

## **Eviction Prevention Policy - Damages Policy & Protocol**

Approved July 5, 2010

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### **Purpose**

All participants in the At Home project will be signing leases. As such they have the same rights and responsibilities as all tenants in the province of Ontario. These rights and responsibilities are governed by *Residential Tenancies Act* (RTA) are outlined in the lease agreements signed by the participants and the process for resolving landlord/Tenant matters are subject to review and judgements of the Landlord and Tenant Board.

The protocol is provided to create a framework to support agencies as they address the issue of participants and their guests who cause damage to the rental property where they live including their unit and common elements of the property (elevators, common areas, doors, etc.).

This applies where the tenant remains in the unit and in cases where they have left the unit.

### **Principles Based Decision-making**

It is acknowledged that every situation where damages occur will require a customized response that takes into account the specifics of the situation including the tenant's role, the landlord's concerns, and potentially the concerns of neighbours. For this reason, the Policy & Protocol sets out an approach for considering each situation and implementing a plan of action. Also included is a feedback loop so that we can learn from past situations.

In making decisions about actions to be taken when there is a damage issue, the following principles must be considered:

- **Avoiding Evictions:** The intent of the fund is primarily to avoid evictions and help support stable, successful tenancies
- **Tenant Accountability:** The process must include ensuring that the tenant understands and acknowledges their responsibilities and accountability
- **Fund Stewardship:** Damage fund to be primarily a revolving fund (i.e. wherever possible, the tenant should be responsible for repayment of all or some of the damage funds used)
- **Landlord Relationship:** The mitigation plan must consider preservation and enhancement of the landlord and tenant relationship, and ensuring the continued positive image of the At Home/Chez Soi project in Toronto, otherwise, landlords may not be willing to participate
- **Research:** demonstrate the types of issues that arise and effective approaches for resolution
- **Prevention:** Preventing future damages, and on learning from incidents
- **Quick Responses:** Timeliness, responsiveness and respectful actions
- **Role Clarity:** clarity in the role of service providers in supporting tenants to prevent damages, be successful tenants, and to resolve damages

- Efficient and Effective Decision Making Processes: for example, determine a benchmark for situations that would be considered under the damages protocol vs those that are minor and can be resolved by the service worker and tenant; establish a process for including expert advice in the development of mitigation plans.

Additional decision making principles include:

- Stewardship: every effort must be made to ensure dollars are used wisely and for the furtherance of the project objectives. Multiple agencies will be involved in decision making and funding approvals, therefore, roles and authorities must be clearly established.
- Alignment with other policies and protocols: this policy and protocol must fit within the framework of other Toronto Site policies and protocols which may relate to this policy and protocol, such as for moving & storage and eviction prevention.

## **Roles:**

The primary persons involved will include the tenant, Service Provider (SP), and the landlord. Others included will be Housing Connections and one or more advisors with expertise in this subject.

For major situations, the SP and HC will jointly have lead responsibility for development and implementation of the mitigation plan and may consult with expert advisors. SPs will lead on minor incidents, and may request support from HC as needed.

Payment of damages will generally be made by HC (either directly or re-imbusement of payments made by the SP). Repayment plans for the tenants may be established. SPs will assist their clients to follow through on a repayment plan.

The City has a budget from MHCC for damages. Amounts paid by HC shall be reimbursed as part of the usual quarterly payment & reconciliation process.

Landlords often contact HC directly. Therefore, it is important that SP's keep HC up-to-date as quickly as possible where there is an issue.

## **Terminating Tenancy for Cause**

The RTA permits a landlord to give a tenant notice to end the tenancy early if the tenant, the tenant's guest or someone else who lives in the rental unit does something they should not do, or does not do something they should. This is sometimes called ending a tenancy "**for cause**".

Some examples of "**for cause**" reasons for ending a tenancy are<sup>1</sup>:

- not paying the rent in full,
- **causing damage to the rental property,**

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<sup>1</sup> [http://www.ltb.gov.on.ca/en/Key\\_Information/170036.html](http://www.ltb.gov.on.ca/en/Key_Information/170036.html) Viewed on February 17, 2010

- disturbing other tenants or the landlord, and
- illegal activity in the rental unit or residential complex.

This protocol addresses potential evictions due to damages. The other “for cause” issues are addressed by SPs as part of their regular support work with the client.

## **Process:**

As a general rule of thumb, the more public the damage is, the faster the response needs to be. Public means damages to the exterior of the unit, common areas, and/or impacts on neighbours. Less public is damage within the unit that cannot be seen by others and does not impact on others.

## **Minor Damages**

Damages may be minor: matters within the unit, not impacting on the neighbours or landlord, and low cost. The SP may in these cases work directly with the tenant to fix the problem. For example, poor cleanliness or marks on a wall. HC can help the SP to identify cleaning supports if such supports are needed (for example, Squeaky Clean and Fort York Shelter). Costs for such services would be negotiated by the SP and the client – pay all at once or a payment plan) and worked out with HC where advanced funds are needed.

## **Major Damages**

This P&P is concerned with damages that cannot be dealt with directly by the SP and tenant, and which if unaddressed may lead to an eviction. Examples:

- Landlord contacts Housing Connections, Support Agency or other partner concerned about damages
- Landlord issues an eviction notice
- Support worker identifies damage to the unit during unit visits or, if they cannot access the unit due to safety or other issues

Any partner receiving information related to damage to the unit or common area must share this information without delay with Housing Connections and the SP.

Please note that damages may occur at the same time that the tenant is experiencing instability. Assessment and mitigation may need to be delayed (for example, where a unit has been taken over by visitors and it is unsafe for either the tenant or support worker to enter the unit; the tenant is in a crisis situation). In such situations, it is important to communicate with the landlord and HC so all parties understand that there is a commitment to mitigate, but that concerns for the safety and well-being of the tenant and safety of support would take precedence. Furthermore, work with the client to prevent future damages may need to be delayed until the instability (crisis) which lead to the damages are under control.

## **Fast Track – Health & Safety**

Matters that can affect the health & safety of the tenant and/or other tenants if left unresolved for more than a day or two must be treated as a priority and responded to immediately to avoid further risk. In such situations, the steps below need not proceed in a linear way where they would impede a necessary critical response. In such

situations, the SP should immediately contact HC and work out a quick, interim response.

## **Assessment**

Where a major damages issue has been identified, the SP will investigate and document all allegations of damage to the unit and/or common areas, with support from HC. The SP and HC will jointly decide who is best positioned to consult with the landlord. The SP will be responsible for consulting with the tenant.

Information in the Assessment will include:

- What happened?
- Who's affected?
- How bad is it/expensive?
- Why did it happen/could it be avoided in future?
- What could be done to resolve it?

The SP will complete a risk assessment form as per their Agency's and MHCC's requirements.

## **Assessment Review**

This information will be shared with HC and other project partners as required, who will review the information to make an initial determination of:

- o responsibility for damages
- o assessed value of the damages
- o outcome the landlord is looking to achieve

If the damages are determined to be the responsibility of the participant (including their guests), the SP and HC will jointly take the lead on developing a mitigation plan. In preparing the plan, support may be provided the "Expert Panel".

If the damages are determined to not be the responsibility of the participant, HC will work with the landlord to seek resolution and work with the SP as appropriate.

## **Mitigation Plan**

The SP and HC will jointly lead the development of a mitigation plan that responds to issues raised in the assessment, and the decision principles identified earlier in this document.

The mitigation plan will include:

- the approach for repairing the damages
- the approach for paying for work to be done, including the tenant's share
- the approach for the SP to address the tenant behaviours that led to the damage and towards preventing future incidents
- may include plans for moving
- if there is an eviction notices, plans for working with the landlord to retract the notice
- HC will be responsible for the elements of the plan to do with having repairs made and payment of same.

The mitigation plan may include consultation an Expert Panel. It must be reviewed by the program manager of the Service Agency. Where the costs to by paid from the City's MHCC budget exceed \$1,000, City approval is required.

## **Expert Panel**

As each situation will be different, having seasoned experts available to brainstorm and provide advice will help the SP in preparing the mitigation plan. The Expert Panel will be comprised of a number of individuals with significant property management and tenancy experience (e.g. social or supportive housing providers). In preparing the plan, the SP would be required to consult with at least 2 members of the panel – whoever is available and able to assist at the time.

The Expert Panel will be identified by the City and HC. Because speedy decisions are critical, the group need not meet in person. The list and contact information will be appended to this policy and updated from time to time.

## **Payments for Damages**

If it has been determined that damages are the responsibility of the participant and that it is reasonable to make a payment to cover the damages then the following will be considered as payment options:

- Discussion with the landlord will take place to confirm the amount of the payment for damages and if this will be paid in a lump sum or instalment payment plan. In many situations due to the need for a quick resolution, HC may pay for the repairs or deductible up-front, and the repayment plan can be determined later.
- Landlords may sometimes have a charge back policy which should be considered, in particular if the tenant will pay for the damages in instalments.
- Where damages would normally be covered by the tenant insurance program then the claim will be processed though this policy. Payment of the deductible<sup>2</sup> would be the responsibility of the participant (unless there are valid reasons why the participant cannot pay all or part of the deductible);
- Where damages are not covered by tenant insurance and the participant is supported by an income support program the support agency will identify funds available through this program – community start up or excess available due to reduced shelter costs. Please note that where there is a request for CSUB: Costs for damages are not specifically referenced in the policy. OW/ODSP may assess on a case depending on the amount owing, circumstances leading to the damages and previous issuances within the last 24 months. It is recommended that a copy of the assessment and the mitigation plan be provided to assist OW/ODSP in their review. There may be situations where there is room in the shelter component to make the installment payments, and the SP should also discuss this option with OW/ODSP.
- Where no funds are available through income support programs, the participant, insurance or other means Housing Connections will authorized payment from contingency funds available in the program.

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<sup>2</sup> Information about the insurance policy is available at [insert link] or by calling [insert contact info]

Tenant pay-back of “loans” from the damage fund would be by way of a financial agreement between the SP and the Tenant. The “loan payments” may be small (e.g. \$10 a month minimum); part of the “loan” may be waived if necessary (principles for waiving repayment requirements need to be developed). A sample loan agreement is attached as Appendix X [to be developed]. SPs will need to establish internal processes for collection of funds and remitting such funds to either HC or the Landlord – whichever one paid the lump sum for the repairs up-front.

Note: Payment up-front for damages by HC does not mean that HC, the City, the SP or MHCC have accepted liability. This needs to be made clear in any communications with the landlord.

## **Management of the Mitigation Plan**

Deadlines and deliverables will be establishing in the mitigation plan. The SP will monitor the plan, and provide regular reports to HC and others as per the communication requirements established in the plan.

When the plan is completed and the matter resolved, a final report by the SP shall be completed to document what was done and results.

## **Research and Continuous Learning:**

Copies of the assessments, mitigation plans and final reports shall be shared by SOT members and posted on the MHCC Toronto site of Sharepoint with appropriate privacy controls. Private information will be removed.

These will help in developing responses to future issues, and will capture important information for the Toronto project site.

## **Next Steps:**

City and HC to develop and finalize attachments to this policy:

- post on website

Provide this protocol, once approved, to SP’s with request that the Protocol be reviewed with their staff.

Ongoing updates to this Protocol will be recommended as required by City of Toronto staff.

## **Attachments:** [to be developed]

- Contact info for expert panel
- Payment letter/form for landlord
- Loan letter format for tenant repayment plans