental unit or the residential complex in a manner inconsistent with its use as a residential premises and this has caused or can be expected to cause serious damage
- you live in the same building as the tenant and the tenant, their guest or other occupant of the rental unit has substantially interfered with your reasonable enjoyment of the rental unit or has substantially interfered with another of your lawful rights, privileges or interests

95 The LTB Interpretation Guidelines state that the landlord may issue more than one notice of termination for the same event if he or she believes the event gives rise to more than one ground for termination.

96 The *Residential Tenancies Act* refers to an “illegal act.” Section 61 of the Act provides that “a landlord may give a tenant notice of termination of the tenancy if the tenant or other occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.” The Act does not define an illegal act. However, the LTB’s Interpretation Guideline states that an illegal act is a serious violation of a federal, provincial or municipal law.

97 In key decisions posted by the LTB, an illegal act was found to have occurred in cases involving: sexual assault and the making of child pornography; drug trafficking by a fellow tenant; operating an illegal business that included health

violations; the shooting of a tenant with a pellet gun; and pursuing a tenant with an axe while threatening death.

Ombudsman Findings

- 98 My office received conflicting information from management on whether the TCHC intended to proceed with the notices of termination. I am concerned that the TCHC's equivocation on this issue may reflect a concern that its issuance of the eviction notices would not withstand scrutiny.
- 99 Given the serious consequences, a tenant facing eviction must be given the reasons for the proposed eviction in clear and unambiguous language. The grounds, and the alleged conduct on the part of the tenant, must be obvious on a plain reading of the notices.
- 100 None of the notices of termination clearly informed Mr. P of the grounds for termination of his tenancy. The three separate notices that were delivered together, and the Schedule "A" that accompanied each, were contradictory and confusing. Form N5 allowed for correction. Form N6 expressly stated that there was no opportunity for correction. Form N7 did not address correction in any way. Only one notice, N6, actually alleged that Mr. P had committed an illegal act. All three notices were accompanied by identical Schedules "A", which did not refer to an "illegal act." It was not clear from the notices or the Schedules "A" whether the uttering of a racial slur, either of the other incidents, or all three were alleged to amount to illegal acts. This is quite apart from the question of whether, as a matter of law, any of the incidents cited in the Schedules "A" would be found by the LTB to amount to an illegal act constituting grounds for termination.
- 101 The notices that are available reflect the need for different tools to deal with different situations. There may be circumstances where multiple notices are appropriate to address different grounds for termination. However, the landlord should not use all three notices at the same time without clearly articulating how the same event(s) provide grounds related to the different notices. A single statement does not properly explain this.
- 102 Further, the TCHC has stated that it wanted to send a warning to Mr. P and that it did not actually mean to follow through with an eviction. The TCHC used the eviction notice which expressly precludes correction for the improper purpose of issuing a warning. It is not appropriate to issue a notice of termination in order to warn a tenant. This is a misuse of the process under the *Residential Tenancies Act*.
- 103 The TCHC's action in issuing the notices of termination without first undertaking a rigorous review of the circumstances to determine to the fullest extent possible

whether Mr. P's alleged conduct actually provided grounds for termination, was a precipitous response on the part of the TCHC.

- 104 This action was in my view premature and ill-considered. Threatening to deprive a long-time tenant of his home should be an absolute last resort, following extremely careful consideration.
- 105 In response to my draft report, the TCHC advised that it has been developing a Community Standards Protocol since the fall of 2008. The Protocol was approved for implementation by the TCHC's Board of Directors in September 2009.
- 106 The Protocol, among other things, documents the steps that should be followed in dealing with complaints of unacceptable tenant behaviour. The proposed methods for dealing with serious problems include written warnings, mediation, formal meetings with the tenant, fact-finding, investigations and commencement of eviction proceedings under the *Residential Tenancies Act*.
- 107 The TCHC also informed my office that it intends to draft an Eviction Prevention Policy for Non-Arrears, either as part of its existing Eviction Prevention Policy for Rent Arrears or as a separate policy.
- 108 The development of the Community Standards Protocol and the proposed Eviction Prevention Policy for Non-Arrears are welcome additions to the TCHC's toolkit. The range of responses documented in the Protocol are consistent with my conclusions and recommendations and provide a guidepost for procedures going forward.

6 Ombudsman Conclusions

- 109 My office's experience during the investigation and the information garnered from witness interviews indicate that Mr. P is a very challenging individual. Nevertheless, the issue here is whether the TCHC's response in issuing the notices of termination complied with the duty of administrative fairness. Mr. P's conduct did not negate the TCHC's responsibility to deal fairly with him.
- 110 Mr. P had been served with three notices of eviction. The seriousness of the consequences made it all the more important that he be afforded procedural fairness at this stage.
- 111 Procedural fairness concerns how the decision was made. It includes the duty of fairness, which provides the person affected with the right to notice that an adverse decision is going to be made, the right to respond to the decision maker and the right to an unbiased decision.

- 112 Procedural fairness in the eviction process requires, at a minimum, that affected tenants be given an opportunity to respond to allegations made against them and a fair investigation be conducted before eviction proceedings are commenced. This is especially true when the allegations made are so serious. The process must be transparent. The tenant must be provided with a clear explanation of the grounds on which the eviction proceedings are based.
- 113 I am also of the view that administrative fairness requires that eviction notices only be used for the purpose intended by the legislation and not as a warning mechanism.
- 114 Mr. P was better positioned to respond to the threat of eviction than many TCHC tenants. He was able to advocate on his own behalf.
- 115 The reality, however, is that the TCHC manages the tenancies of thousands of vulnerable persons, many of whom have mental health challenges and/or a range of disabilities. These factors are compounded by economic disadvantage, leaving many tenants powerless and often without the requisite skills to negotiate and respond effectively. For them, the threat of eviction is a traumatic experience that may result in homelessness. The fact situation in this complaint would not lend itself to a successful outcome for most tenants. I have taken this into consideration in assessing the fairness of the TCHC's actions.
- 116 The City of Toronto Municipal Code, Chapter 3, Bylaw 1098-2009, § 3-36, provides that the Ombudsman, in undertaking an investigation, shall have regard to whether the decision, recommendation, act or omission in question may have been:
- A. Contrary to law;
 - B. Unreasonable, unjust, oppressive or improperly discriminatory;
 - C. Based wholly or partly on a mistake of law or fact;
 - D. Based on the improper exercise of a discretionary power; or
 - E. Wrong.
- 117 There are generally accepted definitions of the above-noted terms in both case law and the ombudsman field. I have considered those definitions in reaching my opinion.
- 118 The decision to commence the eviction of Mr. P in these circumstances was in my opinion unreasonable and unjust. In addition, the process followed both to

reach the decision, and to implement it, was in my view unreasonable and unjust. Specifically, I find that the TCHC:

- had no comprehensive policy for dealing with incidents of serious misconduct by tenants;
- failed to provide Mr. P with an opportunity to respond to the allegations and simply accepted the complaints made against him as sufficient basis for issuing termination notices;
- initiated the termination of Mr. P's tenancy without establishing, prior to issuing notices, that his alleged conduct, if proven, was likely to amount to an 'illegal act' and grounds for termination;
- failed to clearly disclose to Mr. P the specific grounds that provided the basis for terminating his tenancy;
- failed to respond appropriately to Mr. P's requests for clarification of what specific conduct was alleged to constitute an 'illegal act' and grounds for termination;
- failed to explain to Mr. P why the Tenant Complaint Policy did not apply to his complaints.

7 Ombudsman Recommendations

119 Taking into account all the evidence, I make the following recommendations:

1. That the TCHC issue forthwith a written directive to its staff that serious problems with tenants are to be documented contemporaneously or as soon as is reasonably possible thereafter. The documentation must be factual, precise and objectively descriptive. General and subjective terms must be avoided.
2. That a copy of the above directive be provided to the Ombudsman.
3. That where a complaint of serious misconduct is made against a tenant, the TCHC shall conduct a fair and thorough investigation.
4. That the TCHC develop in 2010 an Eviction Prevention Policy for Non-Arrears.
5. That the TCHC include in its implementation of the approved Community Standards Protocol, a set of procedures to follow when a complaint of serious misconduct is made against a tenant that includes the requirements set out in Recommendation 6.
6. That the Eviction Prevention Policy for Non-Arrears and the Community Standards Protocol implementation incorporate the following elements:
 - (i) Fair and thorough investigation of complaints of serious misconduct, including interviewing the tenant, taking statements, reviewing documents, and drawing conclusions based on that evidence.
 - (ii) Sufficient relevant and objective evidence to support an eviction before initiation of the eviction process.
 - (iii) Clear documentation of the circumstances when it is not reasonably possible to interview the tenant, due to factors such as criminal charges, the presence of weapons or apprehension by the police.
 - (iv) Issuance only of the appropriate notices of termination, which clearly inform the tenant as to his/her conduct and the legal grounds that justify the eviction.

7. That the Ombudsman be provided with a report on the status of implementation of Community Standards Protocol by July 2010.
8. That the Ombudsman be provided with a status report on the development of the Eviction Prevention Policy by July 2010 and a copy of the Policy when completed.
9. That the TCHC not act on incidents that occurred more than three years earlier unless there are extremely compelling reasons for doing so.
10. That the TCHC develop criteria to identify compelling reasons with regard to Recommendation 9 and provide a copy to the Ombudsman.
11. That the TCHC ensure the protections afforded by their policies are made available to tenants.
12. That the TCHC remove the February 23, 2009 notices of termination and Schedule "A" from Mr. P's file, and advise him in writing that this has been done with a copy to the Ombudsman.

(Original Signed)

Fiona Crean
Ombudsman

January 12, 2010