

# PATTERNS OF NEGLECT

HERON GATE RESIDENTS SUFFER FROM A LEGACY OF POOR MAINTENANCE AND LANDLORDS' USE OF A MUNICIPAL COMMITTEE TO OVERTURN BYLAW ORDERS WITHOUT TENANTS' KNOWLEDGE



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WHETHER FROM LACK OF FUNDING, NOT TAKING TENANTS' VOICES SERIOUSLY OR IN THE CREATION OF QUASI-JUDICIAL BODIES THAT HAVE THE POWER TO OVERRIDE BYLAW OFFICERS' AUTHORITY TO DO THEIR JOBS, WE SEE A BYLAW DEPARTMENT THAT IS COMPROMISED IN ITS ABILITY TO PROTECT TENANT'S RIGHTS.

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## THE LAST HERON GATE TENANT

I returned to Heron Gate on Oct. 4. The Herongate Tenant Association had organized a rally and press conference against the evictions. Demonstrators, observers and members of the media snaked through the abandoned homes on their way to the Heron Gate rental office. The walk was narrated by organizers with a bullhorn.

After the rally, I met up with Abdullahi Ali at his home.

Ali and his family were the last people to move out. They had intended to stay on indefinitely to fight the evictions, but chronic flooding in his basement had led to his home developing a significant mould problem, so they reluctantly decided to move.

The place they had been able to find wasn't available until Nov. 5, so despite Timbercreek's desires, they were planning to stay put until then.

Ali was upset because earlier that day he had met with a city Bylaw Officer. He had originally called Bylaw on July 25 about the basement flooding. According to Ali, the officer, Jean Sarault, had investigated the flooding that day, then told him 10 days later, "I put in the work order."

Ali then heard nothing at all until Oct. 3 when Sarault called Ali and told him that he had received a report from Timbercreek that the work had been done, that management had

fixed the problem – they had "sealed the window."

Ali was incredulous because the problem he had initially called about had to do with a leaking foundation, a common problem in the entire section of interconnected townhouses. I saw numerous work orders and photos from other residents that corroborate that this was an ongoing problem, spanning several years.

Ali asked that the officer at least come to inspect the situation for himself, to which Sarault agreed. He came by the following day, but not much came of it. Ali said that Sarault had spoken to management and that Sarault took their word that the flooding had been caused by a window, which had since been repaired.

Ali pointed out that there was no evidence of work to the window (something I also saw), and that there was no water damage evident at that location. He also pointed out the history of flooding throughout the other townhouses.

At one point, Ali grew frustrated and said "use your common sense," to which Sarault apparently replied, "I don't need to use my common sense."

All of this struck me as a little odd. It felt inappropriate that the Bylaw Officer would simply take the management's word on the matter, especially in light of the numerous complaints in other connected units. Actually, the truth of the matter turned out to be a bit stranger.

Abdullahi Ali's Kafkaesque experience with Bylaw, as Timbercreek's last Heron Gate tenant, tied in with questions I'd had since I began documenting Heron Gate last spring. Just walking around the housing complex, I would see numerous bylaw violations. I often wondered, "how is this possible?"

Timbercreek also receives hundreds of thousands of dollars a year in government money, as part of the housing supplement that helps to subsidize housing costs for low-income families. So the full question I've been asking myself is "how is it possible that living conditions can be so poor here, while Timbercreek can continue to receive so much government money?"

## A LEASING AGENT

Philippe Pariset, 28, is currently studying Computer Engineering at Algonquin College, but 10 years ago he spent a summer working as a

leasing agent at Heron Gate. That was when it was still owned by TransGlobe. Nonetheless, his experiences offer some valuable insights.

Pariset said he was optimistic when he began working, but things quickly soured. "They trained me terribly," he said. "They threw me into the fire with zero training whatsoever." Yet his employer was frequently angry and abusive about his inability to do his job properly. Pariset described the work environment as toxic.

Pariset's job was to show apartments to potential tenants. He would be given a list of apartments he could show and would then be paired with a prospective renter. If a client was interested in taking an apartment, Pariset would then hand them over to another agent in the office.

Many of the apartments he showed were in very bad condition, broken down and very dirty.

"Some of the carpets were filthy brown, like full of filth. Sometimes there was still garbage on the floor, it wasn't even vacuumed." At one point, when showing an apartment, he opened a door to a room and saw the floor littered with blankets and syringes. He quickly closed the door and ushered the potential renter out of the unit.

When he brought this up, his boss simply replied that it was either a diabetic or squatters. Throughout this time, Pariset's employer stressed that the apartments would be cleaned and renovated before renters moved in, but Pariset began to have his doubts.

The office, he explained, was often full of tenants complaining about issues that went unfixed and people moving into apartments that hadn't been renovated. He recalled a student in tears in the office because the apartment she had moved into was infested with mould.

Pariset said that, by and large, the potential renters assigned to him were immigrants and refugees. He said that he couldn't recall ever being assigned a white client. Pariset is half-Chilean and speak a number of languages, which he suspected was the reason for these assignments.

His boss would frequently tell him to "show the worst apartments first." Pariset said, "I saw some really really disgusting units and it was strange to me that my boss kept telling me to show those first."

As his conviction grew that he was being pushed to put refugees and immigrants into Heron Gate's worst units – and that those units would not be properly cleaned and repaired – he became increasingly distressed. After two months, Pariset couldn't take it any longer and quit.

## A SINGLE-MOTHER RENTER

Everyone I've spoken to has told me that Timbercreek is a little better than TransGlobe in terms of maintenance. However, in August I spoke with Elizabeth Aguilar, a single mother who nearly rented from Timbercreek. In the fall of 2017, Aguilar was shown two apartments in Heron Gate's Cedarwood tower. In many ways, her story complements Pariset's from the inverse perspective of a potential client.

She told me that the first apartment Timbercreek showed her was "really dirty."

"In the apartment," she said she "found what appeared to be a bed bug or two." She went on, "I asked them if they did a [bedbug] inspection. They said they did. I asked for the name of the company; they said they didn't want to give it to me."

Like many of the apartments Pariset had shown, this one had filthy carpets and garbage that had not been disposed of. Aguilar explained that in the kitchen "there was food in the cupboards still... It was quite dirty... I asked them to change the carpet, it was between gray and black... the [window] screen was ripped... the bathroom had no faucet, no shower head."

Feeling desperate, Aguilar agreed to take the apartment on the condition that all the repairs be done beforehand. She took photos to document the issues.

In the end, Aguilar did not end up moving into Heron Gate, as she managed to find an apartment in a building not owned by Timbercreek elsewhere in the city.

## A FORMER RESIDENT

Mavis Finnamore is an organizer with Ottawa ACORN and a former Heron Gate resident. She lived in the complex for more than 30 years as it passed hands from Minto to TransGlobe and then to Timbercreek. She lived in the section of Heron Gate that was demolished in 2016, then moved elsewhere.

In speaking with Finnamore, I wanted to return to the role that Bylaw played in all of this, to the way it related to the equation of maintenance problems and neglect at Heron Gate.

As a concerned resident and ACORN activist, Finnamore has had a lot of experience with Bylaw. At one point she was part of an ACORN initiative to guide bylaw officers through a host of mass inspections at Heron Gate. This exercise led to citations for more than 500 infractions, she said.

Oftentimes, however, Finnamore stressed that dealings with Bylaw did not go so smoothly. She described a situation involving the parking garage beneath her home "I called Bylaw and they sent... an officer... She said 'oh deary, can you look at this!' I said 'yeah, you can see the cracks in the concrete, where the drains have blocked, etc.' And she said 'don't worry I'll go to the office and talk to them.' That was the last I heard of her and when I questioned what was going on, there wasn't even a record of a report."

It is Finnamore's opinion that "There's an attitude in the [Bylaw] office that if they don't have to go out, they won't and if they can talk to the management first there is a prejudice against tenants."

## AN EXPERT WITNESS

Daniel Tucker-Simmons is a lawyer representing a number of recently evicted Heron Gate residents in a human rights case, including Abdullahi Ali. He has also represented "dozens and dozens" of people in tenants rights cases and has extensive experience with the city Bylaw office and standards of maintenance issues.

Tucker-Simmons said, "To be fair to Bylaw, they're often swamped, like they're understaffed in my experience. They're under quite a lot of pressure to resolve things quickly. I've seen in the past Bylaw actually issuing an order and then the landlord doesn't follow through with it, the tenant calls Bylaw, Bylaw calls the landlord who says to Bylaw they fixed it, without verifying it. It's really a matter of resources and they do tend to take landlords' word for it – especially corporate landlords."

I suggested that this seemed rather counterintuitive, that landlords had the greatest incentive to be dishonest in these cases. He responded, "It isn't a good system. It's broken."

"It's almost like an economy of scale," Tucker-Simmons said. "[I]f there's so many maintenance issues that Bylaw can't deal with a fraction of them, then there's an incentive to have more maintenance issues [rather] than fewer."

## COMPLAINTS COMPLAINTS COMPLAINTS

The *Leveller* filed a number of Freedom of Information requests with the city relating to bylaw complaints by tenants and Timbercreek work orders. These documents paint a picture of homes in a chronic state of disrepair.

Between 2012 and 2016 alone, 34 families made bylaw complaints. At the time of the evictions there were 105 families living in this area, so this would represent around one third of them. Keep in mind, this means going above and beyond submitting a work order to Heron Gate management, which would be the preliminary step in trying to have maintenance issues addressed.

The notes in these documents show tenants in despair, repeatedly pleading with Bylaw that Timbercreek refuses to address their problems.

## AFTER THE DELUGE

Ali wasn't the only person in his interconnected row of townhouses, which all shared a common foundation, to have problems with basement flooding. For one of his neighbours, the problem was even worse. For more than a year, rampant mould growth had rendered the basement unusable.

This former neighbor does not speak English, so her son had tried to reach Bylaw on multiple occasions, apparently to no avail. Timbercreek never dealt with the issue.

## THE PROPERTY STANDARDS AND LICENSE APPEAL COMMITTEE

All of this brings us back to Abdullahi's house. As I mentioned earlier, I found it odd that Bylaw would simply accept management's account of Ali's leaking basement, especially when other residents who had had a similar issue corroborated his claim.

I put this issue to the city, asking them why the bylaw officer had seemed so resolute in his refusal to believe Ali and so adamant to take management's word for the story. I was answered by Chief Bylaw Officer Roger Chapman, the head of the department, and his response was quite interesting.

"The matter of water entering the basement of the unit in question (2827-D Sandalwood) was investigated and an Order was issued to make repairs to the foundation to prevent water from entering," Chapman wrote.

"In accordance with the Property Standards By-law and Building Code Act, a property owner has the right to appeal the Order."

"In this case, an appeal was made by the property owner to the Property Standards and License Appeals Committee, a quasi-judicial body established by City Council to hear appeals and render decisions which are final and binding."

"Upon reviewing the evidence, the Committee found the work undertaken by the property owner was in compliance and considered the matter to be addressed."

This showed that the bylaw officer initially had believed Ali, and had in fact issued a work order to Timbercreek to repair the foundation.

But what was the Property Standards and License Appeals Committee?

No one I spoke to had ever heard of it. Tucker-Simmons had not heard of it. George Brown, another lawyer who has worked on numerous tenants rights issues, had never heard of it.

It turns out the Property Standards and License Committee was established by City Council in 2010. According to Ottawa City Bylaw 2013-416, the "Committee may confirm, modify or rescind the order to demolish or repair."

Section 97 of the same bylaw stipulates that "An owner or occupant who has been served with an order made under the Building Code Act and who is not satisfied with the terms or conditions of the order may appeal to the License and Property Standards Committee."

I reached out once again to Ali, and he reiterated firmly that he was completely unaware of this committee or its ruling, and stressed that no one had done any work on his window, which had never been the issue.

I went back to Ottawa's Media Relations and asked why Ali had not been notified of any of these proceedings and why he hadn't given any testimony or been asked for evidence. What evidence had been provided in this ruling?

Roger Chapman got back to me with one document, the Appeals Committee decision, which was issued on Sep. 19.

The document states that Bylaw Officer Sarault was present for the ruling, as well as the Appellant, whose name is redacted, but is obviously Timbercreek, although we don't know which employees specifically attended.

In terms of evidence, Sarault claims that he visited Ali's unit on July 26 and noticed water on the floor of the basement. The decision then states that the Appellant (Timbercreek's representative) did not dispute there was a building "deficiency... but presented evidence to support that the cause of the deficiency – specifically a one-inch hole in a basement window frame – was identified and suitable remedial action was undertaken."

"The PSO [Officer Sarault] agreed that the identified cause could very well have been the reason for the flooding," the ruling went on, "and he expressed his satisfaction with the Appellant's remedial action. The Appellant also independently informed the committee that plans are underway to demolish the complex that the said property is part of. As required, tenant eviction notices have already been delivered and it is the Appellant's hope to have all tenants evicted by September 30, 2018."

The document then goes on to consider the matter dealt with and closed.

To my question as to why Ali had not been notified of these proceedings, Chief Bylaw Officer Chapman responded, "The complainant was notified of the decision of the Committee on October 3, 2018."

When I interviewed Ali on Oct. 4, he despairingly referred to the idea that the flooding could have come from the window as "a big fat lie."

Whatever notification Ali received came after the decision was already made. Moreover, when I spoke to him, he certainly didn't seem aware that it had taken place at all. From his conversation with Sarault, his understanding was that the report on the window had come from Timbercreek rather than been handed down by this Committee.

Another outstanding question is how often has Timbercreek been using this committee as a tool to quash bylaw orders? How often do landlords make use of it in general?

## THIS IS THE BEGINNING NOT THE END

While Timbercreek has been successful in its most recent round of evictions, this does not necessarily signify defeat for Heron Gate residents, as roots have been planted for longer-term resistance to Timbercreek's agenda. Also, there is also still a pending human rights challenge.

As Josh Hawley previously argued in the pages of *The Leveller* (also in Issue 11.3, Sept/Oct. 2018), it seems that the coherent corporate strategy for Heron Gate "has long been to drive the properties into the ground, force out 'legacy tenants' through wholesale demolitions, and maximize profits through increasing the density of units on each parcel – rather than abide by the city's official guidelines on intensification."

As UN Special Rapporteur on Adequate Housing Leilani Farha explained in a piece for Huffington Post, Timbercreek practices "unscrupulous demographic engineering in search of profits: replacing poor and vulnerable people with those who possess greater purchasing power."

The current state of bylaw enforcement in Ottawa seems to have enabled this exploitive process.

Whether from lack of funding, not taking tenants' voices seriously or in the creation of quasi-judicial bodies that have the power to override bylaw officers' authority to do their jobs, we see a Bylaw department that is compromised in its ability to protect tenants' rights.

It is furthermore strange that there is a committee where landlords can appeal bylaw orders without informing tenants. The members of this committee, as far as I can determine, come from the business and real estate community. As such, they are more likely to be sympathetic to a landlord's perspective.

Imagine a trial conducted behind the accuser's back, where the prosecution could not present evidence, and the police and judge tended to just accept the accused's version of events. That seems to be how this committee functions.

Last year, Prime Minister Justin Trudeau promised to enshrine adequate housing as a fundamental human right in Canadian law. Canada is already a signatory to a UN convention that recognizes housing as a human right. With skyrocketing housing prices, it is vital this right be put into practice sooner rather than later.

