

**Enforcing the Right to Healthy Housing:
Recourse for Montreal Tenants
Facing Health and Safety Problems at Home**

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Abstract

This exploratory study examined the recourse available to Montreal tenants facing housing problems that affect their health and/or safety. Strengths and weaknesses of the Quebec Rental Board and the borough-level city inspection service were explored through qualitative interviews with key informants and brief analysis of statistics. Findings suggest that, although the Rental Board has certain strengths and it is possible for tenants to achieve a positive outcome, particularly if represented by a lawyer, there is a major gap between tenants' rights under the *Civil Code* and their ability to enforce these rights in practice. Issues discussed include access, hearing procedures, challenges in providing proof, and results ultimately obtained. At the level of the borough inspection service, this study suggests both strengths and weaknesses, as well as variation between boroughs; time, resources, and the philosophy of intervention emerged as important themes. Ideas for improvements for both of these recourses were also discussed.

Cette étude exploratoire visait à examiner le recours disponible aux locataires montréalais vivant des problèmes de logement touchant leur santé et /ou leur sécurité. Les forces et les faiblesses de la Régie du logement du Québec ainsi que du Service d'inspection de la Ville de Montréal (arrondissements) ont été explorées par le biais d'entrevues avec des acteurs-clé ainsi qu'une analyse brève de statistiques. Les résultats suggèrent que, malgré certaines forces et bien qu'un résultat positif soit possible à la Régie du logement (surtout avec la représentation par avocat-e), il existe un écart important entre les droits accordés aux locataires en vertu du Code civil et leur capacité de faire respecter ces droits en pratique. L'accès, les procédures, la preuve, et les résultats ultimement obtenus sont parmi les enjeux discutés. Au niveau du service d'inspection, ce projet suggère des forces et des faiblesses, ainsi qu'une variation entre arrondissements. Le temps, les ressources et la philosophie d'intervention ont apparu comme thèmes importants. Des suggestions visant l'amélioration de ces deux recours ont également été discutées.

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Residents in the building said they have complained for months about mice, cockroaches and mould. In addition to the vermin, the heat has been off for three days, tenant Kugan Mano said. “I pay \$750 for nothing,” Mano said. “It’s like living in the North Pole.”

-CBC News (Montreal), December 11, 2009

L’insalubrité est omniprésente dans l’édifice: douches infectes, cuvettes brisées, moisissures. C’est dans ce décor que vivent des locataires démunis et livrés au diktat de la saleté. La vermine prolifère et des insectes de tout genre s’attaquent aux locataires. Un habitant, qui refuse de s’identifier, confirme l’existence de coquerelles et de punaises de lit. Il affirme également avoir vécu sans douche pendant trois mois faute de réparations.

-Radio-Canada, Nouvelles (Montréal), August 16, 2010

“I think it’s unfair. When I got here the walls were freshly painted, you didn’t notice anything, nothing seemed to be wrong”, he said. “But then, soon after, I saw my children start to scratch all over. I took them to the doctor and he said: ‘It’s bedbugs, there’s nothing we can do’. Frankly, I can’t stay here. It’s not good for my children’s health”.

-Montreal Gazette, February 18, 2010

Housing is intimately related to health. The structure, location, facilities, environment and uses of human shelter have a strong impact on the state of physical, mental and social well-being. Poor housing conditions and uses may provide weak defences against death, disease, and injury or even increase vulnerability to them. Adequate and appropriate housing conditions, on the other hand, not only protect people against health hazards but also help to promote robust physical health, economic productivity, psychological well-being and social vigour.

-World Health Organization, Health Principles of Housing (1989)

1. Introduction

The right to adequate housing is a fundamental principle recognized in article 25 of the 1948 *Universal Declaration of Human Rights*. The 1966 *International Covenant on Economic, Social and Cultural Rights*, signed by Canada in 1976, also recognizes this basic tenet, including the right to “the continuous improvement of living conditions” (article 11.1). Housing conditions are a critical determinant of health (World Health Organization, 2008; Raphael, 2009), and the right to healthy and safe housing is both a key public health issue (Krieger & Higgins, 2002; Shaw, 2004; King, 2000; Bashir, 2002) and a question of environmental and social justice (Rauh, Landrigan & Claudio, 2008; Bashir, 2002).

In Montreal, 65.6% of households call a rented dwelling home (Ville de Montréal, 2009). While many of the city's 487 605 tenant households (ibid) enjoy comfortable conditions, others, as the above quotes suggest, experience problems that can pose a risk to their health and safety, including mould, lack of heat, lack of water, vermin, cockroaches, structural problems and safety issues.

Montreal tenants have rights regarding their housing conditions under the *Civil Code of Québec* and can enforce these rights through the Quebec Rental Board. At the municipal level, Montreal's *By-law Concerning the Sanitation, the Maintenance and the Safety of Dwelling Units (RVM 03-096)* details specific standards with respect to housing; tenants can enforce their rights under this regulation through the city inspection service of their local borough. But how do these recourses actually work in practice? When tenants encounter problems, to what extent are they able to ensure that their right to live in a safe and healthy home is respected?

Context and Rationale

These questions take on a particular importance when viewed in the context of Montreal's rental housing market and its tenant population. Data from

the 2006 census indicate that 10.5% of rented housing units in the City of Montreal territory are in need of major repairs, and 28.6% require minor repairs (Ville de Montreal, 2009). The rental housing stock is fairly old; 19.9% of rental units were constructed before 1946, and 26.4 % were built between 1946 and 1960 (Ville de Montréal, 2009). Yet rates of new rental construction to replace these ageing units are very low, as builders are drawn to more lucrative condominium and retirement home projects (Saillant, 2006; Canada Mortgage and Housing Corporation - CMHC, 2009; CMHC, 2010).

Secondly, poor housing conditions are inextricably linked to poverty (Shaw, 2004), and poverty is a daily reality for a very high proportion of Montreal tenants. In 2005, 44.9% of tenants in the City of Montreal, or 218 710 households, lived on an income under the Statistics Canada Low-Income Cut-Off (Ville de Montréal, 2009). The median income for tenant households was \$29 766, compared to \$63 196 for homeowners (Ville de Montréal, 2009), and 33% of tenant households lived on less than \$20 000 per year (Ville de Montréal, 2009). It is clear that a very large number of Montreal tenants are both at risk of living in an unhealthy environment and less likely to have the resources to be able to find solutions to these problems on their own.

Vacancy rates add a third dimension of urgency to the issue. The vacancy rate for the Island of Montreal in the fall of 2010 was 2.7% (CMHC, 2010). For two-bedroom units, it was 2.3%, and for three or more bedrooms it was 1.8%¹ (ibid). More affordable units are much more difficult to find: for example, the vacancy rate for three-bedroom units with a rent over \$900 was 3%, but for those between \$500 and \$699 it was 1.5% (CMHC, 2010). These figures reflect the “transformation” of a housing crisis that has gripped the city for the past decade: while vacancy rates for more expensive units have stabilized in recent years, Montreal continues to face a critical shortage of affordable housing, especially larger units for families (Saillant, 2006; Front d’action populaire pour le réaménagement urbain - FRAPRU, 2009). Clearly, many tenants struggle to fund affordable housing: census data indicate that in 2006, 38.8% of tenant households

¹ These figures include only private structures with three or more apartment units (CMHC, 2010).

in Montreal paid more than 30% of their income toward rent, 18.9% paid more than 50%, and 8.8% paid more than 80% (FRAPRU, 2009).

Finally, although social housing provides a long-term solution for low-income households, Quebec has a much lower proportion of social housing units than many European countries (Société d'habitation du Québec, 2007; FRAPRU, 2009). In Montreal, social housing (low-cost, cooperative and non-profit units) accounts for only 10.8% of the rental housing stock (Ville de Montréal, 2009). Even for tenants in very serious situations, this solution to their housing problems is extremely difficult to attain. In March 2011, for example, there were 21 116 households on the waiting list for Low-Cost Housing in the Montreal region (Office municipal d'habitation de Montréal, 2011).

These factors combine to create a situation in which, as community organizations have observed, landlords are able to rent units in very poor condition, and tenants who find themselves in unhealthy surroundings cannot “just move” to escape them, even if they are able to legally break their lease (Comité d'action de Parc Extension - CAPE, 2006; Project Genesis, 2006). When tenants do manage to move out of unhealthy units, new households in need of inexpensive housing move in. International migrants (particularly recent immigrants and those who speak little English or French), single parent families, senior citizens, people with mental health problems and Aboriginal people living in urban areas are particularly affected, in that they are more likely to experience poor housing conditions and the impacts on their health (Observatoire montréalais des inégalités sociales et de la santé - OMISS, 2006).

Beyond individual impacts, there are serious medium and long-term repercussions for the city's housing stock if problems are not corrected (Rauh et al, 2008). There are also social and economic impacts, such as the increased use of health care services (Jacques et al, 2011) and missed days of work and school. In this context, then, it is critical that tenants have access to effective recourse in order to ensure that their right to a healthy and safe place to live is respected.

Objectives and Outline

This project grew out of my thirteen-year experience working as a community organizer in the Côte-des-Neiges neighbourhood of Montreal, where I was involved in doorknocking, tenant assistance and organizing, work on health care and poverty, and, in my last two years, campaigns related to housing policy. This experience convinced me of the profound impact that poor housing conditions have on individuals and families, at physical, social, psychological, family and economic levels. While I believe creating social housing is the most effective way to ensure access to affordable, quality housing, the huge proportion of tenants who find a home on the private market makes effective regulation and recourse for housing problems absolutely essential.

Through this research project I sought to explore the current recourses available to Montreal tenants experiencing housing problems that affect their health and/or safety. Rather than focusing on the relevant legislation, however, this study aimed to look at how the system works in practice, and to explore what actually happens when tenants try to exercise their rights under the laws and regulations currently in place. Specifically, the project aimed to 1) explore the recourse available to tenants through the Quebec Rental Board; 2) explore the recourse available to tenants through the Montreal City Inspection service (borough-level); and 3) propose changes to improve the protection of tenants facing health and/or safety problems. By looking at the strengths and weaknesses of these processes, I hoped to identify factors that make it difficult for tenants to enforce their rights, and to suggest ways in which the situation can be improved.

This paper will present the results of this project. I will begin with a discussion of relevant literature, first in relation to health and housing, and then on recourse for health and safety problems in housing. Next, I will present the conceptual framework and the methodology used in this study. In the fourth section, the project's findings regarding the Rental Board will be presented and analyzed. The fifth section will focus on the recourse available through the municipal inspection service. I will conclude with a discussion of overarching

themes, recommendations for change, limitations of this study and suggestions for further research.

2. Housing and Health

This section will examine literature related to housing and health, in order to help situate this project. The following themes will be addressed: a) framing the issue of housing and health; b) the impact of poor housing conditions on health; c) unhealthy housing in the Montreal context; and d) definitions and legislation pertaining to unhealthy, adequate and healthy housing.

Framing the Issue of Housing and Health

Several approaches to the issue of housing and health can be found in the literature, and they often intersect. These frameworks include a biomedical/epidemiological perspective; environmental and ecological approaches; a public health approach; a social/ environmental justice perspective; and a human rights approach.

Biomedical/ Epidemiological Approaches

A “biomedical model” (Lawrence, 2006) or “epidemiological approach” (Bryant, 2009, p. 242) is used to explore relationships between specific housing problems and particular health impacts. These approaches focus on identifying impacts and understanding cause-and-effect relationships.

Environmental Health and Ecological Approaches

The environmental health approach includes the biomedical model described above, but can also incorporate broader concepts and collaboration with other areas. This encompasses, for example, an emerging focus on “elucidating the associations between the built environment and health disparities” (Hood, 2005, p. A312). Lawrence (2005) called for an explicitly interdisciplinary, ecological framework to the question of housing and health, arguing that “an ecological perspective recognizes that behavioural, biological, cultural, economic, social, physical and political factors need to be considered if a comprehensive

understanding of housing and health is to complement disciplinary and professional interpretations” (p. 323).

Public Health Approach

In many places, including Canada, the United States and Europe, housing problems have historically been seen through the lens of public health (King, 2000; Krieger & Higgins, 2002; Lawrence, 2005; Shaw, 2004). This approach analyzes the impact of housing conditions on health, but also focuses on action to bring about policy change and reform. The public health approach remains highly relevant to work on unhealthy housing, in Montreal itself (King, 2000) as well as in other parts of the world (Krieger & Higgins, 2002; Shaw, 2004; Bashir, 2002). In Canada, calls for more analysis of the social determinants of health and for policy to reflect these priorities, including healthy housing, are strong (for example, see Raphael, 2009; Bryant, 2009).

Social/Environmental Justice Perspective

Several authors writing in the American context bring a strong social, economic and political analysis to the question of housing and health, framing these themes in terms of social and environmental justice. Rauh et al (2008) named “the disproportionate and inequitable exposure of poor and minority populations to hazards in the environment”, arguing that the “greatest toxic burden is carried by those who can least afford the adverse health consequences” (p. 283). Krieger and Higgins (2002) argued that power dynamics are at the root of this problem, and that these inequalities affect both who experiences poor housing conditions and the extent to which they are able to resolve them:

Substandard housing is an environmental justice issue. The inequitable socioeconomic distribution of substandard housing reflects underlying disparities in income, assets, and power. Tenants are often powerless to improve their housing conditions in the context of the low vacancy rates, high rental costs, weak tenant protection laws, and politically influential landlord associations commonly found in the United States. (p. 765)

Inadequate housing has emerged as a major social justice issue for grassroots organizations and coalitions, who are working to address both the underlying causes and the impacts of the problem (Bashir, 2002).

Human Rights Approach

Finally, housing and health is framed as an important human rights issue, in that “the right to adequate housing is solidly established and defined under international human rights law” (Theile, 2002, p. 714). The fundamental right to decent housing is included in the international legislation already mentioned, as well as in the *International Covenant on Civil and Political Rights*; the *International Convention on the Elimination of All Forms of Racial Discrimination*; the *Convention on the Elimination of All Forms of Discrimination Against Women*; the *Convention on the Rights of the Child*; and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (Theile, 2002). This legislation is seen as an important tool for advocates around the world working to promote healthy living conditions (ibid).

In Summary

These perspectives illustrate the many ways of examining the issue of unhealthy housing. Of particular relevance to this project are the links between knowledge of how housing affects health, recognition of the inequalities inherent in who experiences unhealthy housing, and the need for effective public policy in this area.

The Impact of Poor Housing Conditions on Health

The interaction between housing conditions and health is evident at several different levels, and can include physical, social, psychological and neighbourhood/ community dimensions (Moloughney, 2004; Bonnefoy, 2007; Rauh et al, 2008; Shaw, 2004). Although the link between poor housing and health may seem obvious, reviews of the literature suggest that the evidence base is actually relatively weak, largely because of the size and design of empirical studies (Bonnefoy, 2007; Jacobs, Wilson, Dixon, Smith & Evens, 2009; King,

2000; Moloughney, 2004; Shaw, 2004; World Health Organization, European Centre for Environment and Health – WHO ECEH, 2006; Lawrence, 2005). Cause-and-effect relationships are not easy to determine, and in reality people may be affected by a complex set of factors (Bryant, 2009; Moloughney, 2004; Bonnefoy, 2007). It is especially difficult to distinguish the effects of poor housing conditions from phenomenon such as poverty (King, 2000; Bryant, 2009; Shaw, 2004). However, several reviews have concluded that certain housing problems have negative impacts on peoples' health, and that in some cases this impact can be severe. I will briefly discuss these findings here².

Temperature Problems

There is enough evidence to link cold temperatures in the home to excess mortality during winter (WHO ECEH, 2006). Elderly people are particularly at risk (Shaw, 2004), although some studies found it difficult to separate the temperature effects from other factors (Moloughney, 2004; Shaw, 2004). Excessive heat is also linked to cardiovascular problems and mortality (WHO Europe, 2006; Shaw, 2004; King 2000), and in Europe this problem has been further linked to the social isolation of senior citizens (Bonnefoy, 2007). In addition to the elderly, infants, people with chronic health problems and people with disabilities are at increased risk of experiencing serious health impacts from temperature problems (Moloughney, 2004).

Humidity Problems and Mould

Humidity problems and mould growth are clearly linked to negative health effects (WHO ECEH, 2006). A recent Montreal study found that one in four children aged 6 months to 12 years had a respiratory disease, and attributed 26% of respiratory infections, 17% of asthma cases and 14% of allergic rhinitis (winter) cases to excess humidity and mould in their homes (Jacques et al, 2011).

Mould is an important trigger for asthma (Rauh et al, 2008). The impact of mould can vary from “slightly to moderately severe” irritation, to allergic and

² Given that the impact of poor housing conditions on health is not the main focus of this project and because there are several existing reviews of the empirical literature, I have used reviews for most of this section.

asthmatic reactions among people prone to allergies, to “hypersensitivity reactions”, which are infrequent but often serious (Institut national de santé publique du Québec - INSPQ, 2003, p. 14-15). Although a clear relationship between dose and response has not been determined in all cases, studies have repeatedly shown impacts such as irritations of throat and eyes, allergies, lower respiratory symptoms and general health problems such as fatigue, headache, dizziness, and concentration difficulties (Bonney, 2007). In addition, studies indicate that poor housing conditions such as dampness and mould are associated with mental health problems, including anxiety and depression (Krieger & Higgins, 2002; Shaw, 2004). Research also indicates that people with respiratory problems, people with depressed immune systems, babies, children and the elderly are more susceptible to developing health problems as a result of exposure to fungal contaminants (INSPQ, 2003).

Exposure to Cockroaches, Rodents, and Dust Mites

There is some evidence linking exposure to cockroaches, rodents and dust mites to both respiratory and allergy problems (WHO ECEH, 2006). Exposure to cockroach antigens (Moloughney, 2004) as well as to mice and dust mites (Rauh et al, 2008) plays a significant role in causing and exacerbating asthma among children; this issue is now considered a major health problem in inner cities of the United States. In Montreal, the presence of cockroaches increased the risk of allergic rhinitis (winter) by 25% among children aged 6 months to 12 years (Jacques et al, 2011). Because there are many sources of dust mites, it is difficult to determine precisely which sources cause the most problems (Moloughney, 2004).

Poisoning

Lead poisoning can have very serious health consequences (WHO ECEH, 2006). Problems include neurological development issues and behaviour problems in children (Shaw, 2004). Research from the United States indicates that ingestion of lead through paint can cause a wide range of problems in children, including reduced intelligence and attention, difficulties with reading, Attention Deficit and

Hyperactivity Disorder (ADHD), lack of success in school and delinquent and criminal behaviour (Rauh et al, 2008). Research and organizing on this issue in the United States have led to major policy change and to a significant decrease in the prevalence of lead poisoning, although it remains an important public health concern (Jacobs, 2009; Rauh et al, 2008). Exposure to lead seems to be less prevalent in Canada than in the United States, but there have been reports of high exposure in some places (Moloughney, 2004).

Exposure to radon in home environments can cause cancer (WHO Europe, 2006; Shaw 2004; Moloughney, 2004), but this does not appear to be a widespread problem in Canadian homes (Moloughney, 2004). Carbon monoxide poisoning is also linked to serious illness and death (Shaw, 2004; King 2000).

Air Quality and Ventilation

There is some evidence linking ventilation with respiratory and allergy problems (WHO ECEH, 2006). There is also some evidence linking volatile organic compounds (released from articles in the home, such as furniture and rugs) to respiratory issues (Moloughney, 2004, WHO ECEH, 2006), as well as to cardiovascular and allergenic problems (WHO ECEH, 2006). Emissions related to cooking and heating with gas are also linked to respiratory illnesses in children (Bonney, 2007). Tobacco smoke is clearly linked to respiratory and allergenic problems (WHO ECEH, 2006) especially among children (Bonney, 2007). Other impacts include lung cancer, low birth weight, asthma, bronchitis, pneumonia, and ear infections (Moloughney, 2004).

Crowding and Noise

Crowding is a concern because of the potential for the spreading of diseases (Moloughney, 2004). Overcrowding is also associated with mental health problems, including anxiety and depression (Krieger & Higgins, 2002; Shaw, 2004). However, the research on the health impacts of crowding is contradictory and it is difficult to separate out all the factors at play (Moloughney, 2004). Research indicates that noise can also negatively affect health (Bonney, 2007; WHO ECEH, 2006).

Unsafe Physical Conditions

Accidents and injuries in the home environment are a serious health problem, and in some cases these are due to physical factors such as building design or maintenance (Shaw, 2004; King 2000; WHO ECEH, 2006; Bonnefoy, 2007). Fire deaths are much more likely to occur in “multi-disadvantaged neighbourhoods” (Moloughney, 2004, p. 12).

Bedbugs

The impact of bedbugs varies considerably from one person to another (Perron, King, Lajoie & Jacques, 2010). Bedbugs do not transmit diseases (Habitat Services & Woodgreen Community Services – HS & WCS, 2009), but can cause itchiness and discomfort, and, in rare cases, more serious reactions (Perron et al, 2009). Secondary infections can also occur from scratching (ibid; HS & WCS, 2009). Psychological and social impacts can be profound and may include anxiety, sleep deprivation, emotional distress, paranoia, feelings of shame, stigma and social isolation (HS & WCS, 2009). Bedbugs are also a public health concern because people may inappropriately use insecticides to get rid of them, increasing risk to their own health and the health of others who live with them (Perron et al, 2010).

Neighbourhood and Building Conditions

A growing body of literature suggests that neighbourhood can also have an important impact on health, although again there are methodological limitations to many studies (Shaw, 2004; Moloughney, 2004). In children and youth, research suggests links between neighbourhood characteristics (for example, accessibility of institutions and resources, relationships, “the norms and collective efficacy of the community”) and success in school, behavioural and emotional difficulties, sexual behaviour and childbearing (Moloughney, 2004, p. 16). The extent to which neighbourhood design facilitates exercise (for example, lack of sidewalks) is seen to impact on physical health problems such as obesity (Bonnefoy, 2007; Hood, 2005); lack of local supermarkets makes it difficult for people to access healthy food (Hood, 2005). There is also some evidence linking “social conditions

of housing and fear/fear of crime” to negative mental health effects (WHO ECEH, 2006, p. 7; Bonnefoy, 2007).

Building typologies such as “multi-family housing” and “high-rise housing” are also negatively linked to mental health (WHO ECEH, 2006, p. 7; Moloughney, 2004), particularly for mothers with young children (Evans, 2003). A Montreal study examining the relationship between tuberculosis and dwelling or building type found an association between incidence of TB and residence in taller buildings, newer buildings, buildings with lower resale value, and units on blocks with a high degree of population density, suggesting that “the aggregation of TB within dwelling types and neighborhoods may reflect not only inhabitants’ own characteristics, but also the physical and social environment in which they reside” (Waneyki et al, 2006, p. 510).

Satisfaction with Housing Conditions

Finally, research suggests that poor housing conditions increase psychological distress, but there are methodological problems with these studies (Evans, 2003). A Canadian study concluded that “the meaning people invest in their homes, their satisfaction with their homes, and the amount of control they were able to exercise in the social and economic aspects of their domestic relations were empirically linked with self-reported status and mental health status” (Dunn, 2000, p.584). Although studies show that satisfaction with housing conditions is associated with better health, it is difficult to determine the precise relationship (Moloughney, 2004).

In Summary

There are important gaps in the research on health and housing. For example, more solid empirical research about the effect of housing problems on mental health is needed (King, 2000; Krieger & Higgins, 2002), especially on the processes through which impacts occur (Evans, 2003). There is also a need for more research on housing and health in the Canadian context (Moloughney, 2004) and specifically on Quebec. In addition, there is a lack of research moving beyond epidemiological approaches to, for example, the relationship between

housing impacts and other determinants of health, and the ways in which public policies influence housing conditions and health (Bryant, 2009).

However, despite these shortcomings, this body of research clearly demonstrates that housing problems can constitute a serious risk to both physical and mental health. Of particular relevance to this project are problems such as mould, heating, and cockroach and vermin infestations. It is also very clear that there are particular impacts on vulnerable populations, including children, the elderly and people with existing health problems.

Unhealthy Housing in Montreal

This section will briefly explore three themes raised in academic and grey literature on health and safety problems in Montreal: a) the prevalence of unhealthy housing in the city; b) interventions related to unhealthy housing; and c) the link between poor housing conditions and the need for social housing.

How Prevalent is Unhealthy Housing in Montreal?

There do not seem to be any recent comprehensive analyses of the prevalence of unhealthy housing conditions in Montreal. However, empirical studies, statistics on complaints related to unhealthy housing, and documents from a recent city commission all shed some light on this question.

Research/ Studies. The Montreal public health department's study on respiratory health among children found that 36.3% of Montreal families with children 6 months to 12 years live in homes with excessive humidity and mould; 4.5% of these households have cockroaches, and 6.1% have rats or mice (Jacques et al, 2011). This study also revealed that problems are more prevalent in certain neighbourhoods: for example, over 40% of target households in Villeray and Hochelaga-Maisonneuve have excessive humidity and mould, and in Pointe St. Charles that figure is 51.9% (Jacques et al, 2011; ASSSM, 2011a). In some cases the disparity was very striking: while no families in the Olivier-Guimond CLSC territory (Mercier-ouest) had rodents and only 1.1% had cockroaches, 25.9% of target group families living in Park Extension had cockroaches and 18.7% lived with rats or mice (Jacques et al, 2011).

As noted above, data from the 2006 census indicate that 10.5% of rented housing units in the City of Montreal territory require major repairs, and 28.6% require minor repairs (Ville de Montreal, 2009). One 2002 study found that 9.3% of rental housing units in Montreal were in need of major repairs, and that 23.6% of Montreal tenants were somewhat or very dissatisfied regarding noise problems in their apartments (Dansereau, Choko & Divel, 2002). Across Quebec the need for major repairs was greater in larger buildings, and single parent families were most likely to live in housing they felt was in need of major repairs (ibid).

King (2000) noted that there has been insufficient research on problems related to unhealthy housing in Montreal. The most recent comprehensive study of the prevalence of health-related housing problems in Montreal using methodology beyond census data dates back to 1991; it found that just over 15% of private market rental housing units in Montreal (50 000 units at the time) were in poor condition, including 5 600 qualified as “pitoyables”, and that another 100 000 were considered to be in minimally acceptable condition (Institut national de la recherche scientifique - INRS, 1991, p. 117, 120).

Housing problems have been identified in specific complexes and neighbourhoods. For example, a joint intervention of the Montreal Public Health department and the local health and social services centre of the St-Léonard borough in the ‘Domaine Renaissance’ apartment complex found a high proportion of problems such as cockroaches, bedbugs and mould; it demonstrated links between these problems and both physical and mental health concerns (Direction de santé publique - DSP & Centre de la santé et des services sociaux – CSSS St-Léonard et St-Michel , 2010). According to a community-based study on rooming housing in the Ville-Marie and Sud-ouest boroughs, those run by non-profit organizations as social housing tended to have better conditions, but health and safety issues were a critical concern in many others:

Pour l’arrondissement du Sud-Ouest, si certaines maisons sont aux normes par rapport au code du logement, d’autres sont dans un état qu’on peut associer à des cas graves d’insécurité et d’insalubrité. En effet, pour la sécurité, on parle de maisons n’ayant pas de serrure (ni à l’entrée, ni aux

portes privées des locataires, sans détecteurs de fumée, sans aucun système de surveillance, etc. En ce qui concerne l'insalubrité, on parle de maisons ayant des trous dans le mur, de la vermine, des coquerelles, etc. De plus, certaines maisons visitées n'ont pas l'eau chaude courante (Réseau d'aide aux personnes seules et itinérantes de Montréal - RAPSIM, 2005, p. 10).

Research exploring the housing conditions of immigrants in Montreal has focused on access to homeownership and housing expenses (Leloup, 2005; Leloup, 2008), but was not able to draw conclusions about quality (Leloup, 2005). When quality of housing was defined as the number of rooms per person, immigrant households in Montreal, Toronto and Vancouver experienced a disadvantage (Leloup & Zhu, 2006). The housing situation of immigrant households in Montreal has become more precarious in the past decade (Germain, 2009).

Statistics on Complaints Regarding Unhealthy Housing. There is no public register of violations to Montreal's *By-law Concerning the Sanitation, the Maintenance and the Safety of Dwelling Units*. This makes it difficult to develop a thorough and accurate portrait of the prevalence, distribution and sources of unhealthy housing in the city. However, statistics from ten of the nineteen boroughs in the city indicate that for the years 2007, 2008 and 2009 there were a total of 17 174 inspections performed in relation to complaints made under the regulation³ (Ville de Montréal, Direction de l'habitation, 2010). An additional 557 buildings including 10 233 apartments were inspected between 2007 and 2011 by a centralized team of inspectors for particularly serious cases (Ville de Montréal, Direction de l'habitation, 2011). In the last two years, Montreal's public health department also investigated health concerns in 200 buildings (Agence de la santé et des services sociaux de Montréal - ASSSM, 2011b). Educational documents recently released by the city and by the public health department demonstrate that, like many other cities, Montreal is facing a serious

³ This does not mean 17 174 complaints, as some cases may have involved more than one inspection.

increase in bedbug infestations (Ville de Montréal & Direction de santé publique, ASSSM, 2010b).

Public Commission. In 2006 the city of Montreal held a commission on the application of its housing regulation. The briefs submitted by nine neighbourhood housing organizations, two housing coalitions, one coalition on homelessness and two tenants from a tenants' association referred to a range of housing problems, including serious health and safety issues (see for example Action-dignité de Saint-Léonard, 2006; Project Genesis, 2006; CAPE, 2006; Comité logement Centre-Sud, 2006; Regroupement des comités logement et association de locataire du Québec - RCLALQ, 2006; Comité habitation de Concert'Action Lachine, 2006; Comité Base pour l'action et l'information sur le logement social - BAILS Hochelage-Maisonneuve et Entraide Logement Hochelaga-Maisonneuve, 2006; Comité logement de la Petite Patrie - CLPP 2006; Association des locataires de Villeray - ALV, 2006). Although they do not present a global statistical portrait, it is very clear from these documents that health and safety problems affected large numbers of tenants, in many neighbourhoods across the city.

Identifying Unhealthy Housing Conditions and Developing Interventions

Montreal's public health department has worked on strategies to identify poor housing conditions, with a view to addressing problems. A combination of telephone questionnaires and home visits were ultimately not found to be effective tools for identifying housing problems in the Côte-des-Neiges neighbourhood (Smargiassi, 2002). Identification of poor housing conditions through statistical data and through key actors in the community, including health workers, community workers, and city inspectors produced different results, each with its own strengths (Smargiassi, Charbonneau, King & Wexler, 2004). Bringing these actors together improved communication and the potential for intervention (ibid). Concerted collaboration between health workers, inspectors, community organizations and other actors was also seen as positive in St-Léonard (DSP & CSSS St-Léonard et St-Michel, 2010). Most recently, Montreal's Public Health Department has reiterated that "la salubrité des habitations est au coeur des

préoccupations” of the organization and that it will continue to pursue work in this area (Jacques et al, 2011, p. i).

A project initiated by the Mountain Sights Community Centre in the Côte-des-Neiges neighbourhood brought together residents, landlords, workers from local community and health agencies, inspectors and public health officials to deal with cockroach and to some extent vermin problems in 491 apartments located in 22 buildings (Mountain Sights Community Centre, 2007). The mobilization of local residents was seen as a key component of this intervention (ibid).

Unhealthy Conditions and the Need for Social Housing

In addition to the critical problem of affordability, housing organizations view poor housing quality as an important factor underlying the urgent need for the creation of a significant number of social housing units (FRAPRU, 2009). Public health authorities have linked the inaccessibility of social and affordable housing to unhealthy housing conditions, in that tenants are often afraid to complain about poor conditions out of fear that rent may increase or the building may be closed down (DSP & CSSS St-Léonard et St-Michel, 2010). They have also recommended the creation of more social and affordable housing as a solution (Jacques et al, 2011). Increased development of social housing, including through the expropriation of buildings from landlords with many health and safety violations, was also proposed by large numbers of community organizations in the city at the 2006 municipal hearings (for example, ALV, 2006; POPIR- Comité logement, 2006; FRAPRU, 2006).

In Summary

This brief review underscores the critical need for more study of the prevalence and nature of housing problems affecting health in Montreal, including research that goes beyond simple census data. However, the available sources suggest both the extent and the seriousness of the problem.

Definitions and Legislation

Finally, it is helpful to consider definitions and legislation in situating the exploration of recourse available to Montreal tenants. The World Health Organization (WHO) defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” (WHO, 1946, preamble). This definition is highly relevant to the discussion of poor housing conditions (King, 2000; Bonnefoy, 2007) and provides a broad basis from which to consider their impact.

International Level

The WHO identified six broad principles as the basis for healthy housing, which reflect this wide definition of health:

- 1) Protection against communicable diseases;
- 2) Protection against injuries, poisonings and chronic diseases;
- 3) Reducing psychological and social stresses to a minimum;
- 4) Improving the housing environment;
- 5) Making informed use of housing;
- 6) Protecting populations at special risk. (WHO, 1989, p.1)

International legislation has provided more concrete definitions. In 1991, for example, the Committee responsible for monitoring compliance to the *Covenant on Economic, Social and Cultural Rights* sought to define the meaning of “adequacy” in relation to housing. It introduced the notion of “habitability”, defined as “providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors” (Committee on Economic, Social and Cultural Rights, 1991, article 11(1)). The UN *Habitat Agenda* (1996) produced a definition that incorporated physical, psychological and to some extent social dimensions, stating that adequate housing requires:

adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting, heating and ventilation; adequate basic infrastructure, such as

water-supply, sanitation and waste-management facilities; suitable environmental quality and health-related factors (article 60).

Commitment to achieving these principles was reconfirmed by the United Nations General Assembly in 2001 (UN Habitat, 2001). Yet the UN Habitat Agenda also recognized that different geographic, environmental and cultural settings influence the notion of what constitutes adequacy (UN Habitat Agenda, article 60). As Bonnefoy (2007) noted, “there is still no commonly agreed upon definition of ‘healthy housing’”(p. 412).

Local Level

At the local level, in a report prepared for the Montreal public health department, King (2000) combined the broad WHO definition with the concepts of indoor air quality and salubrity to develop a definition of a healthy housing environment: “caractère d’un milieu de logement qui, de par la qualité de son environnement intérieur, est favorable au maintien d’un état de complet bien-être physique et mental des occupants” (p. 3). This definition was supplemented with a list of basic requirements (including, for example, adequate and safe heating, access to drinking water) and a list of elements to be avoided (for example, humidity rates above 60%, water infiltration) (King, 2000).

The definitions and provisions contained in legislation that directly applies to Montreal tenants are particularly relevant to this project. The *Civil Code of Québec* contains general provisions stating that a dwelling must be in “good habitable condition” (article 1910) and “clean condition” (article 1911). The concept of “unfit for habitation” is defined as “in such condition as to be a serious danger to the health or safety of its occupants or the public, or if it has been declared so by the court or by a competent authority” (article 1913). The *Civil Code* also states that units must comply with “the minimum requirements fixed by law with respect to the maintenance, habitability, safety and sanitation” of dwellings (article 1912) which, for Montreal tenants, are laid out in the city by-law.

At the municipal level, the *By-law Concerning the Sanitation, the Maintenance and the Safety of Dwelling Units* contains both a general provision

and detailed standards which as a whole provide a definition of what constitutes adequate housing. The regulation states that “No building or dwelling unit may constitute a public health or an occupant and public safety hazard because of the use that is made of it or the condition it is in” (article 25). It also details extensive and specific standards in seven areas: sanitation, maintenance, basic equipment required in a residential dwelling, surface space/ configuration, window layout/ lighting, ventilation, and resistance to forced entry/ safety standards (including fire safety, heating systems standards and guardrails). In the area of sanitation, for example, the by-law specifically prohibits

- (1) uncleanliness, deterioration or obstruction of a main building, dwelling unit, balcony or outbuilding;
 - (2) presence of dead animals;
 - (3) storage or use of products or materials that give off noxious odors or toxic fumes;
 - (4) disposal of household waste, refuse or recyclable materials elsewhere than in containers provided for that purpose;
 - (5) obstruction of a means of egress;
 - (6) obstacle preventing the closing and locking of a door in a prescribed fire separation;
 - (7) presence of ice or condensation on an interior surface other than a window;
 - (8) accumulation of debris, materials, spoiled or putrid matter, or any other state of uncleanliness;
 - (9) presence of vermin, rodents or insects, as well as conditions favoring their proliferation;
 - (10) presence of molds, as well as conditions favoring their proliferation.
- (By-law concerning the sanitation, the maintenance and the safety of dwelling units 03-096, a.25; 03-096-4, a.1)*

In Summary

Although there is not a single, widely accepted articulation of what constitutes healthy housing, definitions of adequate housing exist. These

definitions can reflect a narrow focus on physical health and illness, or a broader conception of physical, psychological and social impacts. From a policy perspective, legislation can focus either on broad concepts or very specific standards; both of these apply to Montreal tenants. However, few definitions incorporate the notion that housing conditions affect people differently, and that some populations are more affected than others (King, 2000).

Conclusions

Overall, this brief exploration of literature demonstrates that unhealthy housing is a serious problem: poor housing conditions can affect peoples' physical, psychological and social well-being in a variety of ways. Even problems often seen as minor, such as cockroach infestations, can have serious impacts, especially for children. Beyond individual medical implications, unhealthy housing is seen as a broader issue involving public health, social justice and human rights.

This review also indicates that poor housing conditions have been recognized as a significant public health concern in Montreal, and that unhealthy housing is a serious problem for many tenants living in the city. The provisions of the *Civil Code* pertaining to tenants refer directly to health and safety concerns, although they do not provide specific definitions. At the municipal level, a public health orientation and extensive, extremely specific provisions reflecting many of the concepts outlined in the research provide a clear context for intervention. Taken together, these factors point to the urgency of the problem of health and safety problems in housing, to the need to ensure accessible and effective recourses, and to the relevance of exploring how these recourses function in practice.

3. Recourse for Health and Safety Problems in Housing

In this section I will review literature pertaining to recourse for tenants facing health and safety problems in housing. I will briefly discuss the concept of access to justice and then focus on two areas: a) access to justice for tenants; and b) the enforcement of city housing codes.

Despite a large literature on regulation of health and safety in the workplace (Burrige & Ormandy, 2007), a substantial literature on regulatory enforcement in other contexts (Ross, 1995) and a moderate literature on the impact of housing interventions on health (for example, see Thomson, Thomas, Sellstrom & Petticrew, 2009), there have been few empirical studies on recourse for health and safety problems in housing (Burrige & Ormandy, 2007; Ross, 1995). Much of the available literature focuses on the American and United Kingdom contexts, and several of the studies on the enforcement of housing codes rely on data from the 1980s. However, this literature reveals several interesting themes of relevance to this project. Literature on recourse for health and safety problems in Montreal/ Quebec is also sparse, but some work on the Rental Board in general is relevant for tenants facing health and safety concerns. Grey literature, including documentation from public commissions on the application of the Montreal by-law held in 2006 and 2009, also provides some context for the discussion.

Access to Justice

The enforcement of tenants' rights, at the level of the Rental Board in particular, can be seen as an issue of access to justice. This notion has many facets, and interpretations have evolved over time (Deschamps, 2009; Galanter, 2005; MacDonald, 2005). While the "access" component often receives most of the attention, the notion of "justice" and what it really means is also very important (Deschamps, 2009; MacDonald, 2005). As Deschamps (2009) notes,

“Nous sommes tellement préoccupés par l'accès que nous ne faisons pas assez attention à la justice elle-même. (Deschamps, 2009, p. 248).

MacDonald (2005) has summarized eight characteristics commentators often include in defining a justice system that is accessible: “(1) just results, (2) fair treatment, (3) reasonable cost, (4) reasonable speed, (5) understandable to users, (6) responsive to needs, (7) certain, and (8) effective, adequately resourced and well-organized” (p. 23-24). Yet he argues that these describe only an “accessible dispute-resolution system” (MacDonald, 2005, p.24); a comprehensive approach to access to justice must also be multi-dimensional in order to respond to the diversity of people, situations and perceptions, and incorporate an emphasis on other goals and sites. At its broadest, access to justice includes citizen participation in all aspects, including the practice of law and the creation of policy (MacDonald, 2005).

Lack of legal representation is seen as a critical barrier to justice (Zorza, 2011; Canadian Forum on Civil Justice, 2007; Saskatchewan Unrepresented Litigants Access to Justice Committee, 2007), but there are many other facets to consider. According to MacDonald (2005),

Barriers can be understood in multiple senses: physical barriers like building design, hours of opening, distance to a point of service, lack of translation services; objective barriers like cost, delay and complexity of processes for obtaining redress; and subjective barriers such as a feeling of social disempowerment. (p. 27)

Social and psychological barriers are also important, and access to justice is seen as closely connected to the phenomenon of social marginalization, with exclusion stemming from many bases, including poverty, socio-demographic status, social stigmatization, disability and health issues, and psychological factors such as emotional trauma (MacDonald, 2005).

Access to Justice in Housing: Tenants' Rights in Theory and in Practice

Literature on the enforcement of tenants' rights, both in international contexts and in Quebec, raises important themes, including global questions about the effectiveness of the legal recourse available to tenants in practice and specific challenges. These specific issues include a) challenges related to navigating procedure and providing proof; b) issues related to representation; c) the interpretation of key concepts and definitions; and d) the results tenants are able to achieve in practice.

Global Effectiveness of the Recourse

In the United Kingdom, two legislative approaches have been used to regulate unhealthy housing conditions: contractual obligations and intervention by local authorities (Burrige & Ormandy, 2007). Although legal contracts gave tenants significant rights in theory, according to Burrige and Ormandy (2007) in practice it was extremely hard to enforce them, and "such measures became either instantly ineffectual or gradually irrelevant" (p. 546). The responsibility for ensuring health and safety in housing was left almost entirely to the local level (Burrige & Ormandy, 2007).

Procedure and Proof

The ability to navigate court procedures and provide effective proof emerges as an important dimension of access to justice for tenants. The failure of recourse for health and safety problems at the covenant (contract) level in the UK, for example, was due in part to "procedural technicality, and legal complexity" (Burrige & Ormandy, 2007, p. 558), as well as "onerous procedural hurdles, and an unsympathetic judiciary" (ibid, p. 546).

At the New York City Housing Court, arguing a case and following procedures were also seen as significant challenges for the very large number of people who appear before the court without a lawyer. For Baldacci (2006), a person was "thrust into the role of litigator within an adversarial system which she does not understand, either procedurally or substantively, and which effectively

silences her” (p. 661). This silencing was attributed in part to “the structural dynamics in Housing Court” (ibid, p. 661). The strict adherence to the adversarial format, with a particular view of the role of judges that does not allow them to lend assistance, was also seen an important component (ibid). Procedural hurdles at the New York City Housing Court were particularly difficult for people with mental health problems and senior citizens considered to have “diminished capacity”, especially given the Court’s “mandate to summarily process cases” (Zelhof et al, 2006, p. 733).

Earlier work on Baltimore’s Rent Court concluded that one of the major challenges tenants faced was conveying their information: people wanted to explain their situations, but there was a clash between the “rule-oriented court talk expected and privileged by judges in low-level courts” and the way tenants naturally expressed themselves (Bezdek, 1992, p. 588). In addition, witnesses rarely received an explanation of the rules they were expected to follow during the court proceeding (Bezdek, 1992). This process was seen as inherently disempowering:

Judicial manipulation of the hearing’s discourse signals official priorities about the rights to be protected and the language to speak. Nothing in it encourages belief in a system of legal rights, nor an expectation that legal rights parallel one’s intuitive sense of rights, nor a perception of oneself as a rights-bearing person. (Bezdek, 1992, p.589)

An early but extremely thorough study of 143 cases at the Quebec Rental Board found that, although commissioners (judges) were supposed to explain the rules of proof at the hearing, the large majority did not; this was seen as having a major impact because in cases where the rules were explained both parties were better able to use them in presenting their case (Thomasset, 1987). Tenants brought proof in the form of “pièces justificatives” only 39.9% of the time, compared to 62.9% of the time for landlords, and were less likely to use witnesses (Thomasset, 1987, p. 55). Commissioners were seen as having “des comportements très diversifiés” and as applying rules of proof and procedure with little rigor (ibid, p. 1).

More recent sources indicate that although accessibility and simplified procedure are promoted as hallmarks of the Rental Board, many tenants are not aware that they will still be required to present substantial proof according to extremely stringent guidelines (Saillant, 2006; Gagnon, 2009). As Gagnon (2009) noted,

On estime fréquemment – et faussement – que toute espèce de preuve, quelle que soit sa qualité, est recevable devant la Régie du logement. Cette impression découle peut-être de l’ambiance conviviale et peu guindée qui caractérise les audiences du tribunal ou encore de la procédure qui encadre l’instance, celle-ci étant réduite à la plus simple expression. (...) Il faut comprendre que la Régie du logement est un tribunal civil; la qualité de la preuve qui lui est soumise doit être la même qu’ailleurs. (p.167)

A study of Rental Board jurisprudence pertaining to rent reduction cases demonstrated that many of these cases involved health and safety concerns, and illustrated that for all rent reduction cases the burden of proof was substantial (Lamy, 2004a). Tenants had to satisfy a long list of conditions:

- Le tribunal doit être en mesure d’évaluer l’étendue et la durée de la perte de jouissance dont le locataire se plaint
- La diminution de prestation ou la perte de service dont se plaint le locataire doit être réelle, sérieuse, significative et substantielle
- Le locataire ne doit pas être l’artisan de son propre malheur
- Le locataire doit donner accès à son logement
- Le locataire doit minimiser ses dommages
- Le locataire doit valablement évaluer toute offre de règlement de son locateur
- Le critère de l’usage ne doit pas être pris en compte lors de l’évaluation de la diminution du loyer
- La diligence du locateur peut parfois faire échec au recours en diminution de loyer du locataire ou en affecter le quantum
- Le locateur n’est pas responsable des phobies et des allergies de ses locataires (Lamy, 2004a, p.27-28)

When tenants sought damages in a case related to health and safety, the burden was even higher:

Si le locataire réclame des dommages-intérêts en invoquant des problèmes de santé reliés à l'état de son logement, il doit démontrer son dommage, la faute du locateur et/ou de ses préposés et le lien de causalité entre la faute et le dommage pour obtenir une compensation. (Lamy, 2004a, p. 232)

The complexity of proof and procedure is also evident in the literature produced by housing coalitions to help tenants prepare and plead a case at the Rental Board (see, for example, RCLALQ, 2008; Confédération québécoise des coopératives d'habitation, 2007). As one guidebook noted,

La Régie du logement n'est pas réellement un tribunal d'accès à la justice, sans formalité et avec peu de règles, un peu comme c'est le cas à la Cour des Petites Créances. La Régie du logement est un tribunal administratif avec des règles de droit qui sont les mêmes que devant la Cour du Québec ou la Cour Supérieure. Elle est assez formalisante et exigeante quant à la façon d'exposer nos prétentions et nos revendications. (RCLALQ, 2008, p. 5)

Representation

In New York City's Housing Court, approximately 90% of tenants are not represented by a lawyer, while 85% of landlords are (Yaroshefsky & Flood, 2006). This inequality and the very high proportion of unrepresented litigants are seen as major problems in terms of access to justice for tenants (Baldacci, 2006; Seron, Van Ryzin, Frankel & Kovath, 2001). A random controlled trial in which tenants were provided with a lawyer demonstrated the substantial impact of this inequality: it found that "when low-income tenants in New York City's Housing Court are provided with legal counsel, they experience significantly more beneficial procedural outcomes than their pro se counterparts" (Seron et al, 2001, p. 429). Academics, lawyers and advocates have demanded the right to government-funded counsel for all tenants appearing in eviction cases at the New York City Housing Court (Sherer, 2006). In the UK, the need for and access to legal representation also appeared to be a factor undermining tenants' abilities to

enforce their rights, as the technical proceedings demanded “expert but unreachable legal services” (Burrige & Ormandy, 2007, p. 558).

In Quebec, the legislation determining representation at the Rental Board is seen as creating a fundamental inequity between landlords and tenants: while landlords can be represented by an officer, an administrator, an employee at his or her sole service or a lawyer, tenants can only be represented by a spouse or by a lawyer (Saillant, 2006). Thomasset (1987) revealed that only 16.1% of tenants were represented by a lawyer, while 42% of landlords were represented by a professional of some kind. Limited eligibility for Legal Aid coverage is seen by housing organizations as putting many low-income tenants at a serious disadvantage (Saillant, 2006; RCLALQ, 2005).

The Interpretation of Key Concepts and Definitions

In the UK, court interpretations of the concept of “disrepair” were seen as narrow, contributing to the ineffectiveness of legal recourse for tenants (Burrige & Ormandy, 2007). In Quebec, the need for commissioners to interpret the terms in the *Civil Code* introduces an element of discretionary power and, for tenants, a lack of clarity about how their particular situations will be viewed. As Gagnon (2009) noted, “Il existe toujours une controverse sur le sens précis qu’il faut attribuer aux termes ‘inhabitable’, ‘insalubre’ et ‘impropre’. Certains y voient une gradation dans l’état de délabrement du logement; d’autres considèrent que ce sont des synonymes ” (p. 71).

Research on Rental Board jurisprudence revealed that interpretations of the concepts of ‘urgent’ and ‘necessary repairs’, vital in cases when a tenant has proceeded to make repairs without the authorisation of the tribunal, are subject to several considerations, including how long the problem has persisted, whether the landlord has already responded and the time of year (Lamy, 2004a). In some cases they seemed somewhat inconsistent. For example, “le bris ou la réparation d'une robinetterie” and “un bain ou un évier bouché ou qui refoule” (p. 175) were found to be urgent, but not “un tuyau qui coule sous l'évier de la cuisine” or “déboucher le drain d'un bain”, or “une robinetterie défectueuse” (Lamy, 2004a, p. 174, 175, 176). Generally, the following health and safety concerns were considered

urgent: broken plumbing fixtures; issues regarding access, such as broken door handles and locks; electrical problems; broken heating systems; blocked sinks and bath drains; broken or blocked toilets; broken hot water heaters; extermination fees; garage lock issues; telephone jacks; and the thawing of pipes (Lamy, 2004a).

Jurisprudence and Decisions

Jurisprudence also sheds light on the specific outcomes tenants are able to obtain at the Rental Board. Amounts awarded in cases involving rent reduction are based on the proof presented at the hearing, and so vary widely (Lamy, 2004a). In addition, the tribunal has the discretion to award rent reductions either as a percentage of the rent or as a fixed amount (*ibid*). Jurisprudence charts included in Lamy's (2004a) study of cases involving rent reduction indicate that, in mould cases heard between 2001 and 2003, percentage-based awards ranged from 3% to 49% of rent, and dollar amounts fell between \$20 per month and a fixed amount of \$800 (compilation based on Lamy, 2004a). In 2002 and 2003, tenants with heating problems won between 2% and 43% of rent, and \$15 per month and a fixed amount of \$500 (*ibid*). Between 1999 and 2003, percentage awards for tenants with rats fell between 5% and 30% of rent, and dollar amounts ranged from \$25 per month to a fixed amount of \$1200 (*ibid*). In some cases tenants were also awarded damages. Because rent reduction is meant to represent the loss of enjoyment of the dwelling, tenants with higher rents tended to receive higher awards (Lamy, 2004a).

Jurisprudence also indicates that tenants cannot successfully invoke Article 1 of the *Charter of Human Rights and Freedoms* (the right to life, personal security, inviolability and freedom) in cases of uninhabitable housing (Lamy, 2008).

Although the Rental Board has the ability to implement serious sanctions against landlords in situations involving health and safety, and while it has used this power in some cases, these types of decisions are seen as very rare (Saillant, 2006).

General Effectiveness of the Quebec Rental Board as Recourse for Tenants

An assessment of the Rental Board after twenty-five years heavily criticized its performance as a watchdog for tenants and questioned the tribunal's ability to achieve its original objectives of simplicity, accessibility and justice (Saillant, 2006). Thomasset (1987) also raised serious concerns about the functioning of the tribunal, concluding that, "en fin de compte les propriétaires sont dans une position plus favorable que les locataires par rapport à la Régie du logement" (Thomasset, 1987, p. 1).

When it was established in 1980, housing organizations saw the Rental Board as positive in many respects, but identified weaknesses (Bennett, 1997). In 1992 a provincial housing coalition issued a 'dossier noir' entitled *La Régie du logement: Autopsie d'une fraude*, arguing that the tribunal did not adequately protect tenants (RCLALQ, 1992, cited in Bennett, 1997), and major weaknesses are still identified (for example, see RCLALQ, 2005). Landlord associations have also been highly critical, bringing a legal challenge against the very existence of the Rental Board that went to the Supreme Court in 1983 (Bennett, 1997; Saillant, 2006), and seeking to prevent the board from publishing rent increase guidelines (Saillant, 2006).

Particular concerns raised by tenant organizations include accessibility issues such as fees (RCLALQ, 2005), long waiting times for hearings, speed of hearings and limited appeals (RCLALQ, 2005; Saillant, 2006); the quality of its information service; its role in eviction, repossession and rent control cases; the fact that it is used substantially more by landlords than by tenants; and an overall lack of resources (Saillant, 2006; RCLALQ, 2005). The Rental Board was also viewed as not making use of many of its powers, particularly with respect to ensuring the quality of housing (RCLALQ, 2005). These concerns were firmly situated in a context of access to justice for tenants: "Il ne faut jamais oublier que ce qui est mis en danger par les difficultés d'accessibilité à la Régie, par ses lenteurs ou encore par son manque de personnel, c'est la justice elle-même" (Saillant, 2006, p. 54).

In Summary

These sources suggest that access to justice is a serious problem for tenants in Quebec and elsewhere, and that tenants may face many types of challenges when trying to exercise their rights. These difficulties include navigating procedures and presenting proof, the need for representation, and challenges related to the interpretation of terms. They reflect issues at several levels: at the level of accessing courts and tribunals, at the level of preparing and participating in the hearing and, at a broader level, basic questions about what “justice” they are ultimately able to achieve.

The Application of Municipal Codes: Contexts and Challenges

Literature pertaining to the application of municipal housing codes also raises a number of interesting concepts. This section will briefly explore the following themes: a) housing enforcement for other purposes; b) the tension between health protection goals and the market; c) the discretion of inspectors; d) approaches to achieving compliance; and e) legislation and enforcement of the housing code in Montreal.

Use of Housing Code Enforcement for Other Purposes

Research from the United States has argued that, although housing codes contain provisions to ensure the health and safety of occupants, in practice their enforcement can be used for other purposes, including the imposition of particular norms, and gentrification. A century has passed since many of these codes were adopted, but in several cities specific regulations regarding occupancy still remain in place (Krieger, 2008). The enforcement of crowding provisions of the housing code on Long Island, New York was viewed as aiming to displace immigrant tenants whose household arrangements do not meet the community norms:

The enforcement of occupancy standards, for example, frequently entails the use of housing codes to target new immigrants whose living arrangements do not fit the model of a dwelling occupied by a small nuclear family. In those situations, officials would rather expend their limited resources to enforce occupancy standards against a large, extended

immigrant family than focus on actual violations of powerful landlords that endanger the health and safety of tenants. (Krieger, 2008, p. 1241)

In many American cities the enforcement of housing codes is used as an inexpensive means of displacing low-income tenants for profitable revitalization projects, resulting in a sometimes very speedy gentrification process (Dorsey, 2005). Proposing community organizing as the strongest response to this trend, Dorsey stated that

Without a doubt discriminatory code enforcement is on the rise in this country. Towns that for years allowed their housing stock to run into the ground are once again interested in “urban renewal” and have discovered the solution of using the housing code to effect change. (Dorsey, 2005, p. 464)

Tension Between the Goals of Protecting Health and the Market

Studies of housing code enforcement in three major American cities suggested that market considerations played an important role in the work of local inspectors (Ross, 1995; 1996). In fact, “vigorous and literal” enforcement was seen as negative for both low-income tenants and poor neighbourhoods (Ross, 1996, p. 29). As one inspector interviewed noted,

Strict enforcement will hurt many tenants...The market demands low-cost housing and forcing landlords too hard would squeeze out of the market this type of housing, so we have to live with some violations...Granted, these places are not really habitable, but people have a roof over their heads for [a very low rent]. They will all be out if we push this thing because they cannot afford the increased rents the owner will have to charge. (Ross, 1996, p. 36)

Pushing a landlord too far with violations was seen as leading to abandonment of the building, which in a neighbourhood context was a major problem and part of the phenomenon of urban blight. For this reason, Ross argued that “overzealous enforcement of existing housing code increases urban decline, but sensitive and moderated enforcement can help the code accomplish its goals” (Ross, 1996, p. 44). This somewhat paradoxical approach to housing code

enforcement runs contrary to the notion of putting the health needs of the residents first.

In the United Kingdom, although tension between the market and health interests was viewed as important throughout the history of regulation, the introduction of an evidence- and risk-based “Housing Health and Safety Rating System” (HHSRS) in 2000 (revised in 2004) provided a new tool for intervention at a local level. This program was seen as having a clear focus on health and on action: “the HHSRS provides a modern tool to assess conditions and the threats those conditions may pose; working with local health trusts, they are now in a position to act to reduce hazards” (Burrige & Ormandy, 2007, p. 566). However, the authors still saw market factors such as property value as potential threats to “regulatory will” (Burrige & Ormandy, 2007, p. 566).

Discretion of Inspectors

Ross (1995; 1996) highlighted the role discretion played in the everyday work of housing inspectors. Ross argued that inspectors were faced with so many possible violations that they had to make choices, and that discretion was evident throughout the process: in how violations were identified, how progress was evaluated and how compliance was determined. For example, inspectors considered the repercussions of a strict enforcement on the tenants and the neighbourhood, whether the landlord in question was a low-income person himself/ herself or in a particularly difficult situation, and the neighbourhood context (Ross, 1995; 1996). In addition, inspectors strategically chose to ignore certain violations as part of their negotiation process, and trust (the inspectors’ impression of the sincerity of the landlord’s efforts to make the required repairs) was also important when determining timelines. Lack of resources and potential political repercussions (for example, if a complaint came from a certain source) also played a role in the inspectors’ considerations (ibid).

Achieving Compliance in Housing Code Enforcement: Negotiation vs Punishment

Ross’ work revealed that in all of the American cities studied, achieving voluntary compliance was the central goal of the housing inspection system. This

philosophy, distinct from a more punitive or coercive approach, shaped much of the interaction, and resulted in significant negotiation between landlords and inspectors (Ross, 1995; 1996). Taking landlords to court was seen as a last resort, even as a failure, to be used in cases of non-compliance, and even at the court level some judges seemed to favour trying to gain cooperation over the imposition of fines, which were set very low (Ross, 1995). As Ross noted, “Although inspectors have the power to punish uncooperative property owners by bringing them to court, all participants recognize that the objective of code enforcement is improving property rather than punishing bad owners” (Ross, 1996, p.36-37). In this sense, in general the inspector’s “goal in a given case is for sufficient repairs and investments to be made so that the file can be closed on the basis of compliance” (Ross, 1995, p. 149). In cases where the landlord did not comply, however, inspectors adopted a more rigid and punitive attitude.

This theme was also evident in documents from the commission on the application of the *By-law Concerning the Sanitation, the Maintenance and the Safety of Dwelling Units* held by the Montreal city administration in 2006. The city consultation document provided an outline of the basic orientation of the inspection services, stating that, in general, inspectors similarly

...favorisent la négociation, en utilisant les outils disponibles dans le règlement plutôt que la voie des tribunaux (qui entraînent souvent des délais importants pendant lesquels perdurent les conditions d’insalubrité), afin de favoriser une prompte réalisation des travaux correctifs. (Ville de Montréal Service de la mise en valeur, 2006, p. 3)

The majority of participants in the commission, on the other hand, argued that the negotiation approach worked to the detriment of tenants, who had to wait longer to see a solution to their problems (Ville de Montréal, Commission permanente⁴ - VMCP, 2006; for example, RCLALQ, 2006; CLPP, 2006; CLCS, 2006). Many groups also criticized the city for not using its recourse to an intervention fund (to do the repairs and then bill the landlord) often enough

⁴ Ville de Montréal, Commission permanente du conseil municipal sur la mise en valeur du territoire, l’aménagement urbain et le transport collectif.

(VMCP, 2006). In addition, a majority of organizations called for the use of expropriation in particularly serious cases where landlords were not complying, with a view to turning these buildings into social housing (VMCP, 2006; for example, Fédération des coopératives d'habitation intermunicipale du Montréal métropolitain - FECHIMM, 2006; POPIR-Comité logement, 2006; Project Genesis, 2006), including rooming houses (RAPSIM, 2006).

Legislation and Enforcement in Montreal

The *Montreal Charter of Rights and Responsibilities (2005)* recognizes the importance of healthy housing, and commits to “taking appropriate measures to ensure that housing meets public health and safety standards and to provide relocation services if a dwelling must be closed or vacated” (article 18a). The current by-law has been amended five times since its adoption in 2003 (in 2005, 2007, 2009, 2010 and 2011). These modifications have expanded and significantly strengthened the legislation. Fines for violations are substantial: they can reach \$10 000 for an individual and \$20 000 for a corporation for second or subsequent violations of certain articles (RVM 03-096; RVM 03-096-04).

At the 2006 commission, the majority of groups and individuals argued that the code itself was strong, but that the regulation was not applied rigorously enough in practice (VMCP, 2006). The commission issued sixteen recommendations related to issues such as adequate resources, rigorous application of the by-law, intervention by the central city in exceptional cases, legislative change to attach infractions to buildings instead of individuals, increased use of the ‘*constat billet*’ (an infraction issued as a ticket on the spot) to reduce delays, uniform and simplified procedures, faster treatment of health and safety cases, information campaigns, and the creation of a database on interventions related to health and housing (VMCP, 2006).

In response to these recommendations, in 2007 the City of Montreal launched an Action Plan to address the issue of unhealthy housing conditions (VMCP, 2009a). This plan included the creation of a centralized team of six inspectors, one principal inspector, a liaison officer, an office agent and a secretary, dedicated to the application of the housing code, including the

systematic inspection of buildings (ibid). The goal was to intervene in particularly difficult cases that exceeded the normal intervention capacity of the boroughs. The plan was not meant to relieve boroughs of their responsibilities in this area, but to provide a service of the central city to intervene in these particularly difficult or complex cases (ibid). The project was allocated a budget of \$1 million per year for three years (ibid).

Another commission was held in 2009, with a primary focus on the work accomplished under the Action Plan. This time no briefs were submitted, although there were two public question periods. The commission issued six recommendations, focusing on adequate resources for the action plan, the distribution of mail in rooming houses, legislative change to attach infractions to buildings instead of individuals, relocation of tenants in case of evacuation, bedbugs, and the simplification of complaint procedures (VMCP, 2009a).

In Summary

The literature on housing code enforcement suggests that both political and market forces can have an important impact on how this legislation is applied. It also suggests the challenges inherent in the enforcement of these regulations, the importance of the role played by individual inspectors, and the tension between different approaches.

Conclusions

Overall, several conclusions can be drawn from this brief survey. First, there is little research on access to justice for tenants, particularly in relation to health and safety problems, and there are few studies of the enforcement of housing codes. Academic literature on municipal codes focuses largely on a systemic perspective and the perspective of inspectors, rather than a tenant perspective. Second, the existing literature suggests that in many places tenants may face significant challenges when exercising their rights, particularly if they are not represented by a lawyer.

Third, there do not seem to be any studies specifically focusing on the recourse available to Montreal tenants experiencing problems that affect their

health and/or safety. The related studies, grey literature and older research raise many important questions regarding the extent to which tenants are able to access and effectively use the recourse available to them, and the results they ultimately obtain. These factors support the need to study the recourse available to Montreal tenants at both levels.

4. Conceptual Framework and Research Methods

Contribution of this Project

The two previous sections have demonstrated that unhealthy housing is an important public health concern in Montreal, but that there is little research on the recourse available to tenants living in these situations. This project therefore hoped to provide a first exploration of how the two main recourses available to tenants experiencing health and safety problems – the Rental Board and the borough-level city inspection service - function in practice. It also aimed to identify key issues and challenges, and to propose ideas as to how they can be improved.

On a practical level, this project aimed to contribute information that may be useful in efforts to improve the recourse for tenants experiencing health and safety problems in their homes. On an academic level, this study also hoped to contribute to the literature on the enforcement of housing legislation, and to knowledge regarding how tenants' rights are experienced and enforced in practice.

Conceptual Framework

In developing a conceptual framework, this study drew on several of the themes found in the literature. Pragmatic considerations were also important.

A Specific Focus on Tenants

I recognize that health and safety problems in housing affect both landlords and tenants, and that there are situations in which tenants cause problems and landlords must seek recourse to resolve them. Effective recourse for all parties is an integral aspect of justice and is of course essential. However, my specific research interest was the effectiveness of the recourse for tenants. I also did not have space or time to expand the research to include the perspective of landlords. For these reasons I chose to focus specifically on tenants.

A Focus on the Two Main Services Directly Accessible to Tenants

I chose to focus on the two main recourses available to tenants - the Rental Board and the borough-level city inspection service - because these are the services most commonly used by tenants facing health and safety problems. Recourses such as the Régie du bâtiment, the fire department and the Public Health Department may also be involved in these cases. A question about these was included in the interviews, but for time and resource reasons they were not integrated as major elements.

As noted above, in 2007 the City of Montreal created a centralized team of inspectors to enforce the by-law in particularly serious cases. Clearly this team has had an important impact on tenants living in some of the worst housing situations in the city, and there are relevant questions to be asked about how this level of intervention works in practice. At the present time, however, tenants cannot contact these inspectors directly. Because my focus was on recourses available to tenants, I integrated some content regarding this service, but maintained the major focus on the inspection service that is directly accessible at the borough level.

A Broad Conception of Health and Safety Problems in Housing

This study incorporated the broad view of health defined by the World Health Organization (1946), adapted to housing by King (2000): “caractère d’un milieu de logement qui, de par la qualité de son environnement intérieur, est favorable au maintien d’un état de complet bien-être physique et mental des occupants”. I felt it was important to focus on wellbeing, not only on specific illness or disease, and to include physical, psychological and social impacts as defined in the WHO (1989) principles of housing.

In the spirit of this broader approach, the study did not adopt a specific definition of unhealthy or unsafe housing; participants were invited to describe what kinds of problems they felt constitute a health and safety problem. However, given the focus on applying the current legislation, the specific provisions of the *Civil Code* and in particular the Montreal by-law also provided a concrete point of reference for both interviews and analysis.

The Inclusion of an Access to Justice Perspective

Given that the Rental Board is a tribunal and the only body through which tenants can enforce their housing rights under the *Civil Code*, this study included an access to justice perspective in analysis of this level of recourse. Two aspects of access to justice were integrated. The first is the practical, more “traditional” level: a focus on access, and on the extent to which the tribunal functions as an “effective dispute resolution system” (MacDonald, 2005, p.23). Although as noted above MacDonald’s (2005) conception of access to justice went well beyond this, his listing of features regarding an effective dispute resolution system provided a a kind of minimum and a helpful lens⁵. The second level includes the broader conceptions of justice, and access to justice themselves (Deschamps, 2009; MacDonald, 2005). Both of these dimensions were included in the analysis of how well the Rental Board functions as a recourse for tenants facing health and safety problems.

Private Market and Social Housing

Initially I had planned to focus specifically on tenants living in private market housing. Although tenants living in social housing have access to the same recourse in health and safety situations, I felt there might be differences in the extent to which and the ways in which these recourses are used. However, this distinction seemed less important as I went along, and it was not possible to separate private and social housing in the statistical data. Ultimately, I did not include a specific focus on tenants in social housing, but they were not excluded either.

Research Methods

The methodology for this study was informed by a grounded theory approach, supplemented with brief analysis of the statistical data I was able to obtain. According to Creswell (2007), a grounded theory study aims to generate ideas or a theory about a particular process from participants who are directly

⁵ These criteria are “(1) just results, (2) fair treatment, (3) reasonable cost, (4) reasonable speed, (5) understandable to users, (6) responsive to needs, (7) certain, and (8) effective, adequately resourced and well-organized” (MacDonald, 2005, p. 23-24).

connected to the issue; he noted that “a key idea is that this theory development does not come ‘off the shelf’, but rather is generated or ‘grounded’ in data from participants who have experienced the process (Strauss & Corbin, 1998)” (Creswell, 2007, p. 63). Grounded theory studies involve interviews, and may also include the analysis of documents (Creswell, 2007).

A grounded theory orientation was relevant to this study because the aim was to examine how the systems work in practice, and to explore the experience of people engaged in it on a daily basis, either directly or through their work with tenants. However, although grounded theory studies normally involve interviews with twenty to thirty participants (Creswell, 2007), because of time and resource constraints this was not possible; a reduced number of key informants was chosen to provide different perspectives on how these housing recourses work in practice. In addition, although open coding was used, analysis was not limited to one core phenomenon, as is often the case in grounded theory studies (Creswell, 2007). Instead, I followed the many themes that emerged from the participants in order to be able to provide as complete a picture of the situation as possible.

Quantitative analysis of relevant statistics was included to illustrate and further analyze the issues identified by the participants. This analysis was also seen as important in broadening the strength of the study; given that it was not possible to interview a large number of participants, analysis of statistical data was seen as a way to increase the depth of the project.

A major dilemma faced was how to include the voices of the people most affected by policy in this area, the tenants themselves. Although interviewing large numbers of tenants would clearly have been the best way to gather information about how these recourses work in practice, it was not possible to interview enough tenants to be able to draw conclusions. Originally, I had planned to include three case studies, in order to illustrate the ways in which the themes raised in the interviews affect tenants in practice. Although I interviewed one tenant family and this was very helpful in informing my understanding of how these issues play out, ultimately I was not able to interview other tenants. From a

methodological point of view I also had difficulty integrating these individual cases. I therefore decided not to integrate tenant case studies.

Literature

Literature from several sources was reviewed for this study. Searches of the social science, medical and legal databases were performed using combinations of the terms housing, health, tenants, housing code, housing conditions, enforcement, recourse, access to justice, Rental Board, Montreal, Quebec and Canada. The McGill library database was also explored using these terms. The French-language database Repères was searched, using combinations of the terms logement, santé, insalubrité, insalubre, locataires, recours, Régie du logement, accès à la justice, Montréal, Québec and Canada. Searches of the database of the Institut de la santé publique du Québec (santecom), the Société d'habitation du Québec, the website of the Institut national de la recherche scientifique (Urbanisation culture et société) and the World Health Organization database were also performed. Grey literature was collected from government sources, as well as community organizations working directly on housing in Quebec.

Interviews

Five 'key informants' from the housing sector – four housing workers employed in community-based housing rights organizations and one lawyer who exclusively represents tenants – were interviewed. Housing workers were chosen on the basis of their extensive experience in working with tenants, and also their location in different neighbourhoods of the city. A lawyer was included in an effort to provide a slightly different perspective, as well as direct experience at the Rental Board (housing workers do not represent tenants in hearings at the tribunal). Key informants had between ten and thirty-six years of experience working directly with tenants in the Montreal area. Each was approached by telephone, and then sent documentation about the study by email. Three of these participants were interviewed in their own offices; one was interviewed at another organization and one interview took place at the participant's home. Each

interview lasted between one hour and fifteen minutes and two hours. All interviews were digitally recorded and then transcribed verbatim.

A request for an interview was made with the Montreal office of the Quebec Rental Board, but this request was refused. A representative of the Rental Board sent a written statement by email. This statement was included in the study.

Municipal inspectors were contacted through a general email sent to several boroughs and by telephone. An effort was made to recruit inspectors from different boroughs, in order to provide different perspectives. Two inspectors agreed to participate in the study. The inspectors interviewed had between seventeen and twenty-three years experience working in this capacity. These interviews took place in the offices of the inspectors, lasted approximately one and a half hours each and were digitally recorded and then transcribed (note form with some verbatim).

One tenant who had faced health and safety problems and had used both the provincial and municipal levels of recourse to defend her rights was recruited through a community organization, and was interviewed with another member of her household. This interview took place in the couple's home, and lasted approximately one and a half hours. The interview was digitally recorded and partially transcribed. Documentation, including letters and tribunal decisions, was also collected. As noted above, unfortunately I ultimately did not integrate the tenant case studies and so did not include this information in the findings.

Statistical Data on the Use of Each Recourse

Basic documentation regarding the Rental Board and the use of its services was retrieved from the organization's website, mostly through annual reports. Because this documentation did not include a regional breakdown of statistics, a request for information pertaining specifically to the Montreal region (including numbers of cases filed by tenants and landlords, waiting times for cases, recourse sought by tenants, resources for the tribunal, and proportions of landlords and tenants represented by a lawyer or a professional) was made in August 2010. A 2008 study on quality of services and client satisfaction at the Rental Board was also requested at this time. The Rental Board refused to provide this information.

An Access to Information request was filed with the Quebec Commission d'accès à l'information in October 2010. Because the hearing to deal with the request had not been held by May 2011, I was not able to obtain data specific to the Montreal context. Instead, I used data pertaining to all of Quebec from publicly available annual reports to develop my analysis.

A request for statistical information regarding the borough-level city inspection services, including numbers of complaints, inspections, violation notices and infractions, and information regarding human and financial resources, was made to the City of Montreal's Housing Department in July 2010. In September 2010 the department provided information for the period 2003-2006, as well as a referral to a website containing very recent data related to the activities of the centralized inspection team. An Access to Information request was made for additional, more recent data on the borough level services in October 2010. I was informed that this request needed to be redirected to the boroughs, on the grounds that the information requested pertained to borough administrations. I then filed nineteen Access to Information requests, one with each borough, for basic statistical data as well as information about human resources and funding for inspection departments.

While some boroughs provided considerable amounts of data (one borough representative telephoned the day after receiving the request and gave the information immediately), others did not provide any information, on the grounds that under Access to Information legislation they are only required to provide existing documents, and that they did not have a document summarizing all of the data requested. Because additional statistics regarding use of the city inspection service were obtained through housing organizations that had made requests in the past, I decided not to pursue these requests. This data was compiled and analyzed.

While these processes provided interesting insight into bureaucracies and the functioning of the Access to Information system, it was somewhat surprising that basic information on public services at both levels was not readily available and was so time-consuming, difficult and in some cases ultimately impossible to obtain.

5. The Quebec Rental Board

This section will focus on tenants' recourse for health and safety problems at the level of the Quebec Rental Board. I will begin with a presentation of the findings from the interviews with housing workers and city inspectors. I will then present the statement issued by the Rental Board in response to my request for an interview, as well as statistical data on the use of this recourse. Lastly, I will provide an analysis of these findings, exploring several of the themes raised by participants, integrating links to the literature, and analyzing some of the ways the barriers, challenges and weaknesses identified by participants might be addressed.

Practitioners' Views on the Rental Board as Recourse

Interview participants were asked to identify strengths and weaknesses of the Rental Board as a recourse for tenants facing health and safety problems, and to propose recommendations for change. Housing workers and the lawyer spoke extensively about the Rental Board, but both city inspectors stated that they were only able to speak briefly about this recourse.

Participants identified different strengths regarding the Rental Board, but clearly identified many common barriers and weaknesses. This cohesion was perhaps due to the fact that there were, unfortunately, no representatives of the Rental Board to provide a different perspective.

This section describes the major findings, according to five broad themes: a) accessibility and speed; b) services; c) procedure and proof; d) impact; and e) other issues. A table summarizing all of the recommendations made by participants is also included. I have used the following system to describe comments: when a comment was made by all or only one participant I indicated this, and when a comment reflected the views of two or more, I have simply indicated "participants".

Getting to the Rental Board: Accessibility and Speed

Known to tenants/ direct access. One participant felt that the Rental Board is well known to Montreal tenants, and that this is an important strength. Another viewed the fact that tenants can go directly to the tribunal to request an order (for repairs to be made or for the problem to be solved) as very positive, in comparison to other provinces where tenants must go through the regular court system.

Cost. Participants were divided on the extent to which the Rental Board is financially accessible to tenants facing health and safety problems⁶. The fact that fees are waived for people receiving welfare was seen as an important strength. One participant did not think that fees are a deterrent for tenants not receiving welfare. Two others viewed the filing fee as an obstacle, but not the most serious one, and not an impediment for most tenants. The remaining two participants felt that the fees constitute a barrier for low-income tenants, and prevent some or many from exercising their rights.

Location. The location of the offices was viewed as a barrier to access for tenants who live far from these neighbourhoods; more service points around the city were seen as needed.

Waiting times for hearings. All five housing workers identified long waiting times for hearings at the Rental Board as a major problem and a serious obstacle for tenants experiencing health and safety problems. All five regularly saw tenants with health and safety problems, including serious situations, wait between one and two years for a hearing. Several participants had seen even longer waits, particularly in cases in which there had been a postponement. Both city inspectors also named these delays as a weakness of this recourse.

However, three participants reported seeing some cases in which tenants with serious health and safety problems obtain a hearing quickly at the Rental Board. One spoke of an agreement or “fast-track procedure” whereby tenants with a city inspectors’ report indicating serious issues can sometimes obtain a hearing

⁶ Current fees for filing a case at the Rental Board are: \$41 if the tenant’s rent is less than \$350; \$51 if it is from \$350 to \$600; \$66 if the rent is over \$600 or if the case concerns abandonment (Régie du logement. 2010c).

quickly, and identified this as a strength; another had seen hearings for cases involving bedbugs granted in three weeks or one month. Participants specified that faster hearings were the result of the use of specific keywords in the application, an inspector's report and/ or the intervention of a third party (for example, major advocacy on the part of a housing group), and were not seen as granted easily or regularly. Participants also noted that in general, cases heard quickly only involved orders, and did not include a request for any kind of monetary compensation. Although some workers advised tenants to file an amendment before the hearing to add compensation requests, one viewed this as very risky as it may result in a postponement and an extremely long wait for the tenant.

Long waiting times were seen as evoking serious problems for several reasons: they deter tenants from filing; they have a negative impact on the ability to provide proof; they expose tenants to potential intimidation by the landlord; and they are unevenly distributed between different types of cases.

Participants indicated that waiting times are a major deterrent that prevent tenants from exercising their rights. One participant estimated that 40% of the tenants seen in his organization do not bother to file at the Rental Board because of the long wait; another said the majority move to solve the problem on their own because the time it takes to get a hearing is simply too long. One housing worker described the waiting times as a "*déni de justice*", and felt that they compromise the entire work of the tribunal: "*à mon point de vue, à cause de ces délais la Régie ne fait pas son travail*". Participants also noted that many of the tenants they see who do file become discouraged and abandon their cases before the hearing. As one participant stated,

Les conséquences sont immenses lorsque les audiences retardent trop. Après un an ou deux ans, si ça ne procède pas, les logements continuent à se détériorer. La situation du locataire se détériore aussi. Puis souvent, les locataires finissent par abandonner leurs recours.

The waiting times were also seen as very seriously compromising tenants' ability to provide proof at the hearing. For example, witnesses are very hard to

locate, and providing proof of a mould problem or a lack of heat experienced a year or two previously becomes extremely difficult.

One participant identified a link between long waiting times for hearings and pressure and intimidation from the landlord, which in his experience further discourages tenants from enforcing their rights. He noted that, after filing at the Rental Board, the landlord is informed of the complaint, and “*l’audience va avoir lieu au bout de plusieurs mois. Là ça donne plusieurs mois au propriétaire pour exercer des représailles: t’es allé à la Régie, tu vas payer pour*”.

Participants also raised the theme of inequality of waiting times for tenants facing health and safety problems as compared to landlords who have filed for eviction, whose cases are heard very quickly; this discrepancy was seen as very unfair. As one participant noted,

Clearly tenants are waiting a lot longer than landlords for certain cases. Non-payment for landlords is heard within four to six weeks and repair cases are heard, on average, it's sixteen months. And that's a clear sort of, I would say, discrimination. Most of the tenant cases are repair cases and those are the ones that are put at the bottom of the list of priorities.

Scheduling problems and adjournments. The lawyer identified a related weakness: rescheduling of cases when not enough time is allocated. According to this participant, hearings involving health and safety issues often take a long time, and frequently only 40 to 60 minutes of hearing time is allocated when in fact a half-day is often needed. In these cases the first part of the hearing is held in which the tenant presents his or her proof, and then there is an adjournment for another six to ten months, leaving the landlord with several months to prepare his or her response. This situation was seen as profoundly unfair.

Obtaining Information and Assistance: Services

Online services. One participant identified online services, including legislation, information pamphlets and the ability to track the case on the Internet, as extremely helpful to tenants facing health and safety problems. According to this participant,

Now all the standard Régie information, the laws, the pamphlets - it's all up there for anybody who is literate to read in French or English. Tracking your case, you can do it on the click of a mouse. So all of this information that at one point you used to have to go physically down there or call somebody on the phone is now available.

Information and assistance services. The existence of the telephone service was seen as a strength, but problems of inaccuracy of information were also identified. One participant noted that

The quality of the information that you get from the Régie is extremely uneven. Anything that's not clearly in the book and that's not clearly standard, you can get many different answers to the same question, and some of those answers are not matters of interpretation. They're just downright wrong!

Problems with the telephone system were attributed in part to the provision of information through the centralized phone system for Quebec government services, to which callers are forwarded when the dedicated line staffed by Rental Board workers is busy.

Similarly, the existence of a service to assist tenants when filing their claim was identified as positive, particularly for tenants who speak little English or French. Some staff were seen by participants as knowledgeable, well trained and competent. However, accuracy problems were also identified, and the lawyer found complaints filed with the assistance of this service often need to be amended because they are poorly done.

In addition, the fact that staff can provide information but not legal advice was seen as causing problems in practice, both on the telephone and in person. For example, when clerks tell tenants they can claim up to a maximum of \$70 000 tenants sometimes claim this amount, even if it is not at all appropriate for the case, and this seriously compromises their credibility at the hearing. As one participant noted,

Ils ne doivent pas prendre position et parfois il y a des choses tellement farfelues qu'ils laissent écrire. Tu sais, ils écrivent ce que le justiciable

vient de demander, mais des chiffres qui ont pas de bon sens. (...) Ce qui fait que ça vient nuire quand tu arrives en audience ensuite.

Making the Case: Procedure and Proof

Simplified procedure. One participant identified simpler procedure, in comparison to other courts and tribunals, as a strength of the Rental Board.

Procedure and representation. However, all five housing workers felt that, despite perceptions of the Rental Board as an accessible and less formal tribunal, in practice the procedure remains complicated, and tenants who are not represented by a lawyer often experience difficulty in pleading a case related to health and safety problems. One participant noted that,

Oui, c'est un tribunal d'accès, mais c'est un tribunal qui nécessite des connaissances en droit, qui nécessite que les dossiers soient bien montés. Et parce que c'est souvent mal fait, ça amène des mauvais résultats, après une attente de deux ans.

Another stated that

A lot of people just don't understand how a hearing is conducted, so many people just show up, just explaining what is going on and thinking that is going to be sufficient, and it's not. (...) You know, a courtroom situation is designed for that adversarial type of structure, and it's just not something your average person is really able to do or trained to do and really understands.

A third noted that

The problem with people who aren't articulate and go into the Rental Board is that they tend to get squashed like bugs. And even if they are [articulate] they don't get the same respect that they would get if they go in with a lawyer.

Participants felt that tenants are much more likely to succeed at the Rental Board if represented by a lawyer, but that very large numbers of tenants are not represented. One participant had attended a presentation at which Rental Board officials stated that only 11.4% of all parties (landlords and tenants) were represented by lawyers.

The lack of access to Legal Aid coverage and the cost of representation were identified as major obstacles for tenants in obtaining representation. Income eligibility criteria for Legal Aid were seen as including only “the poorest of the poor”, leaving out a very large proportion of tenants, including senior citizens on a pension and minimum wage workers. For many tenants not eligible for Legal Aid, the cost of representation was seen as simply too high. For those eligible for partial coverage, benefits were viewed as very low and as “*un incitatif à ne pas faire valoir leurs droits*”. One participant also felt that there are not enough lawyers who specialize in housing law and are interested in representing tenants.

In addition, one participant identified the parameters regarding representation at the Rental Board as patently unfair:

Une grande injustice que je vois c’est [que] je vois un tribunal permettre aux compagnies et gestionnaires de représenter les locataires. Mais de la même façon si on pouvait permettre aux locataires défavorisés qui ne peuvent pas payer un avocat d’être assisté par les gens qui ont une meilleure connaissance de ça, ça aiderait peut-être.

Proof. All five housing workers also identified the issue of providing proof in a case involving health or safety as a major challenge for tenants. Participants noted that the burden of proof is on the tenant, who must prove that they did not cause the problem, and must also demonstrate that the problem impacts on their health and /or safety; the bar for proof was seen as quite high.

Cases involving mould were viewed as posing particular challenges with respect to proof. Participants stated that tenants must go beyond photos and witnesses to include expert testimony from a specialist, and in many cases this means paying several hundred dollars in fees, something many low-income tenants simply cannot afford. One participant noted that tenants covered by Legal Aid may receive an allocation toward paying an expert, but that these amounts are very low and often do not cover even half the fee charged. Although city inspection reports were seen as helpful in some cases, participants felt they were not able to determine toxicity of the mould. As one advocate noted,

You want to take a landlord to the court for mould? You need a city inspector's report, or you need a private inspector's report. And the private [report] – that means a lab report, and that means a lab report where they actually came, took the sample, took it to the lab with a chain of evidence. Not where you took it to the lab yourself, it won't be recognized. (...) It's not difficult, but it's pricey. I mean we are talking to build a case on this probably somewhere around five, six hundred dollars. (...) If it's visible mould you'll get a good report [from the city inspectors], but what the city report won't tell you because they don't have the qualifications for it will be whether the mould is toxic.

Participants also spoke about the burden of proof in relation to the recourse of abandonment, noting that, although tenants have a legal right to abandon the apartment in cases where there is a "serious danger" to the health and safety of the occupants, this is extremely difficult to prove, and tenants who are unsuccessful can be held responsible for the lease. The lawyer stated that, according to the jurisprudence, tenants need to provide medical proof as well as proof of a cause-and-effect relationship, a task seen as "immense". Another advocate described the risk tenants wanting to exercise this right face in practice, even in extremely serious situations:

The bar is high for abandonment, just too high for most people (...). It doesn't address most of the situations, even the bad ones. And the worst thing I find is that when people come to us, they describe the most awful living conditions and yet we have to say there is a risk if you abandon. I mean people have a newborn baby and they've got mould or whatever, they've got cockroaches, they've got mice and they're really worried about the health of their babies. We've had babies who were actually sick, had problems and they wanted to bring them home from the hospital but they couldn't because of the condition of the apartment. Even there, we could not feel confident that they could be sure that abandonment would be without risk. And that seems just really absurd.

Participants also noted that most tenants cannot use the legal provision which allows them to make an urgent/ necessary repair themselves and be reimbursed, because they can't afford it. Those who do use this recourse face uncertainty regarding whether or not the repair will actually be seen as 'urgent' or 'necessary' by the commissioner.

Participants reported that the challenges inherent in proving the case are even more severe for people who do not speak French or English well; language barriers were seen as a key obstacle, particularly for tenants of immigrant origin, and many of those not covered by Legal Aid cannot afford translators recognized by the court. The speed of the hearing was also seen as an exacerbating factor. As one participant stated,

[À] la Régie du logement il faut convaincre à l'audience plusieurs personnes qu'il y a un problème, que le problème était là soit avant son arrivée ou qu'il est survenu par la suite, qu'ils ne sont pas les responsables de ce problème là. Et puis toute la question des règles de preuve, disons qu'il faut bien maîtriser. Puis c'est évident que si le régisseur est pressé puis que les gens ont de la difficulté à s'exprimer, là ça va être ben difficile.

Cases in which the commissioner decided to visit the dwelling to see the problems firsthand, although extremely rare, were viewed as very positive, in that they allowed a full understanding of the situation and facilitated proof of the problems experienced.

Role of commissioners. The fact that tenants may receive some help from the commissioner during the hearing in order to understand procedures, something that does not occur in civil court, was identified as a strength by one participant. Of the two participants who commented on commissioners' attitudes and behaviour in the hearing, one did not see this as a problem, but another viewed "judge's bias" as a "recurrent issue" and a "huge issue".

Impact: What Do Tenants Actually Achieve?

Authority/ Ability to issue an order. The Rental Board's ability to issue an order for work to be done was seen as an important strength of this recourse. The fact that the tribunal has the authority of a court was also seen as important.

Decisions/ Results achieved. Participants felt that in cases where tenants are represented by a lawyer and/ or extremely well prepared, it is possible to obtain a "good decision" at the Rental Board. This was seen as including an order for the problem to be fixed, as well as some kind of financial recognition.

However, most participants were critical of the content of many decisions in cases involving health and safety problems, particularly regarding the amounts awarded for rent reduction or damages. These amounts were seen as very low in relation to the problems tenants had experienced. One participant stated that *"même quand tu réussis un peu à les prouver, c'est les montants qu'on donne à la Régie pour compenser qui sont dérisoires - complètement dérisoires"*. Another noted that

Ça ne reflète pas les problèmes vécus par les locataires. Les montants accordés ne correspondent pas toujours aux problèmes, aux dommages qu'ils ont subis. Les condamnations monétaires sont minimes, sauf lors de cas vraiment excessifs et même lorsqu'il y a preuve de flagrante négligence, la Régie n'est peut-être pas assez sévère.

One participant pointed out that many tenants living in poor housing conditions pay low rent, resulting in extremely low financial recognition of the problem through the recourse of rent reduction. Another stated that

Even as a rent reduction what they grant I don't find really represents the service that's being lost. I mean if you're infested with anything crawling around, I think the value of your abode is really seriously reduced, much more than what's usually acknowledged.

Although tenants who are represented by lawyers were seen as tending to do well, one participant stated that it is common for them to win less than their cost in legal fees.

Housing workers and one city inspector also identified the execution of decisions as another important and extremely frustrating challenge: in some cases tenants face difficulties in obtaining money awarded from the landlord. If tenants have moved, as many have because of the time they wait for the hearing, they are not able to deduct the money from their rent. Procedures required to oblige the landlord to pay were seen as very complex.

In addition, participants felt that there is no 'quality control' in terms of the work done when a tenant wins an order. When a repair is not properly done, the problem will persist. As one participant said,

Donc la Régie ce qu'elle a fait, c'est qu'elle a statué alors un jugement, une petite compensation, une obligation. Bon la Régie a mis en demeure le propriétaire de faire la réparation. Mais comme c'est fait à moitié, mais le problème va perdurer. Puis là la santé des gens, on y revient. Tu vois? On revient. C'est absolument pas réglé.

Once the order has been issued, the burden is again on the tenant to take action if there is a problem. Superior Court proceedings required in cases where landlords do not respect an order for repairs were seen as very complex and time-consuming.

Both the content and the execution of decisions were viewed as particularly frustrating in light of the length of time most tenants have waited for the hearing:

And then even if the conditions have been horrendous and they have been granted some kind of compensation – rent reduction, damages – getting it from the landlord can be virtually impossible. You go through the whole thing, you go through the whole process, you pay the money, you wait your time, you manage to convince the *régisseur*, you assemble the proof you need, you manage to convince them and you get some paltry compensation - and then you can't even get it.

Other Themes

Intimidation and fear of repercussions. Participants raised the fear of repercussions from the landlord as an obstacle that prevents many tenants from

exercising their rights at the Rental Board, even in very serious cases. The conflictual nature of the recourse was also seen as intimidating for some tenants.

As one participant stated,

C'est la difficulté qu'ils vont avoir, parce qu'ils ont peur d'aller à leur audience. Ils ont peur de (...) témoigner, ils ont peur d'être obligé de dire leur preuve et ils sont craintifs des relations que ça va entraîner avec le propriétaire.

Another participant had seen many cases in which a tenant complained about the state of his or her apartment and was then confronted by the landlord's attempt at repossession; although the two were never formally linked, many tenants are afraid of this possibility.

An important institution. Participants underlined that, although they identified many weaknesses with the work of the Rental Board in practice, they felt the existence of a tribunal dedicated solely to tenant and landlord issues is both positive and essential.

Recommendations Offered by Interview Participants

The following table (Table 1) illustrates the variety of recommendations made by participants with respect to the Rental Board:

Table 1: Participants' Recommendations (Rental Board)

Accessibility	Procedure and representation	Proof
<ul style="list-style-type: none"> • Significantly reduce the waiting times for hearings • Ensure that urgent cases are heard very quickly, but that all cases are also heard within three months 	<ul style="list-style-type: none"> • Simplify the procedures so tenants can represent themselves more effectively • Expand access to Legal Aid • Modify the legislation so that tenants can be represented by others; if housing organizations are included in this role ensure that they are given the resources necessary to perform this function. • Find ways to encourage more lawyers to practice in this field • Subsidize interpretation services for people who don't speak English or French • Improve services for people who don't speak French 	<ul style="list-style-type: none"> • Enable commissioners to leave the tribunal to directly view dwellings when needed (seen as rarely possible because of lack of resources) • Have a stronger link between inspectors and the Rental Board; for one participant the ideal would be "<i>une seule instance</i>" • Have a bailiff or an inspector affiliated with the Rental Board who can assist in gathering proof (for example, taking photos)
Decisions	Legislative Changes	Prevention
<ul style="list-style-type: none"> • Sensitize commissioners to the realities of tenants (for example, the impact of living with cockroaches for a year), as a means of increasing damages and rent reduction • Ensure a broader interpretation of the term "serious threat" in cases of abandonment • Have a clear mechanism for checking that work is done properly when an order is issued, and simpler, more accessible recourse when it is not • Have an inspector or bailiff affiliated with the Rental Board verify that orders are respected 	<ul style="list-style-type: none"> • Allow tenants to introduce health and safety problems in non-payment cases • Strengthen provisions in the <i>Civil Code</i> regarding harassment and noise 	<ul style="list-style-type: none"> • Ensure that the Rental Board more actively engages in its responsibility to protect the rental housing stock • Require landlords to submit regular inspection reports on their building (for example, once every five years) • Investigate programs in other cities where landlords are required to demonstrate that units they are renting conform to legislative standards • Investigate dwelling classification systems used in other cities

Summary of Findings from Interview Participants

Participants in this study identified both strengths and weaknesses in relation to the Rental Board. The fact that tenants receiving welfare can file a case with no fee was viewed as positive. Participants felt that the tribunal can have a positive impact in health and safety cases, particularly when tenants are represented by a lawyer. Its ability to issue orders for repairs to be made and its authority as a court were also identified as strengths. Each of the following strengths were identified by one participant: the tribunal's direct accessibility; the fact that it is well-known to tenants; its online services (access to documents and case tracking); its simpler procedure in relation to other courts; the fact commissioners can provide some assistance to tenants in terms of understanding procedures; and the fact that tenants facing serious health and safety problems are sometimes able to get a hearing quickly. Cases in which the commissioner goes to the tenant's dwelling to see the problem directly were seen as extremely rare but very positive. Although participants were critical of many aspects of the tribunal, the institution itself was seen as essential by several key informants.

Participants were divided on the extent to which the cost of filing is a barrier for those not receiving welfare; some identified this as a serious obstacle, while others did not. Participants viewed the existence of the telephone information and in-person assistance services as positive, and some staff were seen as competent, but problems of inaccuracy of information were identified, with serious repercussions in some cases. The fact that clerks can provide information but not legal advice was also seen as leading to problems in practice. Of the two participants who commented on commissioners' behaviour during the hearing, one did not see a problem, while the other raised bias as a serious issue.

Although three participants had seen some cases in which tenants with a serious health and safety problem were able to obtain a hearing quickly, all participants identified long waiting times for hearings as a major weakness. Inequality of waiting times in comparison to eviction hearings was also identified as a weakness. All participants who gave full interviews on this recourse

identified the complexity of procedures as a major weakness, as well as difficulties providing and presenting proof. The location of the Rental Board, the inaccessibility of representation (cost and restrictive eligibility criteria for Legal Aid), the speed of hearings and the inaccessibility of translation services were identified as barriers. The inability to use the recourse of urgent/ necessary repairs because of the cost and uncertainty regarding the interpretation of terms, low monetary awards, difficulty executing decisions and a lack of “quality control” regarding orders were also identified as problems. Each of the following problems were identified by one participant: insufficient time scheduled for hearings, resulting in adjournments; the inequality in representation allowed landlords and tenants; and a lack of housing lawyers.

Finally, intimidation and fear of repercussions from their landlord were also raised as important barriers for tenants. Participants made several recommendations in relation to these issues (see page 68).

Written Statement from the Rental Board

As noted above, the Rental Board did not accept the request to have a representative interviewed for this project. Instead, a representative sent this text:

La compétence de la Régie du logement est partagée avec celles des municipalités et de la Cour supérieure. La Régie du logement peut, à la demande d'un locataire, résilier un bail, diminuer le loyer, ordonner au locateur d'exécuter ses obligations, permettre au locataire de les exécuter à sa place ou déclarer un logement impropre à l'habitation. Les municipalités peuvent porter plainte à la Cour municipale pour imposer des amendes aux contrevenants et référer à la Cour supérieure pour obtenir une ordonnance.

La Cour supérieure peut pour sa part contraindre les locateurs à remédier au problème, permettre à la municipalité de le faire aux frais du propriétaire et ordonner l'évacuation et même la démolition de l'immeuble.

En vertu du Code civil, la Régie du logement a compétence pour déclarer tout logement impropre à l'habitation et pour décider des litiges visant à faire respecter les obligations du propriétaire de maintenir ses logements en bon état d'entretien et de réparation. Lorsque la Régie du logement émet une ordonnance d'exécuter des travaux, l'article 112 de la loi sur la Régie du logement rend passible d'outrage au tribunal le défendeur qui refuse de s'y conformer. Le recours en outrage au tribunal est présentable à la Cour supérieure par le bénéficiaire de la décision, à qui est laissée l'initiative du recours. Il est à noter que si le contrevenant est trouvé coupable d'outrage au tribunal, l'amende minimale est de 5 000\$.

De plus, lorsque la Régie du logement déclare un logement impropre à l'habitation, cela a pour effet d'empêcher le locateur de relouer le logement visé par le défaut. Si le locateur devait relouer le logement suite à la constatation du tribunal, il est passible d'une amende émise en vertu de l'article 112 al. 2 de la Loi sur la Régie du logement. Puisque la santé et la sécurité du locataire sont menacées, une peine de 5 000 \$ à 25 000 \$ (qui varie en fonction du fait qu'il s'agisse d'une personne physique ou morale) peut être imposée au locateur par la Cour supérieure. Le nouveau locataire qui relouera le logement qui n'aura pas été remis en état pourrait ne pas en prendre possession et intenter un recours en dommages et intérêts contre le locateur pour les inconvénients subis.

Statistical Data on the Use of the Rental Board

As noted above, the Rental Board would not provide statistics on the use of the tribunal in the Montreal area, including numbers of tenants who filed, recourse requested by tenants, waiting times for hearings, and representation. The following tables were compiled with data from the annual reports for the Rental Board. Statistics apply to all Quebec tenants (and, where applicable, landlords),

and are not limited to health and safety cases. However, these statistics still indicate some relevant themes and trends for Montreal.

Cases at the Quebec Rental Board fall into one of three groups: non-payment cases, rent fixation and revision cases, and civil cases (Régie du logement, 2010b). Cases involving health and safety problems, whether filed by tenants or landlords, are considered civil cases.

Table 2 presents the total number of cases filed each year at the Rental Board, indicating the proportions filed by tenants and by landlords. Non-payment cases can only be filed by landlords. Rent fixation cases are also filed by landlords, but can only be filed after a tenant has legally refused a rent increase notice.

Table 2: Number and Type of Cases, Quebec Rental Board, 1999-2010

Year	Total Number of Cases	Total Number of Non-payment Cases	Total Number of Rent Fixation and Revision Cases	Total Number of Civil Cases	Number of Civil Cases Filed by Landlords	Number of Civil Cases Filed by Tenants/ Percentage of Total Cases
2009-10	76 992	46 315	7 616	23 061	14 268	8 111 (10.5%)
2008-09	77 216	46 818	7 231	23 167	14 430	7 930 (10.3%)
2007-08	76 141	45 697	7 337	23 107	14 526	7 722 (10.1%)
2006-07	78 232	44 534	9 206	24 492	15 356	8 061 (10.3%)
2005-06	80 963	44 942	11 110	24 911	15 929	8 002 (9.9%)
2004-05	84 245	44 742	15 543	23 960	15 107	7 930 (9.4%)
2003-04	85 694	43 864	16 747	25 083	15 683	8 349 (9.7%)
2002-03	80 862	35 863	14 267	30 732	21 195	8 127 (10.1%)
2001-02	76 647	37 804	11 365	27 478	18 445	7 809 (10.2%)
2000-01	70 330	36 709	6 455	27 166	18 003	7 855 (11.2%)
1999-2000	66 435	35 680	3 613	27 142	18 036	7 884 (11.9%)

Source: Compilation based on Régie du logement, Rapports annuel de gestion (1999-2010)

As Table 2 indicates, even if rent fixation cases are excluded, it is clear that the tribunal is used significantly more by landlords than by tenants. It is not possible to say how many civil cases were filed by Montreal tenants, or how many civil cases filed by tenants pertain to health and safety problems.

Table 3 provides the definitions used to prioritize civil cases at the Rental Board. This classification demonstrates that the Board's policy is to prioritize based on the recourse the tenant has chosen and not on the seriousness of the problem.

Table 3: Categorization of Civil Cases, Quebec Rental Board

Urgent	Applications relative to the eviction of a tenant, to the transfer of a lease or to orders for the execution of obligations of one party to the lease
Priority	Applications relative to the cancellation of the lease for motives other than non-payment
General	Applications which do not concern the occupation of the dwelling (ex: damages, rent reduction)

Source: *Régie du logement, Rapport annuel de gestion 2009-2010*, p. 67 (author's translation)

In cases related to health and safety, for example, only tenants who are requesting an order to fix the problem would fall into the “urgent” category; if they also wanted compensation in the form of rent reduction or damages they would normally need to file another case, and this case would be considered “general”. Tenants seeking to cancel their lease would fall into the “priority” category, and all other tenants with repair or noise problems would fall into the “general” category, regardless of the seriousness of their problem.

It is not clear whether this policy is strictly followed in practice, and to what extent prioritization is a matter of discretion. As noted previously, interview participants had seen cases in which the urgency of the situation was taken into consideration and resulted in a faster hearing. However, several participants felt that requests for compensation often result in longer waiting times for hearings.

Table 4 presents the average waiting times for the different categories of cases, indicating the very long waiting times for “general” cases since 2003. It also demonstrates that after 2003, the number of civil cases filed by tenants decreased slightly and the number of eviction cases increased dramatically; yet waiting times for civil cases (general category) saw a very large increase, while waiting times for eviction cases remained stable at 1.3 or 1.4 months.

Table 4: Number of Cases and Average Waiting Times, Quebec Rental Board, 2000-2010

Year	Total Number of Civil Cases*	Number of civil cases filed by landlords	Number of civil cases filed by tenants	Average waiting time for Urgent Cases (months)	Average waiting time for Priority Cases	Average Waiting time for General Cases	Total Number of Non-payment Cases	Average waiting time for Non-Payment Cases
2009-10	23 061	14 268	8 111	1.4	8.6	17.3	46 315	1.3
2008-09	23 167	14 430	7 930	1.4	6.7	15.9	46 818	1.3
2007-08	23 107	14 526	7 722	1.5	8.9	18.6	45 697	1.3
2006-07	24 492	15 356	8 061	1.5	9.5	17.4	44 534	1.4
2005-06	24 911	15 929	8 002	1.5	8.8	17.4	44 942	1.4
2004-05	23 960	15 107	7 930	1.4	8.9	14.5	44 742	1.3
2003-04**	25 083	15 683	8 349	1.3	6.6	12.6	43 864	1.3
				All civil cases				
2002-03	30 732	21 195	8 127	100 days			35 863	40 days
2001-02	27 478	18 445	7 809	121 days			37 804	40 days
2000-01	27 116	18 003	7 855	118 days			36 709	37 days

*The number of civil cases filed by landlords and the number of civil cases filed by tenants do not add up to the total number of civil cases because this table does not include the “causes relancées”

**The category names were very urgent, urgent and ordinary before 2004-05.

Source: Compilation based on Régie du logement, *Rapports annuel de gestion (2000--2010)*

Inspired by a compilation of Project Genesis, 2007

Table 5 presents the recourse sought by tenants at the Rental Board since 2005. It demonstrates that the most common recourse sought by tenants is rent reduction, and that orders are the least popular recourse.

Table 5: Recourse Sought By Tenants in Civil Cases, Quebec Rental Board, 2000-2010

Year	Cancellation of lease (No. of cases)	Order	Rent Reduction	Punitive Damages	Other Damages/ Interest	Rent Deposit
2009-10	786	267	1 862	608	854	308
2008-09	754	244	1 982	595	828	369
2007-08	726	219	2 019	471	742	411
2006-07	707	281	2 338	495	778	468
2005-06	639	239	2 485	518	808	406
2004-05	573	295	2 352	541	828	469
2003-04	501	304	2 785	525	744	494
2002-03	602	213	2 590	544	742	502
2001-02	825	174	2 717	451	788	409
2000-01	1 223	196	2 479	419	856	311

Source: Compilation based on Régie du logement, *Rapports annuel de gestion (2000-2010)*

Finally, Table 6 provides the eligibility criteria for full (no contribution) and partial (with contribution) Legal Aid coverage. As a point of comparison, as of June 2011 a single senior citizen whose only income is the federal pension (Old Age Security and Guaranteed Income Supplement) receives \$14 302.20 per year, and therefore is not eligible for full coverage. A person working at minimum wage for forty hours per week earns \$20 072 and is not eligible even for partial assistance, unless he or she has a child.

Table 6: Legal Aid Eligibility Criteria, Quebec, 2011

Family Type	Maximum Gross Income (no contribution)	Maximum Gross Income (with contribution)
Single Person	\$13 007	\$18 535
Adult, 1 child	\$15 912	\$22 674
Adult, 2 or more children	\$16 987	\$24 206
Couple	\$18 101	\$25 795
Couple, 1 child	\$20 252	\$28 859
Couple, 2 or more children	\$21 328	\$30 393
Maximum assets: claimant or spouse not owner of residence	\$47 500	
Maximum assets : claimant or spouse owner of residence	\$90 000	
Maximum liquid assets : adult	\$2 500	
Maximum liquid assets : family	\$5 000	

Source : Gouvernement du Québec, no date.

Summary of Statistics

These statistics demonstrate that civil cases filed by tenants constitute a very small proportion of the cases heard by the Rental Board, and that each year for the past decade the tribunal has dealt with between four and six times as many eviction cases. In addition, they show that many cases involving health and safety problems fall into the “general” category, and that waiting times for hearings for these cases have been extremely long since 2003-04, while waiting times for eviction cases have remained extremely short. The very low income cut-offs for Legal Aid coverage also provide a concrete illustration of the point made by many participants regarding lack of access to legal representation.

Analysis and Discussion: Access to Justice at the Quebec Rental Board

Although there were no previous studies specifically on recourse for health and safety problems at the Rental Board, this study supports other work highlighting the weaknesses of the Rental Board as a recourse for tenants (Saillant, 2006; Thomasset, 1987), including material from housing coalitions (RCLALQ, 2005). In the United Kingdom, recourse for tenants based on the contracts they hold with their landlords was seen as utterly ineffective in practice and therefore irrelevant (Burridge & Ormandy, 2007). This study suggests that tenants here face some similar and extremely serious problems, but I would argue that this does not extend to the extent of irrelevance. Instead, several participants underlined that the Rental Board remains an essential institution whose weaknesses must be addressed.

From the perspective of access to justice, this study suggests tenants face several physical and objective barriers (MacDonald, 2005), and to a lesser extent subjective and psychosocial barriers (ibid). Challenges at both the “access” and “justice” levels that urgently need to be addressed (MacDonald, 2005; Deschamps, 2009) were also identified. This section will explore several of the themes that emerged: a) access to the tribunal; b) issues of procedure, proof and representation; and c) impact.

Access: Waiting Times for Hearings

The general problem of long waiting times for hearings clearly constitutes an important barrier for tenants and is a central factor in the problem of lack of access. There are several points to consider in relation to this issue.

The experience of several participants suggests that some tenants with serious health and safety problems are able to get a hearing very quickly at the Rental Board. Table 5 indicates that in 2009-2010 only 267 out of the 8111 (3.3%) tenants who filed civil cases in that year applied for an order, the criteria for the urgent category. The Rental Board does not provide statistics on how many cases were categorized as urgent, and, as noted above, detail from the

Rental Board on how the prioritization process works in practice is needed. However, taken together the interviews and these tables suggest that very, very few Montreal tenants in fact have their cases heard quickly. While this current rapid access is important and very helpful for those tenants who do obtain it, it is clearly not a solution to the overall problem.

This leaves the vast majority of tenants waiting a long time for a hearing. For tenants seeking to cancel their lease, the average wait is 8.6 months, and, as Table 5 indicates, 786 out of 8111 tenants (9.7%) across Quebec chose this recourse in 2009-2010. This suggests that all other tenants with health and safety problems find themselves waiting an average of 17.3 months, even if their situation is serious. The concept of categorization according to recourse sought is itself highly problematic: why should a tenant have to wait longer because he or she feels financial compensation is part of a just solution to the problem? Many health and safety cases (for example, lack of heat, vermin, insect infestations) are likely to engender costs and it seems logical to expect that all facets of the case should be considered at once.

Study participants clearly described the negative impacts of long waiting times on tenants, their housing problems and their case. While they wait, tenants need to find other ways of dealing with the problem. Some may make a complaint to the borough inspection office, and those with the financial resources may try to deal with the problem themselves. It is important to note, though, that unlike many other types of legal problems (for example, small claims, labour relations), the health and safety problems in these types of cases are experienced in the home, often on a daily basis. They also take place within the context of a particular power relationship (Krieger & Higgins, 2002), which, as participants pointed out, can be the source of major stress. It is also important to note that problems are likely worsening as time goes along, and perhaps spreading to other units. Clearly, the impact of these delays can be very serious.

Long waiting times at the Rental Board were framed as an issue of access to justice by Saillant (2006) and in the tenant movement literature (for example, RCLALQ, 2005). Given that most Montreal tenants have a twelve-month lease,

an average wait of over 17 months clearly fails to meet the criteria of “reasonable speed” (MacDonald, 2005, p.24). This constitutes a basic question of access to justice in the sense of access to the tribunal. Yet it is also an issue of access to justice more broadly, in that tenants’ rights to a healthy living environment are arguably rendered meaningless if they are unable to enforce them during the time they actually live in the dwelling. This supports the notion that, as participants suggested, lack of access to a hearing effectively constitutes a denial of justice.

Not all waits are equal: eviction cases prioritized over repair cases.

Unequal access to the tribunal exacerbates the problem of waiting times. As Table 4 indicates, the history of waiting times in relation to the numbers of civil and non-payment cases indicates that the tribunal chose to prioritize the landlord’s right to receive the rent over the tenant’s right to full recourse regarding repairs and other problems. This is particularly striking in view of the major difference in proportion of these cases: in 2009-2010, for example, the tribunal received 46 315 non-payment cases and 23 061 civil cases, only 8 111 of which were filed by tenants. Yet non-payment cases were heard on average within 1.3 months, while civil cases in the general category waited on average 17.3 months. In terms of access to a court, this situation contravenes the idea of “fair treatment” (MacDonald, 2005, p. 24). On a broader level it may also have a major impact on the way tenants view the tribunal.

The Rental Board is clearly aware of the problem of long waiting times, and has identified their reduction as an orientation in its Strategic Plan 2009-2013 (Régie du logement, 2010a). In its most recent annual report, the Board attributed the problem to an insufficient number of commissioners, due to early retirement and sick leaves (Régie du logement, 2010b). Yet the targets for 2013 identified in its strategic plan – 5 weeks for non-payment and urgent cases, 26 weeks for priority cases and 64 weeks for general cases (Régie du logement, 2010a) – suggest that either it is extremely difficult to achieve or it is not in fact a priority.

Although the waiting times are clearly a major disincentive to tenants seeking to resolve health and safety issues, it is important to note, that, as Table 3 demonstrates, the numbers of tenants filing at the Rental Board have not changed

substantially since the waiting times for hearings increased. This suggests that it is not enough to solve the literal problem of access and that there are additional factors that need to be addressed for tenants to have meaningful access to justice at the tribunal.

Possible solutions. While very serious, the problem of waiting times at the tribunal seems relatively straightforward: there need to be more commissioners to hear the cases quickly. Transferring eviction cases to clerks instead of having them heard by commissioners has been promoted as a solution, but raises serious concerns about justice in situations in which peoples' homes are at stake, and has been roundly rejected by housing organizations (RCLALQ, 2010). Given that as recently as 2003 the Rental Board was able to hear all of its cases within three months, and that the Rental Board itself acknowledges that the problem is lack of commissioners, an increase in the number of commissioners seems the most feasible and appropriate solution. Landlords, who file far more civil cases and are very much affected by these waiting times as well, would also likely support this solution.

Solving the problem of the waiting times would also help to address problems related to proof, in that at least tenants would not be struggling to provide compelling proof of the problem a year or two after the fact (for example, locating witnesses). It could also have an impact on tenants' perceptions of the decisions awarded and their overall experience.

Issues of Procedure, Proof and Representation

This study's findings echo what is found in the limited literature on tenant justice and on the Rental Board itself: that it is very hard for tenants to navigate court procedures and to prove their case, and that representation by a lawyer makes a major difference in the outcome (Baldacci, 2006; Seron et al, 2001; Sherer, 2006).

From its inception, the Rental Board was envisaged as a tribunal with the three objectives of accessibility, simplicity and justice (Gouvernement du Québec, 1977; Saillant, 2006). At the level of procedure, in particular, it was expected to "assurer la simplicité des procédures, dans le (...) but de garantir l'accessibilité.

Cette simplicité permet également aux parties de comprendre à tout moment le déroulement de l'audition, et d'intervenir dans le débat" (Gouvernement du Québec, 1977, p. 44). Part of the Rental Board's mission is to adjudicate cases "within the framework of simple rules of procedure that respect natural justice" (Régie du logement, no date). The *Rules of procedure of the Régie du logement* (R.R.Q., 1981, c. [R08.1,r.5] set out the procedure "in such a way as to make the process simpler, easier and faster, while still respecting the basic principles of justice and equality for both parties" (article 1). Yet this study suggests that this simplicity is elusive in practice, and that the tribunal is far from "understandable to users" (MacDonald, 2006, p. 24).

Procedure and proof. Participants in this study suggested that gathering proof and presenting it according to court protocol are both major obstacles for tenants. These findings are consistent with the limited literature on this question; in New York City (Baldacci, 2006) and in Baltimore (1992), for example, people not represented by a lawyer had difficulty presenting their proof and pleading their case. The lack of preparation of tenants at the Quebec Rental Board was observed over twenty years ago (Thomasset, 1987).

It is difficult, though, to know precisely what the problems are and why it is hard for tenants to make their case at the tribunal. One factor may be preparation for the hearing. The Rental Board produces a flier with basic information on how to prepare for the hearing (Régie du logement, no date b), but it is not clear how many tenants use this and how effective they find it. Many community organizations also help tenants prepare for their case, although they are not allowed to help in the court setting; it would be useful to explore how helpful this assistance is in practice and to propose improvements. In both New York City and Baltimore, however, even tenants who received extensive assistance preparing their cases had significant difficulty appearing in Court and pleading their cases (Baldacci, 2006; Bezdek, 1992).

A second factor may be the way in which the hearing is conducted, including the role of the commissioner. Although the American legal systems and cultural contexts are very different and comparisons cannot be made, it is still

interesting to consider these other examples. Baldacci (2006), for example, argued that “the root cause of the problem” for tenants not represented by a lawyer in New York City Housing Court was “being thrust into an adversarial system that presumes representation by a zealous advocate skilled in the technicalities of evidentiary law and in the ‘impenetrable thicket’ of New York’s housing law” (p. 676). He saw the role of the judge as a critical issue, advocating a stronger role of assistance as a means of dealing with the procedural challenges (Baldacci, 2006). Bezdek (1992) also highlighted the fact that witnesses were rarely instructed on the rules of the proceedings.

In Quebec, some degree of assistance from the commissioner is already expected: the *Act Respecting the Régie du logement R-8.1* states that “the commissioner shall give equitable and impartial assistance to each party so as to render effective the substantive law and to ensure that it is carried out” and that “the commissioner shall summarily instruct the parties on the rules of evidence and each party shall state his pretensions and introduce his witnesses” (article 63). Thomasset (1987) found that in the early 1980s most commissioners did not explain these rules. This study was not able to shed much light on the extent to which and the ways in which commissioners currently enact these provisions in practice; it would be important to look further at these issues.

A third factor may be the burden of proof itself. At a concrete level, this study suggests that the inability to pay for expert testimony is a barrier for some tenants, especially in complex cases involving mould. Participants’ experiences also suggested that, as Lamy (2004a) observed in cases involving rent reduction, there are many criteria that must be met, and this is very difficult in practice.

At a very basic level, the need to deal with language barriers was identified as an important factor for some tenants. This exacerbates the above challenges and makes it even more difficult for tenants to exercise their rights. While clearly the tribunal cannot be expected to function in languages other than French and English, the reality of the diversity of Montreal’s tenant population and the vulnerability of migrant populations to poor housing conditions (OMISS, 2006) suggest that this issue is important. According to the 2006 census, people of

immigrant origin supported 244 470 Montreal households; 62.9% of immigrants living in the City of Montreal were tenants, and one in five immigrant households had arrived in the previous five years (Ville de Montréal, 2009). In 2009 35 780 and in 2010 38 707 new immigrants chose Montreal as their destination (ICQ, 2009; 2010); the majority of newcomers find a home on the rental market for at least their first few years (Régie du logement, 2010b). While not all of these households face housing problems or language barriers, it is clear that housing organizations see many migrant tenants who do (for example, CAPE, 2006).

Representation. The Rental Board would not release statistics on the proportion of tenants or landlords represented by a lawyer. However, as noted above participants in this study felt that the large majority of tenants who use the tribunal are not represented by a lawyer. Given the challenges regarding procedure and proof outlined above, the question of access to representation is clearly a critical one, as it is in New York (Baldacci, 2006; Seron et al, 2001; Sherer, 2006). As Table 5 illustrates, Legal Aid eligibility scales currently include only people on very low incomes and leave out particularly vulnerable populations, such as senior citizens with no income beyond government pensions. The problem of inequality in how tenants and landlords may be represented (Saillant, 2006; Thomasset, 1987) was also identified here; this can be seen as another violation of the principle of “fair treatment” (MacDonald, 2005, p. 24).

Possible solutions. At one level, the very concrete barriers such as language could perhaps be addressed, as suggested by participants, through access to interpretation services. However, challenges related to proof and procedure are arguably more complex to solve, and they raise difficult questions. Clearly tenants (and landlords) need to provide convincing proof of a situation in order to obtain the recourse they are seeking, and commissioners need to evaluate the proof at hand in order to make a decision. But how can the requirements for evidence be reconciled with the goal of simplified and accessible justice? How can tenants be assisted in a) collecting and b) presenting their proof?

In terms of preparation, it would be helpful to evaluate use of the materials currently distributed by the Rental Board and to improve these tools if necessary.

The publication of preparatory materials in several languages could also be useful. Evaluating and improving the Rental Board's information and assistance services would also be very relevant; publicly releasing the 2008 report on quality of services and client satisfaction would be a good first step. Evaluating the effectiveness of the support community organizations provide tenants would also be helpful, and, given the meagre resources on which the vast majority of housing organizations function, significantly strengthening these organizations' capacity to help tenants effectively prepare for their hearings would also be helpful.

The issue of procedure begs the question of whether it is better to try to simplify proceedings at the Rental Board, or to expand representation so that more tenants can be represented by a lawyer or someone else, or both. Simplification of the proceedings would have the advantage of making the tribunal more accessible to people, in keeping with the original vision. It is more consistent with a broad approach to access to justice. On a practical level, it would be less resource-intensive, and, as one participant in the study noted, is perhaps more realistic due to the shortage of lawyers representing tenants in the city. However, in New York City changes to court processes short of ensuring the right to representation, including "more efficient court procedures", were seen as insufficient in helping low-income tenants at risk of eviction (Sherer, 2006, p. 711). There is concern that changes such as the relaxing of rules regarding evidence would be of greater benefit to the parties who are represented by a lawyer (Yaroshefsky & Flood, 2006). It is also difficult to see what, in practice, simplification could entail.

The example of Small Claims Court, where some pre-trial written procedures are significantly simplified and the judge plays an inquisitorial role (Lacoursière, 2008), might be a useful parallel to look at. Documents from a conference on the New York Housing Court proposed suggestions, some of which, despite the very different contexts, could be also explored here. These included a more active role for the judge, relaxing the rules of evidence, and giving the judge "an affirmative duty to develop the factual record" (Baldacci, 2006, p.688); despite concerns about the impartiality of the judge, a more active role was seen as both possible and necessary in ensuring justice (ibid). Conference

participants also recommended studying current procedures and practices; creating protocols, guidelines and training programs for judges; providing training videos and written scripts explaining procedures to help tenants prepare; repeating these scripts at the beginning of each trial; and allowing people to complete testimony without objections so as to minimize interruption and facilitate narrative-style speaking in the court (objections would be dealt with at the end of the testimony) (Yaroshefsky & Flood, 2006).

With respect to representation, increased access to Legal Aid is clearly an important part of the solution. However, there must be enough lawyers to meet the demand. Legal Aid levels must also be high enough to cover all aspects of the case (for example, private inspections for mould cases). As participants suggested, representation by other parties, including community organizations, is one possible way of improving this situation. However, many of these organizations have a philosophy of helping people to defend their own rights, it is not clear they would want to take on this role; they would have to both want this mandate and be fully compensated for it.

The trend toward alternative approaches such as mediation or conciliation proposed in the access to justice literature provides another option, which is already in place at the tribunal. In 2009-2010, 432 cases were concluded through conciliation (not necessarily health and safety cases) (Régie du logement, 2010). Although this may be viewed as a response to the discomfort of some tenants with what they see as adversarial or conflictual hearings, concerns about power imbalances and poorer outcomes for weaker parties in negotiation and mediation processes (Grey, Coutlée & Sylvestre, 2004) are extremely relevant here. In New York City's Housing Court, for example, the majority of cases are settled without going to court (Baldacci, 2006); there is concern about the extent to which people "knowingly and willingly give up their right to go to trial" (Yaroshefsky & Flood, 2006, p. 594), and "individuals with diminished capacity, without understanding the legal consequences of their consent, have easily been pressured into signing agreements that give judgments and warrants to landlords" (Zelhof, Goldberg & Shamsi, 2006, p. 734). In addition, in Montreal the promotion of conciliation in a

context where tenants must wait one and a half years for a hearing can be seen as making it difficult for people to see two real options. The fact that even in this context it has not been very popular suggests that it does not respond to tenants' needs.

More research (in particular a better understanding of how tenants are currently experiencing Rental Board hearings and observation of hearings) and analysis is required to face these challenging questions. However, as many participants argued, more than one solution is required to solve these problems, and it is possible to begin addressing these issues on several levels simultaneously, by expanding access to representation while also looking at ways to simplify procedures.

Impact: Do Tenants With Health and Safety Problems Obtain Justice At The Rental Board?

The concept of justice may mean different things to different people (MacDonald, 2005; Deschamps, 2009). While it is not possible to draw definitive conclusions from the findings here, several interesting ideas emerge.

Problem solved. If justice is defined as whether or not the problem is solved, despite the many criticisms of the tribunal, this study suggests that some tenants achieve results, especially if they are represented. A result in this sense would be an order to fix the problem, and this result can be very effective.

However, this result has its limitations, as participants signalled problems in the execution of decisions or in the quality of the work done in response to an order in some cases. The enforcement of orders was also identified as a problem at the New York City Housing Court (Yaroshefsky & Flood, 2006). Clearly, these kinds of problems hinder the obtention of “just results” (MacDonald, 2005, p. 24).

Financial recognition. When defined in terms of compensation and financial recognition of the problems tenants have faced, “justice” also seems elusive in many cases. Study participants suggested that it is possible to win compensation at the Rental Board, but in general amounts awarded are not very high; participants also indicated that amounts granted do not seem to reflect the physical and mental health impacts and lost enjoyment of the dwelling.

This reflects to some extent the study of jurisprudence in 2002-2003 rent reduction cases, where there was a wide range of awards, but many fairly low amounts (compilation based on Lamy, 2004a). In cases involving cockroaches, for example, 32 of the 46 cases in which a rent reduction based on a percentage of the rent was awarded received 10% or less; the highest amount awarded was \$500 in damages and a \$50 per month reduction (compilation based on Lamy, 2004a). The highest amount awarded for heating problems was \$1000 in moral damages and an \$85 per month reduction (ibid). In cases involving rats, one tenant won \$3 375 in rent difference and \$1 500 in damages, yet in 9 of the 19 cases for which dollar amounts can be calculated, tenants won \$600 or less. In the 44 cases compiled by Lamy (2004a) involving mould, rats, cockroaches, or water infiltration for which dollar amounts can be calculated (rent reduction and/ or all kinds of damages), 20 won \$500 or less, 15 won between \$501 and \$1000, 1 was awarded between \$1000 and \$1500, 3 won between \$1500 and \$2000, one won between \$2000 and \$3000, and 4 were awarded over \$3000 (author's compilation based on Lamy 2004a).

Of course, a tenant's satisfaction at the amount received would reflect their own experience and expectations. However, given the amount of time required to prepare and present a case, these amounts seem low. It is also important to consider that tenants who are represented by a lawyer but not covered by Legal Aid would need to deduct an amount for lawyers' fees. I also believe that it is worth thinking about these amounts in comparison to eviction cases. For example, a tenant can be evicted for non-payment of any portion of the rent, even a very small amount; this suggests a kind of "all-or-nothing" approach to the landlord's right to receive the rent. Is it not possible to envision the same approach to a tenant's right to live in a healthy dwelling? If a tenant is living with a serious problem, perhaps they should not have to pay rent at all for the time they have endured this problem, instead of receiving a small rent reduction. While some decisions appear to go in this direction, they do not seem to be common.

Empowerment. Finally, it is also relevant to think about whether tenants achieve justice from the point of view of satisfaction with their experience, or

perhaps a sense of empowerment at having defended their rights. Bezdek (1992) suggested that, for Baltimore tenants at the time of her study, the court experience was profoundly disempowering. Although there have not been recent studies on the experience of Quebec tenants, my own experience working with tenants and the family I interviewed for this project suggest that this is often the case here, particularly when tenants are not prepared for the procedure and rules of evidence they encounter at the hearing. To fully answer this question it would be important to look at how tenants themselves see their experiences at the Rental Board.

All of these factors are particularly interesting when viewed in conjunction with the statistics. For example, although obtaining an order appears to be the fastest recourse tenants can have (for the few tenants whose cases are considered urgent) and is a recourse identified as a solution by some participants, it is chosen the least often by tenants. As Table 4 indicates, applications for an order are consistently the least popular recourse requested by tenants; in 2009-2010 only 3.3% of tenants who filed civil cases sought an order, and under 305 tenants have chosen this recourse each year for the past ten years. Conversely, justice in the form of financial compensation appears to be elusive in practice, but it is much more often sought by tenants. Rent reduction, the most popular recourse, has been seven to fifteen times more popular than orders since 2000. This indicates a possible gap between perceptions and reality: tenants may see the tribunal more as a place to obtain compensation than as a means of solving their problem, yet this takes an extremely long time and they are not likely to get substantial financial recognition.

Possible solutions and improvement. Achieving justice, however it is defined, is of course closely connected to other issues already discussed: for example, being able to present convincing proof has a major impact on the outcome of the case. However, other dimensions are also relevant.

Execution and enforcement of decisions. It seems obvious that justice is not served when tenants are unable to obtain the financial compensation awarded or see orders respected. These procedures should be reviewed and simplified.

The suggestion of several participants to explore ways of ensuring compliance to orders or to have a means of inspecting the quality of work done is also very interesting, and exemplifies a broader way of thinking about the issue of enforcement. At the conference on the New York City Housing Court, for example, participants linked the enforcement of orders to the preservation of the city's housing stock (Yaroshefsky & Flood, 2006). Given that this is part of the Rental Board's mandate, it is very relevant to think about concrete ways in which the tribunal could ensure that problems are actually solved. For example, landlords could be required to submit proof of the problem's resolution, and a system of records could be kept to facilitate follow-up in relation to orders. In Montreal, collaboration with city inspectors or public health officials could be explored. Given that, as the Rental Board's response indicated, the Superior Court can "allow" the city to do repairs at the expense of the landlord, a stronger approach to explore would be for the tribunal to order this type of intervention in particularly serious cases.

Low monetary awards. Participants suggested that the low amounts accorded for rent reduction and damages may be reflective of the large economic gap between commissioners and tenants, in that there is not an understanding of the realities that tenants face, particularly those living on low incomes. One participant stated that attitudes of commissioners toward tenants can be problematic and that this can influence the awards. Although these are difficult issues to address, there are interesting examples of how broader thinking about justice can be integrated into existing systems (Deschamps, 2009). For instance, the Nova Scotia Court initiated a "Community Liaison Committee", a

committee, consisting of judges and court administrators, which is concerned about fairness in the courts. The purpose of the CLC is to liaise with community groups and organizations with the goal of increasing judicial awareness and understanding of the communities in which they serve. The committee meets with community groups who as part of their mandate provide assistance to the people entitled to the special protection

of s. 15 of the *Canadian Charter of Rights and Freedoms*.⁷ (Nova Scotia Courts, no date)

The committee members discuss a long list of questions with the community members they visit. Topics include perceptions of the court by community members, experiences of fairness, the extent to which people feel they have been treated with respect, the extent to which people in the court understand the particular needs of community members, what people feel judges should know about their community or population, and ways in which the court system can be improved (Nova Scotia Courts, no date). The information gathered at these meetings is then used in the training of judges (Deschamps, 2009).

Who is Using the Tribunal?

Finally, as noted above, there are few statistics on tenants experiencing health and safety problems in Montreal, and there are no public statistics on the demographics of people who use the Rental Board (landlords or tenants). However, the literature on housing and health suggests that marginalized populations are more likely to experience housing problems (for example, Krieger and Higgins, 2002; Rauh et al, 2008) and the literature on access to justice suggests that marginalized populations are more likely to experience problems accessing justice (MacDonald, 2005). While participants in this study did not provide statistics, they worked with tenants from many kinds of backgrounds; people living in poverty, recent migrants, senior citizens, single parents and people with mental health problems were clearly highly represented. As only one example, approximately 80% of the lawyer's clientele were on Legal Aid.

If we recognize the right to adequate housing, both through international legislation and through the basic provisions of the *Civil Code*, and if we, as a society, created the Rental Board as a means of state intervention to ensure that right (Gouvernement du Québec, 1977), then it makes sense for the Rental Board to think about its mandate and how it might best respond to the people who most

⁷ "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

need its services, in a perspective of ensuring justice. Ideally, it would also display openness to thinking about justice in a larger framework, as the Nova Scotia Initiative has done.

Summary and Conclusions

Globally, the findings of this study suggest that there is a major gap between the rights tenants enjoy under the *Civil Code* with respect to their health and safety and their ability to enforce these rights in practice at the Rental Board. This project suggests that, although the Rental Board has certain strengths and it is possible for tenants to achieve a positive outcome, especially when represented, many tenants face significant obstacles and challenges when trying to exercise their rights at this level. These include long waiting times for hearings, complex procedures, difficulty presenting adequate proof, inaccessibility of representation, low monetary awards and problems regarding the execution of decisions. Further, the findings suggest that the Rental Board is significantly under-used by tenants, in comparison to landlords. Despite these weaknesses, the tribunal is seen as an important institution whose shortcomings can and must be fixed.

Seen through the lens of MacDonald's (2005) characteristics of an accessible dispute mechanism system, this study suggests the Rental Board has serious weaknesses in relation to the criteria of "just results", "fair treatment", "reasonable speed", "understandable to users", "responsive to needs", "certain" and "effective, adequately resourced and well-organized" (p. 24). As Saillant (2006) noted, there are serious questions about the extent to which the tribunal meets its original objectives of accessibility, simplicity and justice; this study suggests that in cases involving health and safety, tenants may face significant challenges at each of these levels, including important questions about what kind of justice tenants are actually able to achieve. This suggests that much needs to be done to find solutions to these problems and to ensure that the Rental Board functions as a meaningful recourse for tenants trying to enforce their right to a healthy home.

6. The Montreal City Inspection Service (Borough-Level)

This section will focus on recourse at the level of the borough city inspection service. I will begin with a presentation of the findings from the interviews with housing workers and city inspectors, and then present statistical data on the use of the borough inspection service. I will also discuss and analyze some of the central themes that emerged in relation to this service.

Practitioners' Views on the City Inspection Service as Recourse

Two city inspectors and three housing workers contributed full interviews on this level of recourse. Two other participants stated that they felt limited in their ability to give responses about the service. Participants were asked to discuss the strengths and weaknesses of the city inspection service as a recourse for tenants experiencing health and safety problems, and to propose suggestions for improvements in this area.

It is important to note that several participants' responses reflected their experience with only one borough, while others had experience with a few or many boroughs. Boroughs have not been identified because of the confidential nature of the interviews. Participant responses are described here, according to the broad themes of a) legislation; b) variation between boroughs; c) accessibility; d) intervention and follow-up; e) impact; f) philosophical approaches; and g) the link between the inspection service and the Rental Board. A table summarizing all of the recommendations made by participants will also be presented. As in the previous section, when a comment was made by all or only one participant I indicated this. When a comment reflected the views of two or more, I have simply indicated "participants".

Legislation

Housing workers and one inspector identified the municipal regulation itself as an important strength, in that the regulation covers the major health and

safety issues, and sets out very large fines that can be applied in cases of non-compliance.

One housing worker identified the fact that under the *Civil Code* fines are attached to landlords and not buildings as a problem, because when the building is sold the complaint process must begin again. In addition to causing long waits for tenants, this was seen as allowing landlords to “flip” buildings as a means of avoiding repairs.

One inspector identified the fact that landlords can sell a building without correcting violations against it as a weakness, and felt that the law should oblige landlords who want to sell their buildings to correct violations first.

Variation Between Boroughs

Housing workers reported variation in the quality of the inspection services between boroughs, with some boroughs seen as having very good service, and others having much lower quality service. Housing workers also felt that different procedures were followed in different boroughs, and saw this as problematic. One participant reported that even within one borough there seemed to be different processes, and that they get a “different version of how things work depending on who you talk to”.

All participants described the same basic process and procedure in their respective boroughs. However, some boroughs seemed to use the “*télétraitement*” letter (a letter sent to the landlord before initiating an inspection, to advise them that a tenant has made a complaint and to ask them to correct the situation) more systematically than the other. Inspectors felt it was difficult to generalize about the process beyond the initial stages, as it depends on a number of factors, including the urgency of the situation and the response of the landlord, both of which are evaluated by the inspector.

Getting an Inspection: Accessibility of the Service

Cost. Housing advocates and both inspectors identified the fact that the municipal inspection service is free as an important strength.

Process of making a complaint. Housing workers and inspectors saw the process of making a complaint as relatively informal and accessible to tenants. Two housing workers noted, for example, that although tenants are required to demonstrate that they have sent the landlord a formal letter about the problem, in their boroughs tenants were not required to provide proof that the landlord had received the letter, as is the case at the Rental Board. The process was seen by both inspectors and housing workers as less formal in some urgent situations.

However, housing workers identified problems in the initial stages in some cases. One advocate felt that the borough office tenants go to make a complaint is sometimes understaffed, resulting in insufficient time for the tenant to explain the problem and for the staff person to fully explain procedures. Another felt that tenants and advocates often have to follow up to ensure that the complaint is received when the application is faxed, and also attributed this to a lack of resources:

When we fax a complaint to the city inspectors we often have to follow up with a phone call because nothing happens. (...) If for instance you send a complaint and you don't send a copy of the *mise en demeure*, they'll just ignore it. They won't call you to tell you, or write you to tell you you need to send a *mise en demeure*. So if people don't come through our service but just go directly and haven't sent a *mise en demeure* their complaint will just never be followed through on, that's for sure. And then sometimes we fax with a copy of the *mise en demeure*. I just think one of the issues is that they are seriously under-resourced.

A third tells tenants to go to the office to make the complaint in person so that there are fewer problems.

“Coupon-réponse”. Two housing workers reported that a specific administrative procedure constitutes a barrier for tenants trying to obtain assistance. As noted above, when tenants file a complaint often a letter is sent to the landlord to inform them of the problem. Tenants are then sent a letter asking if the problem has been resolved, and they are required to detach and send in a coupon at the bottom advising the borough that the problem persists. Housing

workers felt that the language of the document is not clear and, particularly in contexts where many tenants do not speak French well, large numbers of tenants do not understand that they need to send it back or their file will be closed. One worker noted that many files are closed but “from our experience you know many many many of these cases are not at all resolved, they're just people don't understand what they were supposed to do”. The other noted that, “unless they take it to a community group they haven't got a clue, so it is a problem. There's a lot of education that's got to be done and (...) I find that's a weak point in the system”.

Waiting time for an inspection. All participants saw a prioritization process in which urgent cases were handled more quickly. Housing advocates and one inspector identified the speed of initiating an inspection as a strength. Housing workers reported that it was possible to get some kind of intervention at the borough level much more quickly than at the Rental Board, and this was seen as very helpful. One housing worker found the service in his borough was very fast, estimating an intervention time of fifteen days even for non-urgent cases. One inspector stated that in his borough urgent cases were often treated the same day and that all tenants received some kind of contact (inspection or telephone call) within a week.

However, another housing worker felt that there was a large range: in some cases the inspection happens quickly, and in others it takes an extremely long time. The timing was seen as unpredictable, and this participant's organization routinely told tenants to call back a week or two after each step if the inspection had not happened.

One housing worker also identified the practice of not making appointments for the first inspection as very problematic. Although the inspector leaves a card on the door asking for the tenant to call the service, this participant felt many people do not see it or do not understand it, resulting in delays in obtaining the inspection.

Inspection of the building and other units. Participants viewed the fact that inspectors also looked at all the common areas of the building during the

inspection as helpful. One housing worker felt inspectors should also speak to other tenants about their concerns once they are there (currently inspectors only visit other apartments if they are related to the complaint, as in the case of a water infiltration or an infestation).

Intervention and Follow-Up

Once the inspection has taken place, landlords are notified of any infractions and given a period of time to correct the problem. Both inspectors stated that most of the time landlords are given thirty days for repair cases, or ten days for more urgent situations.

Follow-up/ adequate staffing. One inspector felt that when a full team was in place, his borough was able to consistently follow up on all the files, including calling the landlord to check on progress and re-inspecting when necessary. This inspector identified repeatedly calling the landlord (“*achaller*”) as a frequently used and effective intervention tool.

However, issues related to follow-up were identified as a weakness by the other inspector and by housing advocates. All perceived this problem to be caused by a lack of resources and the fact that inspectors are dealing with a large number of files at once.

Housing advocates felt that follow-up after there has been an inspection is not consistent, often takes a very long time and in some cases does not seem to happen at all. One reported that in some cases follow-up is not done unless the tenant calls back, and that tenants may not realize nothing is happening for a month or two, resulting in further delays.

The second inspector identified the volume of cases as a major challenge, noting that in his department each inspector is dealing with 300-400 ongoing files at a time. He felt that this makes it difficult to follow up consistently on all cases, and results in inspectors constantly prioritizing the most urgent cases. In some non-urgent cases the follow-up inspection may even take place a year later; in others not at all. If the tenant calls back to say the work has not been done the inspector may then return. With respect to resources, this inspector stated that “*c’est sur qu’on en manque toujours, mais il faut faire une équilibre*”. He also

noted that resource issues are more complex than simply additional staff, in that more office space is also required.

Both inspectors also spoke of issues related to staff turnover; both boroughs were in the process of filling a vacant position at the time of the interview. In one borough the team had experienced periods of stability and then periods of high turnover; while budgets were available to hire new staff, time was required to hire, integrate and train them. In the other borough turnover was a consistent problem; this inspector felt that often people saw inspection positions as a “*porte d’entrée à la Ville*” and therefore only stayed a short time before moving on to other jobs.

In addition, one inspector explained that in his borough the inspectors specialized in housing, which he saw as a strength. In the other borough inspectors did construction and other inspections as well, and perceived this as a weakness.

Waiting times at municipal court. Long waiting times at municipal court were identified as a major problem by all participants who gave full interviews on this recourse. One housing worker said that cases in which the landlord does not comply and is taken to court can take several years (from the time the tenant made the complaint) to resolve. Inspectors estimated the current waiting time for a hearing at municipal court at between six and ten months, and said that waits of one year are common. One inspector explained that for the first hearing date, many cases are convened for the same time; those who plead not guilty will have a hearing, which will be scheduled for another date. Postponements were seen as common and, as the inspector noted, “*quand il y a une remise, c’est rarement pour deux semaines plus tard*”.

These waiting times were seen as problematic because they delay the resolution of the problem for the tenant, and because they remove the element of momentum in dealing with a recalcitrant landlord. One inspector felt that they were able to compensate somewhat for this problem by adding violations to an existing case, sometimes many times, before it goes to hearing.

Long waiting times were also seen as an obstacle to applying the higher fines for second and subsequent violations of health and safety provisions outlined in the regulation, because the landlord must be convicted a first time. As one inspector noted, *“Si on est capable d’avoir le premier jugement rapidement, on peut aller rapidement en récidive, donc les amendes plus élevées tout de suite”*.

Burden of proof at municipal court. One inspector raised the burden of proof at the municipal court as a weakness in the system, in that it is difficult for inspectors to acquire the level of proof required to obtain a conviction. The burden of proof was also seen as an important element throughout the process, in that inspectors must always think about their ability to prove violations in court, even in extremely serious cases. One inspector also viewed some judges as tending to be more sympathetic to small landlords, which made the task even more difficult.

Lack of funding to make the repair and bill the landlord. Housing workers saw the provision in the by-law that gives the city the power to make repairs and bill the landlord as a very useful tool, but one that is infrequently applied. One inspector identified a lack of money allocated for this purpose in his borough as an important weakness, resulting in this recourse being very rarely applied. The inspector felt this would be very effective in dealing with serious problems like heating, and with landlords who understand the system well:

Les propriétaires qui ont plusieurs blocs, ils savent comment ça marche le système. Des fois tu peux les amener au boût, mais ils savent jusqu’où est la limite. Ils savent que bon, je ferai rien, je ferai rien, je sais qu’au bout de 30 jours ils feront rien. Au 31^{ième} journée, ils vont faire une nouvelle lettre, avoir un suivi, je vais les appeler de temps en temps, on fait une petite quelque chose - ils peuvent étirer ça longtemps. Puis hop on fait un constat d’infraction, mais (...) ils disent bon je vais contester mon constat, je sais que ça va passer dans un an.

Although there was a budget for this kind of intervention in the other inspector’s borough, it was also not used often. Larger interventions (for example,

replacement of heating systems) were seen as rare and tended to deplete the fund, but very exceptionally money was obtained from the Central City.

The use of this recourse was also seen by both inspectors as logistically difficult, in that private companies were needed to do the work, and a lot of coordinating work with tenants (for example, in cases such as extermination of cockroaches) was required.

Infrequent application of the ‘*Constat billet*’. One housing worker and both inspectors also discussed the use of the ‘*constat billet*’, in which inspectors can give a landlord a ‘ticket’ immediately for an infraction observed. The worker saw this as a very useful tool, but again infrequently applied. Both inspectors did not see this tool as useful and rarely used it, for several reasons: they are only able to give the lowest fine when using this method; concern about having sufficient proof should the landlord contest the infraction (in regular cases the inspectors send their proof to the prosecutor, who reviews it); risk of error; the need to deliver it in person or by bailiff to the landlord or a representative (the same requirement as the other method, so it makes more sense to go through the prosecutor); and, in the case of one inspector, concern about confrontation with the landlord.

Communication issues. Both housing workers and inspectors raised the issue of communication as a challenge. This included communication with tenants who speak little English or French, as well as tenants with mental health problems.

Housing advocates also raised the issue of difficulty obtaining information about progress in the case. One felt that tenants should automatically receive information about the violations sent to the landlord and stated that, although tenants can now get this information by making an Access to Information request, this process usually takes between twenty and thirty days

Impact: What Results Do Tenants See?

All participating advocates and both inspectors reported that the inspection service can have a positive impact in cases involving health and safety problems. One housing worker noted that in his borough “*ça donne des résultats*”; another

felt that the intervention often resulted in a notice obliging the landlord to do repairs. The fact that inspectors looked at common spaces and the building itself in addition to the tenant's apartment was seen as very helpful.

Inspectors also saw the role of the service as positive, stating that

Nous on peut intervenir puis serrer la vis au propriétaire. (...) Je vois qu'on est utile, de ce côté là. On a un pouvoir au niveau du propriétaire, de prendre l'action pour forcer les propriétaires à faire les travaux. On peut avoir un impact auprès du propriétaire et même je pense peut-être aussi avec les locataires.

The other inspector noted that they are specialists and know the regulation very well, both of which contribute to impact. Both inspectors identified the fact that they are able to help both tenants and landlords as important. In addition, one inspector raised the number of inspections undertaken each year as a strength, in that the borough is able to respond to a large number of complaints.

However, as noted above, several housing workers felt that quality of the service differed significantly according to borough and that in some boroughs the service was weak. Variation in quality within the boroughs was also identified by one participant. As already mentioned, time was also seen as an important factor related to the quality of the service, in that in some cases the process takes a very long time.

Credibility of the inspector's report at the Rental Board. Housing advocates identified the fact that the inspector's testimony constitutes important proof at the Rental Board as very helpful to tenants. As one participant noted, "Certainly a lot of credence is given to inspectors' reports. They carry a lot of weight at the Rental Board, so they are very good proof of a situation". Inspectors' reports were seen as particularly helpful in cases involving vermin.

Inspectors' attitudes/ Contents of the report. However, the credibility given these reports was actually seen as a weakness in some cases. Housing workers raised the issue of inspectors' attitudes, stating that some inspectors blamed tenants for problems that were not in fact their fault. One advocate stated that

I've had one inspector tell me that mould is always the tenant's fault. It's something that is caused by tenants. This was just as flat and clearly said, it wasn't nuanced in any way. And when I said well, sometimes there may be structural problems, don't you ever find that may cause some? There was a kind of silence which might have been interpreted as a sort of acquiescence.

The lawyer found that city inspection reports often work against tenants, frequently suggesting that their "*habitudes de vie*" are the source of the problem or indicating tenants have refused access to the landlord in order to make repairs. This participant had intervened several times in situations to clearly indicate to both the landlord and the inspector that the tenant wanted to provide access, and felt that "*l'inspecteur se satisfait souvent souvent de cette excuse là pour ne pas intervenir*". These situations were seen as highly problematic given the credibility accorded this testimony at Rental Board hearings.

Both inspectors felt that tenants were sometimes the source of the problem, but not necessarily at fault. For example, both inspectors noted that, in an effort to save money and to follow the advice of Hydro-Québec, many tenants completely seal their windows during the winter months and reduce the heat, both of which can create or contribute to humidity problems. Lack of information for new immigrants, particularly with respect to heating issues, was seen as part of this situation. Population density (large families living in small apartments) was also seen as an important factor in mould and humidity problems. Both inspectors also evoked cases of insalubrity involving people with mental health problems, for which there is an intervention protocol involving the CLSC.

Inspectors also felt that cases involving a conflict between the tenant and the landlord happened "*assez souvent*", and both mentioned cases in which tenants had refused to give access to the landlord. These were seen as complex and difficult to deal with.

Challenges related to mould cases. Mould cases were again identified as presenting challenges: as noted above, housing advocates reported that inspectors are not able to determine whether mould is toxic, and may not be able to

determine the source of the mould (for example, if it is a structural cause). This was seen as problematic both for tenants' health and for their cases at the Rental Board. One worker felt there should be increased collaboration with the public health department in all cases involving mould and not just extreme ones.

Both inspectors stated that while the regulation was changed to prohibit nonvisible mould (for example, if a landlord has painted over it), in practice this is difficult to document in terms of a violation of the regulation without specialized equipment, and is very difficult to prove in court. In one borough the inspector worked with the public health department in complex mould cases, and stated that the city was in the process of working on a protocol in this area. In the other borough the public health department referred cases, and the inspection service had developed a protocol of requiring the landlord to hire an architect/ other specialists to determine the cause of the mould and how to proceed in order to eliminate it.

How Do Problems Get Resolved? Negotiation vs More 'Coercive' Approaches

The overall approach to the enforcement of the regulation emerged as an important theme. Housing advocates felt the inspection service put a high priority on negotiating with the landlord, as opposed to consistently applying a more punitive approach to enforcement (for example, levying fines), and that this negotiation was less effective in solving problems. As one worker noted,

Ça c'est une autre faiblesse, par exemple, au niveau de la Ville qui ne veut pas trop faire des infractions (...). Il faut les laisser des chances quand même. Nous, on dit : écoutez, quand vous entrez dans un endroit, voyez bien que le problème il perdure. Ça n'a pas pris six mois pour faire ça, ç'a pris un an, deux ans, trois ans, cinq ans de négligence. Pourquoi est-ce que vous donnez des chances à ces gens-là?

Inspectors viewed this issue differently, and saw the goal as achieving resolution of the problem, which might require different approaches in different situations. As one explained, "*Je trouve qu'une amende, ça règle rien. Mon*

objectif c'est que le problème se règle, c'est pas de faire des amendes. (...) C'est plus efficace d'achaller le propriétaire". According to the other,

Ce que l'inspecteur veut en fait, c'est que les travaux se fassent. Puis il y a différents moyens qu'on a : il y en a un c'est la négociation, il y en a un c'est la poursuite, il y en a un autre, c'est de faire les travaux à la place du propriétaire.

Negotiation was seen as sometimes inevitable, in that if a landlord receives many pages of infractions, he or she will not be able to do that work in a thirty-day period; discussion to identify priorities will need to take place. Issues such as labour shortages and holidays were seen as interfering with the schedule established in many cases, and landlords who collaborate were given more time.

Both inspectors stated that the landlord's response to the notice is a major determinant of how quickly the problem will be resolved and what strategy the inspector will use. One inspector identified three types of situations:

Je dirais qu'il y a trois cas. Il y a les cas où les propriétaires vont recevoir un avis puis vont faire les travaux à peu près dans le délai. Il y a les cas où le propriétaire ou les propriétaires sont vraiment délinquants puis qui le font pas. Et il y a les cas où il y a une chicane entre le propriétaire et le locataire et puis là, ça, complique aussi.

This inspector felt that the majority of landlords respond to the notice. The other inspector stated that it happens "*assez souvent*" that the landlords do not respond.

Long waiting times at municipal court and negotiation. Several housing workers linked the long waiting time for hearings at municipal court to the use of negotiation; these delays were viewed as dissuading inspectors from applying fines more often, resulting in more negotiation. One inspector agreed, stating that

On arrive à négocier parce que c'est trop long à la Cour. Si l'élastique pourrait péter plus vite ça serait intéressant desfois (...). Je pense que le problème majeur, c'est ça [les attentes à la Cour municipale]. Parce qu'on travaillerait différemment. On ne serait pas obligés de négocier, négocier,

négociier, il a fait un petit peu, OK, il a fait un petit peu, on étire encore l'élastique. (...) Tu sais, si les délais de cour serait plus courts il y aurait beaucoup moins de négociation.

However, the other inspector viewed it as “*du cas par cas*”, applying the approach he feels is most appropriate, even if he knows it is going to take a long time. Negotiation was viewed as the result of practical elements that arise in dealing with the case. Inspectors and housing workers both noted that negotiation and plea-bargaining also occurs at the city court level.

Link Between the City Inspection Service and the Rental Board

Getting information/ testimony for the Rental Board. As noted above, one housing worker felt that, although tenants can get information about infractions by making an Access to Information request, this process usually takes between twenty and thirty days. The lawyer also regularly experienced serious problems subpoenaing testimony for the Rental Board hearing. Although the process of subpoenaing the report was seen as uncomplicated, tenants who receive only a few days notice for a hearing often have difficulty ensuring the report is sent in time, which can have disastrous consequences for the outcome of the case.

Collaboration regarding Rental Board hearings. One inspector reported that in this borough tenants planning to file at the Rental Board are given a letter indicating the violations of the municipal code observed during the inspection. This letter can be presented at the time of filing, as a means of demonstrating the urgency of the health and safety concerns in the tenant's complaint. No other participants mentioned this practice in other boroughs.

Confusion for tenants. Housing advocates stated that some tenants found the relationship between the two recourses (City Inspectors and Rental Board) confusing.

Other Themes

Collaboration between community organizations and city inspectors. Several housing workers reported that collaboration between community organizations and inspection departments in their borough was strong, and felt

that this resulted in better recourse for tenants facing health and safety problems, although they also spoke of the need to “remain vigilant”. Inspectors also viewed this kind of collaboration as positive, and spoke of collaboration with other resources as well (for example, CLSC staff).

Evacuation situations. An inspector identified the fact that borough inspectors are an “*autorité compétente en matière d’évacuation*” as a strength. He stated that, while these cases are rare and the goal of the intervention is to correct the problem with the least impact on the people living there, evacuation is sometimes a necessary and important role for them to play.

Centralized team of inspectors/ Action Plan. Inspectors viewed this team as very helpful in dealing with the most severe cases, and as lightening the load at the borough level by taking the most labour-intensive cases away. It was also seen as a good use of resources.

Housing workers reported this team has been effective in dealing with very serious cases; one felt these interventions also provide a strong deterrent message to negligent landlords. However, one participant expressed concern that this team can only focus on a few buildings at a time, and that it is important to have a very strong borough level service as well in order to make sure that all buildings are adequately covered.

Recommendations

The following table summarizes the recommendations made by participants regarding the borough-level inspection service.

Table 7: Participants' Recommendations (Borough Inspection Service)

Increased human and financial resources for inspection departments	Municipal Court	Procedure
<ul style="list-style-type: none"> • Increase the number of inspectors where needed to ensure prompt treatment and follow-up of all cases • Have inspectors specialize in housing instead of working in other areas as well • Ensure financial resources to allow more use of the provision enabling boroughs to do work in place of the landlord • Ideally, set up a team (plumbers, contractors, etc) to do these emergency repairs • Higher salaries for inspectors (suggested by a housing worker) 	<ul style="list-style-type: none"> • Ensure cases at the municipal court are heard more quickly 	<ul style="list-style-type: none"> • Ensure files are not closed without a declaration from the complainant • Ensure intervention and follow-up at every stage • Use clearer and simpler language in communications with tenants • Schedule appointments for inspections • Increase collaboration with the Public Health Department in cases involving mould (not just major cases)
Training	Legislative changes	Prevention
<ul style="list-style-type: none"> • More training in the area of communication • More training in working with people of diverse origins 	<ul style="list-style-type: none"> • Require landlords to correct any infractions on a building before selling it • Change legislation to prevent “flipping” of buildings 	<ul style="list-style-type: none"> • Increased and more visible enforcement of the regulation through the application of more fines (this was seen as a deterrent, but would require resources for court time) • More timely intervention • Public awareness interventions on housing issues related to health (as was done for bedbugs, but for other issues) • Public awareness interventions regarding housing rights and recourse • Assistance for newcomers • Resources to do surprise visits • As noted above, require landlords to submit regular inspection reports on their building (for example, once every five years) • Investigate programs in other cities where landlords are required to demonstrate that units they are renting conform to legislative standards • Investigate dwelling classification systems used in other cities

Summary of Interview Findings

It is important to note that participants' comments reflected their experience in different boroughs. Participants in this study identified both strengths and weaknesses in relation to the borough-level city inspection service. The legislation, the fact that the service is free, and a generally accessible process for making complaints were all seen as important strengths. The service was viewed as having a strong impact in resolving housing problems in some boroughs and in some cases. The fact that inspectors look at common areas as well as individual apartments was seen as positive, and inspectors' reports were seen as very credible at the Rental Board. Several participants also raised examples of positive collaboration between inspection departments, housing organizations, and other services, and some identified the fact that the service assists both tenants and landlords as a strength. Each of the following strengths was identified by one participant: the fact that inspectors know the regulation well and are specialists; the number of complaints processed each year; and the role played in evacuation situations.

Time emerged as an important theme. The inspection service was considered to be consistently fast in some boroughs, and fast in some cases in other boroughs; in general participants felt it is much faster than the Rental Board as a recourse for tenants. However, in some boroughs and in some cases the waiting time for an inspection was seen as too long, especially for problems not considered urgent. Although prompt follow-up was identified as a strength in one borough, lack of prompt follow-up was seen as a serious concern in several boroughs and many cases. Long waiting times at municipal court were identified as a major problem by all participants who gave full interviews on this recourse. A lack of resources was also identified as a weakness and as a key factor in all of these issues.

Variation in procedures and in quality between boroughs and poor quality of service in some boroughs were identified as weaknesses. Some participants identified obstacles related to the complaint process and procedure, including

difficulties ensuring the request is received and the use of the “*coupon-réponse*” form. Inadequate resources for and insufficient use of an intervention fund for the borough to do the repairs in place of the landlord, the fact that inspectors cannot determine the toxicity of mould, excessive negotiation with landlords, time and difficulty obtaining inspection reports (in particular in time for Rental Board hearings), communication problems, large caseloads and high turnover among inspectors were also identified. Some housing advocates raised concerns about reports they felt inappropriately blamed tenants. Weaknesses in the legislation were also identified. Each of the following weaknesses was identified by one participant: the fact that inspectors do not make appointments for inspections; infrequent use of the “*constat billet*”; variation in procedure among inspectors in the same borough; the fact that inspectors do not inspect other tenants’ apartments unless related to the case; the burden of proof at municipal court; judges more sympathetic to small landlords at municipal court; and the fact that in some boroughs inspectors do not specialize in housing.

Finally, the theme of how best to ensure compliance to the code, in particular negotiation vs the use of more “coercive” approaches, emerged as an important theme throughout the study.

Statistics on the Use of the City Inspection Service

The following tables provide information about the use of the borough-level inspection service and the work of the centralized team of inspectors under the city’s Action Plan. As noted above, unfortunately it was not possible to obtain detailed statistics on the use of the service, statistics on the service in all boroughs of the city or budgetary information through the Access to Information requests undertaken. However, these statistics provide some additional information.

Table 8 indicates the numbers of inspections made, the number of notices of violation issued and the number of infractions obtained at the municipal court for ten boroughs of the City of Montreal, for the time period 2007-2009. The number of inspections does not represent the number of complaints, because one complaint may have generated several inspections. This table gives an indication

of the differences between boroughs, the relatively small number of violations in relation to inspections and the very small number of violations that end with a conviction at the court level.

Table 8: Inspections, Notices of Violation and Infractions, Selected Boroughs, 2007-2009

Borough	Number of Inspections	Number of Notices of Violation	Number of Infractions
Ahunatic-Cartierville	1 925	584	52
Côte-des-Neiges/ Notre-Dame-de-Grâce	5 413	1 344	416
Plateau-Mont-Royal	1 275	338	24
Sud-Ouest	686	374	58
Mercier-Hochelaga-Maisonneuve	1 397	358	52
Montréal-Nord	678	0	23
Rivière-des-Praires/ Pointe-aux-Trembles	120	32	7
Rosemont/La Petite-Patrie	1 720	419	10
Ville-Marie	1 090	256	31
Villeray-Saint-Michel-Parc-Extension	2 870	213	53
Total	17 174	3 918	726

Note included in original : La plateforme statistiques commune (Oracle) n'assure pas des entrées de données standardisées. Le contenu des données peut varier d'un arrondissement à l'autre.

Source : Ville de Montréal, Direction de l'Habitation (2010). Obtained through the RCLALQ.

Table 9 indicates the violations issued by the centralized team (not the borough-level service), as well as the proportion of violations that have been corrected so far. Although beyond the scope of this study, this table was included to show the large numbers of units considered to have serious housing problems, as well as the strong approach taken by this team in signalling violations. While this table does not indicate how many cases resulted in convictions in municipal court, documents from the 2009 public commission indicated that the 1 621 infractions established by August 2009 represented a potential of \$1.2 million dollars in fines, and that the 128 convictions the city had obtained represented \$55 600 (VMCP, 2009a).

Table 9: Statistics on Interventions from Central City Team, *Plan d'action pour l'amélioration de la salubrité des logements*, Interventions as of April 30, 2011

Borough	Number of Buildings*	Number of Units*	Number of Violations**	Percentage of violations corrected**	Percentage of total
Ahuntsic-Cartierville	56	1 427	6 095	57%	13.95%
Anjou	46	571	2 611	66%	5.58%
CDN-NDG	98	2 019	13 269	86%	19.73%
Lachine	62	853	4 310	75%	8.34%
LaSalle	12	383	3 595	77%	3.74%
Mercier-Hochelaga-Maisonneuve	1	20	211	3%	0.20%
Montréal-Nord	127	2 089	8 727	47%	20.41%
Rosemont-Petite-Patrie	17	322	1 529	96%	3.15%
St-Laurent	70	1 275	8 086	81%	12.46%
St-Léonard	27	457	6 094	92%	4.47%
Verdun	32	470	2 788	90%	4.59%
Ville-Marie	1	156			1.52%
Villeray-St-Michel-PE	8	191	4 283	100%	1.87%
Total	557	10 233	61 598	75%	100%

*Data does not include pilot project on rooming houses

**Data does not include Place de l'Acadie, Place Henri-Bourassa and pilot project on rooming houses

Source: Full table reproduced from Direction de l'Habitation, Ville de Montréal, *Plan d'action pour l'amélioration de la salubrité des logements, État de la situation par arrondissement au 30 avril 2011*. Obtained through the RCLALQ.

Table 10 gives an example of the convictions for one year from the borough with the most inspections, and indicates which health and safety problems they were related to.

Table 10: Breakdown of Fines According to Regulation, Côte-des-Neiges/ Notre-Dame-de-Grâce Borough, 2009

Articles	Health/Safety Issue	No. of infractions	Fine sought	Fine awarded
25(1)	Dirtiness, deterioration, clutter of building, dwelling, balcony, acc. building	5	\$1 000	\$400
25(9)	Vermin, rodents, insects	2	\$1 500	\$1 500
25.1	All other parts/ accessories of dwelling, building maintained in working order	81	\$71 550	\$28 400
26	Solidity	3	\$2 000	\$1 000
27, 28	Watertight exterior envelope of building, around windows and doors	4	\$3 500	\$500
29,31	Humidity, mould, watertight floors	10	\$10 800	\$0
34	Water, plumbing, heating systems	4	\$3 200	\$1 000
49, 50	Electrical systems, lighting for dwellings and common spaces	8	\$2 250	\$1 650
54	Ventilation for bathroom	1	\$400	\$0
60	Locks	6	\$2 000	\$600
64.13 al.1; 64.15 al.1; 64.15 al.2; 64.15 al.3; 64.38 al.1; 64.40	Fire doors	28	\$7 600	\$1 800
25(6)	Preventing closing/ locking mechanism on a firewall/door from working	2	\$400	\$200
25(5); 64.1 al.1	Existence, non-obstruction of evacuation exits	2	\$600	\$200
64.24; 64.27; 64.32 al.4; 64.32 al.7	Exits and emergency stairs	5	\$1 200	\$200
64.34; 64.35 al.1; 64.35 al.2; 64.35 al.3	Emergency signs and lights	8	\$2 800	\$600
64.43 al.1	Smoke detectors	1	\$200	\$200
Total		174	\$112800	\$38 450

Source: Author's compilation from Ville de Montréal, Arrondissement de Côte-des-Neiges/ Notre-Dame-de-Grâce, 2010 (obtained through Access to Information request)

Summary of Statistics

These tables illustrate that the borough inspection service is much more heavily used in some neighbourhoods than others. They also indicate a relatively low number of convictions at the municipal court level. Although it is only a snapshot of one borough in one year, the last table also illustrates that in this case

the general provision of the regulation was the most highly used in terms of infractions, and that some articles (for example the provision pertaining to vermin, rodents and insects) were rarely used.

Recourse and Reality: Analyzing the City Inspection Service

In contrast to the Rental Board, where participants clearly identified the same weaknesses, at the level of the borough inspection service there was less unanimity among key informants: participants raised a greater diversity of issues and views, and fewer common themes emerged. This was likely due to the fact that participants had experiences with different boroughs, and to the different perspectives contributed by housing workers and inspectors. In addition, although participants identified barriers and obstacles for tenants, there was much more discussion about systemic issues. Given these factors and the small number of participants it is difficult to draw conclusions about the service, but it is still possible to identify key themes.

This study's findings related to some extent to the research described in the literature review. The notion that housing codes are applied for other purposes (for example to facilitate revitalization projects) (Krieger, 2008; Dorsey, 2005) was not identified by participants. However, although the experience of inspectors was not the focus of this project, like Ross's (1995; 1996) work this study underlined the important role that inspectors play in enforcing the housing code, and the autonomy and discretion that are central elements of their work. The theme of negotiation also emerged as a key issue and will be discussed below. This section will explore four themes that emerged from these findings and from the academic and grey literature: a) standardized access and quality; b) procedures; c) the gap between legislation and practice/ resources; and d) approaches to achieving compliance.

Standardized Access and Quality

Many participants made the point that each borough is different in terms of its housing stock, the types of problems most commonly encountered, and its tenant population. As Table 6 demonstrates, some boroughs also have far more

complaints than others. These factors make the implementation of the inspection service challenging.

Despite the fact that the inspection service is administered by the boroughs and not through the central city, from the point of view of equity it seems important to ensure that there are not major discrepancies between boroughs in terms of access, waiting time and quality of the service. Although this study only included a few boroughs and was far from an exhaustive survey, the experience of participants suggests that this is not currently the case. More detailed analysis of the service, including human resources, would be helpful in understanding the extent, the precise nature and the causes of these differences, in order to ensure that tenants have access to an effective recourse regardless of where in the city they live.

Procedures

Differences in process between boroughs and even within the same borough were also identified by some participants in this study. This may in part reflect the degree of discretion and autonomy accorded to inspectors (Ross, 1995; 1996). Given the complexity of the inspectors' task and the many variables in each situation (for example, urgency of the problem, attitude of the landlord, involvement of the tenant) a degree of autonomy and discretion seems necessary. Yet major variation again seems problematic.

It is debatable whether the precise procedures in each borough should be exactly the same. On the one hand, clear, consistent procedures are important in ensuring all tenants have access to the same service; on the other hand, given the diversity of problems and populations among boroughs, some flexibility to ensure that the service responds to local needs and realities and is fully accessible to the population would be beneficial. A clear procedural framework with some room to adapt would be helpful; ideally, interested organizations and individuals could be involved a process to identify challenges and obstacles and alternative suggestions within each borough.

The numbers of complaints in recent years suggests that large numbers of people are using the service, and some participants viewed the procedures as

working well. However, two housing workers viewed an aspect of the procedure itself (the complexity of the language of the “*coupon-réponse*”) as an obstacle to tenants in their neighbourhoods. This particular concern may also be an obstacle for many other tenants in addition to those who speak little French (for example, people with low levels of literacy); improving this tool seems a straightforward yet important means of improving the service.

The simplification of complaint procedures and the need for boroughs to look at this issue was recognized at the 2009 commission, which recommended that the City Council “invite le Service de mise en valeur du territoire et du patrimoine à sensibiliser les arrondissements à l’importance de mécanismes et d’outils facilement compréhensibles pour tout citoyen voulant déposer une plainte en matière de salubrité” (VMCP, 2009a, p. 11). Again, the input of the people who use the service is an important element.

Gap Between Legislation and Practice/ Resources

Two inter-related themes emerged in this study, both of which are situated more at the systemic level but have important ramifications for tenants. This project suggests that there is a gap between the legislation the city has passed and its ability to consistently enforce it in practice; although this study unfortunately could not examine financial documents, these findings suggest this is due in part to insufficient resources.

It is clear that in recent years the city of Montreal has made the issue of unhealthy housing a priority. For example, it has adopted several changes to strengthen the regulation and improve the protection for tenants (and landlords). It has also created its Action Plan and centralized team for complex cases; although the activities of this team are beyond the scope of this project and there has not been a full evaluation of their work, as Table 9 indicates they have intervened in a substantial number of cases, and it seems they have freed up some resources from the borough. The regulation is also perceived as very strong. Despite this positive context, this project suggests that borough inspection services do not have the resources to fully put this regulation into practice. This theme is evident at several levels.

Basic Resources for Inspection Departments. At a basic level, the inspection process requires follow-up with landlords: prompt follow-up is important in ensuring work is done, as well as in communicating with tenants, and participants in this study were positive about boroughs in which this happens. Yet prompt follow-up is not feasible if boroughs do not have adequate resources in relation to the number of complaints. A caseload of 300-400 files per inspector, for instance, creates a situation in which prompt follow-up of all cases is impossible. In addition to causing delays for tenants, this sends a message to landlords that enforcement is not a serious priority.

Tools to Deal With Recalcitrant Landlords. While some landlords comply with inspectors and make necessary repairs, others clearly do not. This study also suggests that, while the regulation provides several measures to deal with landlords who do not comply, it is difficult or impossible to apply these measures in practice.

For example, fines for violations of the code are an important tool, but if it takes a year to bring a case to municipal court they clearly lose their power, especially when, as participants indicated, landlords are well aware of the problem. All participants who gave full interviews on this recourse identified long waiting times at municipal court as a problem within the system. The very high fines for second offences are a particularly strong tool for dealing with recalcitrant landlords, yet, as participants indicated, they are largely ineffective and unusable in a context of such long waits for hearings.

The ability to make repairs and bill the landlord is also a powerful means of forcing landlords to comply, but one that is rendered ineffective if there is not a budget to make these repairs. This tool is more decisive than going to court, and has the important advantage of quickly resolving the problem for tenants. In this case the money is recuperated.

According to inspectors in this study, application of this tool is also hampered by the logistical challenges of finding workers and coordinating efforts. One inspector's suggestion of a city team of plumbers and contractors who would be able to move in quickly to make urgent repairs was presented as idealistic, but

it certainly bears exploration. For example, it would be relevant to examine the current costs of contracting out these repairs to private contractors, and to think about how a team like this could be accessible to all the boroughs, particularly if this recourse were used more regularly. Either way the more frequent use of this tool provides a way to respond to serious problems, to send uncooperative landlords a clear message about compliance to the code, and to set an example.

All three of these examples speak to the need to ensure that the options for intervention laid out in the regulation are real options, with the required resources available to implement them. The issue of resources was a central theme at both the 2006 and the 2009 commissions; in both cases the first recommendation was “Que la Ville de Montréal reconnaisse l’ampleur des problèmes liés à l’insalubrité des logements et consacre les ressources humaines et financières nécessaires à l’application du Règlement sur la salubrité et l’entretien des logements (VMCP, 2006, R-1; VMCP, 2009, R-1). The scale of the intervention of the centralized team of inspectors suggests that it has both the resources and the access to municipal court to be able to enforce the code more fully. While this team has clearly had an important impact in several neighbourhoods, it cannot possibly address all the buildings that require attention (and was not meant to). It is essential for boroughs to have sufficient resources and access to court to fully implement the regulation they are working with.

What is the Best Way to Achieve Compliance?

Although the resources to implement the regulation are vital, they are not the only factor: the approach emphasized by the city’s administration is also critical. As noted above, studies in the United States demonstrated that the approach of “negotiating compliance” (Ross, 1995, p. 149) was given priority over the use of more punitive measures, such as the application of fines. In its 2006 commission the City of Montreal also presented this orientation, which clearly emphasized negotiating with the landlord as opposed to bringing the case to court (VMCP, 2006). Since then the city has strengthened its own legislation and created its specialized team, suggesting that it has shifted to a greater emphasis on applying fines and other sanctions, but, as noted above, it has not

necessarily transferred the adequate resources to apply this emphasis to the boroughs. In addition, as Table 7 demonstrates, only a very small proportion of complaints and inspections end with a conviction at municipal court, suggesting that it is not often used in practice.

Participants in the study brought different views to this question. Inspectors felt that an emphasis on fines does not necessarily result in the problem being resolved, and that different approaches (negotiation, court, intervention in place of the landlord) work in different situations, with the response of the landlord as a critical factor. Both inspectors felt that court was necessary in some cases. Several housing workers felt there was excessive negotiation and that overall a more coercive application (for example, applying fines instead of giving the landlord many chances to fix the problem) would be more effective. This view was also reflected in the briefs presented to city hearings in 2006; organizations drew a parallel to a parking ticket, asking why the same kind of approach – an automatic infraction and fine, based on the assumption that it is the landlord’s responsibility to conform to the regulation – could not apply (for example, see POPIR Comité-Logement, 2006).

These views suggest two ways of looking at the question of enforcement and at the role of the inspector. One sees the inspection as an identification of a problem, and the inspector as the initiator of a process to have it corrected; the other sees the inspection as a time to document an infraction and punish the offender, with the inspector in the role of enforcer of the regulation. They are both means of arriving at the goal of ensuring the problem is resolved, but they represent different strategies.

The importance of time. While correction of the problem is of course the central goal, the other vital component is the amount of time this takes to achieve, an issue raised by participants in this study as well as by many participants in the city commission (VMCP, 2006). It is important to look at the full length of time of each step in the process from the tenant’s point of view. For example⁸, a tenant

⁸ This example is adapted from an example in Comité logement Petite-Patrie, 2006, as well as an example given by one of the participants.

experiencing a problem must first send a registered letter to the landlord and wait ten days for a response. The tenant can then make a complaint with the inspection service, in which case the inspection service will most likely send a letter to the landlord to inform him or her of the problem, with another ten day waiting time (the “*télétraitement*” letter). Time will then be needed for the tenant to return the “*coupon-réponse*” to indicate the problem has not been solved. An inspection must be scheduled, and once this has taken place, the landlord will be given a period of time (likely thirty days) to correct the problem. If the problem is still not solved, another inspection must be scheduled; an additional deadline might be given, or the case may proceed to court, in which case, as noted above, there will be substantial delays. What may seem like a relatively reasonable time from an administrative point of view is in fact a very long time from the tenant’s point of view. In addition, during this time the problem may be growing worse and spreading to other units.

It is certainly not possible to draw any conclusions from this study about what approaches are the most effective in code enforcement, and there do not appear to be studies on this question. It seems logical to think that a strict and vigorous enforcement of the regulation ensures problems are resolved more quickly, acts as a deterrent, and, in the case of fines, provides some revenue to offset the cost of these interventions. However, a heavy-handed approach may not be needed in all cases, and it may not be the best use of either human or court resources to impose one. These factors notwithstanding, it is clear that resources and the philosophy of intervention are both critical components.

In considering how to ensure an effective and rigorous application of the by-law, several concepts can be seen as important in the current context:

- The full intervention (from complaint to resolution) needs to be fast enough to have an impact, and to prevent the problem from getting worse;
- Landlords need to be aware that there are serious consequences for not respecting the housing by-law;
- Inspectors need to be able to quickly evaluate whether or not a landlord is going to comply;

- The consequences of not complying need to be real and relatively immediate.

Possible Improvements

Although further analysis is needed, it is possible to identify ways in which the service could be improved, as well as ideas that could be explored in addressing some of the challenges outlined above. These ideas draw on the findings of this study, as well as on the academic literature and the grey literature, including the briefs presented by organizations at the 2006 hearings.

Resources. This study suggests that more resources are required to ensure that the borough inspection services can deal with all of the complaints they receive in a timely manner and that all the provisions of the regulation can be enforced in practice. At the level of human resources, while some boroughs appear to have adequate budgets in relation to the number of complaints, others clearly do not; sufficient resources to provide intervention and effective follow-up are essential.

Resolution of the problem of waiting times at the municipal court is a second important dimension. Since this study did not look at the mechanics of the municipal court system at all, it is difficult to say whether long waiting times are simply a resource problem, or whether it might be possible to reorganize at this level to, for example, create a wing of the court that specializes in health and safety problems in housing, or to prioritize all of these cases within the existing court. Although resolving these problems would cost money, fining recalcitrant landlords brings in some money that can be redirected into the process.

Finally, this study also suggests that boroughs need more resources available for interventions in which the repair is performed by the city and the landlord is billed or a lien is put on his or her building, if this recourse is to be used seriously. Amounts billed to the landlord should include all administrative costs, so that these interventions do not represent a cost to the city. As noted above, means of solving the logistical problems inherent in the use of this recourse, including human resources, should also be explored.

Procedures and practices. Several ideas pertaining to the implementation of the inspection service, especially with respect to time, could also be explored.

Elimination of the “télétraitement letter”. Given that tenants must advise their landlord of the problem before filing a complaint, the step of the “télétraitement” letter could be eliminated; tenants who demonstrate that they have sent a registered letter to the landlord could proceed directly to an inspection. This would have the advantages of reducing delays for the tenant, and eliminating confusion related to the “coupon-réponse”. This letter already appears to be used much more frequently in some boroughs than others. However, proceeding straight to an inspection would require more resources. One inspector stated that, rather than a formality, this letter is seen as a form of intervention, and he estimated that in his borough it is effective in 70% of cases, thereby eliminating the need for a significant number of inspections. Housing workers expressed concern that some of these cases are not actually resolved (that tenants have not sent back the response). It would be important to look carefully at this policy in boroughs across the city to see what exactly is happening in practice.

Shorter deadlines for repairs. Inspectors could apply much shorter deadlines for the repairs. For example, instead of giving thirty days, deadlines of seven, ten or fourteen days could consistently be used. This would allow inspectors to gauge much more quickly whether or not the landlord is going to comply and to proceed with other approaches if not. This would also reduce the waiting time for tenants. There would need to be some kind of mechanism to deal with cases in which landlords have many violations and really are not able to resolve them all within the time period.

Less flexibility with deadlines. Inspectors could be less flexible with deadlines for compliance, by taking landlords to court immediately if the corrections were not made. This would also reduce delays and send a stronger message about enforcement. However, municipal court would have to be accessible for this to be effective.

Automatic issuing of infractions. As suggested above, inspectors could automatically issue notices of infractions for every violation of the regulation they observe. This would send a very strong message to landlords, and would ensure a much faster progression of each complaint because the time period to comply would be eliminated. However, this approach would require inspectors to use the “*constat billet*” on a regular basis, and both inspectors in this study did not find this a practical tool. Although court time would only be required in cases where the landlord contests, overall there could still be a lot of time required because the volume of infractions would be much higher. In addition, as one inspector noted, an increased application of fines requires resources not only at the court level in order to ensure faster hearings, but also at the level of inspection teams, because the more time inspectors spend in court the less time they are able to spend on their other duties.

Increased use of the intervention fund. Inspectors could have access to a substantial intervention fund and could use it much more frequently. This could speed up the process in serious cases, ensure repairs are done more quickly and send a strong message to landlords. However, as noted above, resources and a solution to logistical challenges would need to be found.

Expropriation. In particularly serious cases where landlords are not complying with inspectors, the city could examine expropriation with a view to converting the building into social housing. The issue of expropriation was not raised by many participants, perhaps because the discussion focused more on immediate levels of recourse. The one participant who spoke of this tool did not see it as a viable option because of the possibility of lawsuits; the use of the intervention fund was seen as equally effective and easier to implement in this regard. Either way it would be very relevant to explore the acquisition of buildings in the most extreme situations.

Summary and Conclusions

Given the fact that participants were speaking about different boroughs, it is difficult to generalize about this level of recourse. However, globally this study

suggests that there is variation in the accessibility, procedures and quality of services between boroughs; in some boroughs and in some cases, tenants facing problems that affect their health and safety are able to access effective service relatively quickly and easily, while in others tenants face barriers, long waits and lack of timely follow-up. This study also suggests that there is a gap between the provisions of the by-law on paper and its application in practice, largely due to insufficient resources; problems include long waiting times at municipal court. The overall orientation, including use of negotiation as opposed to more “coercive” approaches, also emerged as a key theme and an important factor.

While many weaknesses and challenges were identified, some participants were very positive about the inspection service of their boroughs and its ability to respond to tenants in a timely and effective manner. If it is possible to provide this level of service in some boroughs, it is clearly possible to do it in all boroughs. A commitment to rigorously applying the regulation and the provision of adequate resources are essential to this process.

7. Overarching Themes, Summary and Recommendations

Building on the specific issues identified in the sections on the Rental Board and the City Inspection Service, this last section will begin with a discussion of several overarching themes that pertain to both levels of recourse. I will then briefly summarize the main findings of this study and present a series of recommendations for change. I will conclude with a discussion of limitations and a series of suggestions for further research.

What is Urgent? The Concepts of Prioritization and Urgency at Both Levels

I feel this study raises important questions about the concepts of urgency and prioritization at both levels of recourse. From the description of problems seen by both inspectors and housing workers (see Appendix A), it is obvious that some housing problems are more urgent than others: in some cases there is an immediate risk of harm or a problem that makes a dwelling unliveable. In any context it is important to be able to prioritize these cases, and to intervene or hear a case as soon as possible. This study suggests that this already happens to some extent at the city level, and to a small extent at the Rental Board. In a context of insufficient resources, though, cases that are considered non-urgent are delayed and sometimes even unaddressed, and this raises several key issues.

Vulnerable populations. First, the literature clearly demonstrates that certain populations are more affected than others by many housing problems (King, 2000; WHO, 1989). In cases of mould, for example, the literature demonstrates that people with respiratory problems, people with depressed immune systems, babies, children and the elderly are more susceptible to developing health problems as a result of exposure to fungal contaminants (INSPQ, 2003). Yet it is not clear whether or how either the Rental Board or the city inspection service integrate this reality into their prioritization processes.

The mental health impacts of housing problems. Second, the impact of problems not ordinarily viewed as urgent can still be serious. Although, as the

literature review demonstrated, the impacts of housing problems on mental health have been under-researched, that link has been recognized. In my experience the psychological impacts of poor housing can be very serious, especially if the problem lasts a long time. People living with mice and cockroaches, for example, endure the daily stress of seeing them, the time and financial stresses of cleaning and dealing with them, the anxiety of worrying about how their children are affected, the shame and stigma of having them, and the isolation that comes from not being able to have people over or provide a place to stay for visiting friends and family members. Although the impact of housing problems was not the focus of this study, many participants spoke about this theme, underscoring the major mental health implications of both the problems themselves and efforts to deal with them. For example, one housing advocate stated that

When you're living in any situation where conditions are not decent, and that could be due to any of these things we've talked about, or a combination of them especially, people get very, very stressed. They worry about their children and they worry about their own health. They worry. And then there is the frustration of being powerless.

Another participant explained how even seemingly minor repairs, such as a broken railing, can significantly affect senior citizens, who become anxious, less likely to go out and consequently experience isolation. He also described a tenant with bedbugs who had spent the summer with the air conditioner on maximum all the time in an effort to control them, and was sick as a result. This worker said

Je suis pas travailleur social, je suis pas médecin, ni psychologue, mais je la regardais, et elle me semblait être ébranlée comme personne. Je la voyais, elle est venue nous voir puis je l'expliquais ce qu'elle pouvait faire et tout ça. Puis là finalement elle dit : moi, même si j'ai des moyens pour obliger mon propriétaire à faire des choses, je veux déménager quand même. Je peux plus, je ne suis plus capable.

A third participant spoke specifically about the range of emotions faced by immigrants who are struggling to integrate and who have been unable to get their landlord to fix a housing problem:

Ça rajoute la frustration aux problèmes. Tu sais, il y a un peu de la colère. Une personne peut se dire toutes sortes de choses en tant qu'immigrant – il se fout de moi, il m'envoie promener, ils se servent du pouvoir qu'ils ont puis de la faiblesse que j'ai pour me maintenir dans cette malpropreté là. (...) Bon il y a aussi des personnes qui viennent ici qui sont déprimées. Malheureusement on n'a pas toujours toute l'énergie pour aider efficacement ces personnes-là parce que premièrement il faut aider les gens à s'aider eux-mêmes. Il arrive assez souvent qu'on rencontre des personnes en détresse.

The stress of poor housing conditions and the effort needed to address them compounds other issues tenants may be facing, such as poverty, unemployment, health problems and social isolation. I would argue that this stress in and of itself constitutes a serious health problem and merits attention.

The implications of not addressing problems. Third, when problems perceived as non-urgent are not dealt with quickly, they become bigger and sometimes much more serious. This can be seen with many issues, including humidity problems and vermin. As well, as the findings suggested, when people are not able to access effective recourse promptly, many abandon the recourse; others find a way to move, and, without the problem being corrected, the apartment becomes home to another household. Although the individual impact is important from a health perspective, the wider impact on the housing stock is also critical: housing deteriorates and the citywide problem of unhealthy housing simply gets worse (Rauh et al, 2008).

The right to a healthy home. Finally, from a rights perspective, “smaller” problems are still a violation of a tenant’s rights under the *Civil Code* or the *By-law Concerning the Sanitation, the Maintenance and the Safety of Dwelling Units*. Tenants still have the right to live in a healthy and safe environment, and they should still have access to effective recourse to get the problem corrected. The continued delaying of recourse for tenants in these situations renders these rights meaningless, and also serves to reinforce marginalization.

These factors all speak to the need to have cases treated quickly, not only in emergency situations or cases in which the harm to health is immediate, but in all cases where health or safety are somehow affected. Prioritizing cases on the basis of urgency is essential, but this must happen in a context where all of the other cases will still be treated within a reasonable time. Adequate resources and effective policy at both the Rental Board and the City Inspection Service are required to ensure this happens.

Mould

Mould emerged as a theme throughout this study, in terms of its prevalence as a public health issue in Montreal and in terms of the challenges tenants face in addressing it through both levels of recourse. The complexity of determining the toxicity of mould, establishing its causes and proving its impact underscore the need for equipment and collaboration. For example, if inspectors are to enforce a regulation that prohibits non-visible mould, they must have access to tools and technology to identify and analyse it, or have ongoing collaboration with the public health office. Given that the cost of private testing was identified as a barrier to justice for many tenants, it would be very helpful for all tenants to have access to public testing, and to be able to use reports in their recourse at the Rental Board.

The recent finding that over one third of Montreal children aged six months to twelve years live in homes where there are mould or humidity problems (Jacques et al., 2011) suggests the enormous scale of the problem. It also speaks to the previous point, suggesting a need for rapid intervention, even in cases where the problem is not acute: if these problems are not corrected the repercussions for the city's housing stock, and for public health, will be huge.

The Market Context

The theme of market forces did not emerge in this study in the same way that it did in some of the literature. For example, market forces did not seem to play the same role in Montreal as in the American studies on housing code

enforcement: inspectors here did not appear to feel that applying the code too rigorously would negatively impact on neighbourhoods or on tenants themselves.

Yet, as one inspector in this study noted, it is impossible to look at the issue of recourse for unhealthy housing without looking at market conditions. In the United Kingdom the lack of legal security of tenure was identified as a major impediment to enforcing tenants' rights (Burrige & Ormandy, 2007). In Quebec tenants have protection of tenure, but they still may not take action because they are afraid of losing their homes, through evacuation (DSP & CSSS St-Léonard et St-Michel, 2010) or, as one participant suggested, through repossession. In the context of an acute shortage of affordable housing and extremely difficult market conditions for low-income tenants, this fear is even more pronounced.

In a tight housing market there is also much less incentive for landlords to make repairs; it will always be possible to find a new tenant in need of an apartment, especially if it is even relatively affordable. For both small and large landlords on the private market there is also a tension between spending money to make repairs and making money. This tension speaks to the fundamental clash between the idea of adequate housing as a right and the provision of affordable housing through the private market. Again, the example of the public health study on respiratory health of children is instructive; in addition to recommending the rigorous application of the housing code and the investment of adequate financial resources, the authors advocate that

Les divers paliers de gouvernement (fédéral, provincial, municipal) devront continuer de soutenir le financement et le développement de logements sociaux et de logements abordables afin de répondre aux besoins pressants à cet égard, les problèmes d'insalubrité et d'accessibilité au logement étant étroitement reliés (Jacques et al, 2011, p. 34).

While improved recourse is essential, the creation of new social housing units remains a vital part of the solution (Saillant, 2006).

Summary and Recommendations

This project has explored the recourse available to tenants facing health and safety problems at two levels. At the level of Rental Board, it suggests that tenants can sometimes find effective recourse for health and safety problems, especially if they are represented by a lawyer, but that overall tenants face many serious obstacles, barriers and weaknesses in trying to enforce their rights at this level. These challenges can include accessing the tribunal, presenting and proving their case, obtaining representation if they want it, and obtaining a significant outcome. This study also suggests that relatively few tenants are using the recourse; while this may be due to some of the factors outlined here, there may be other important reasons. Despite these weaknesses, the tribunal is seen as an important institution whose shortcomings can and must be fixed in order to ensure access to justice for tenants.

At the level of the borough city inspection service, while it is difficult to draw conclusions, this study suggests both strengths and weaknesses; in some neighbourhoods tenants appear able to easily access effective service, while in others there are barriers related primarily to time, lack of timely follow-up and in some cases procedure. More globally this study suggests that long waiting times at the municipal court are a major problem, and that boroughs lack the resources to fully apply the housing by-law. The overall orientation, including use of negotiation as opposed to more “coercive” approaches also emerged as a key factor.

In both cases, while weaknesses have been identified, it is important to recognize that there are situations in which both levels of recourse work well, including a degree of collaboration. For example, in recent years bedbugs have become a priority, and a combination of public health educational efforts, fast-tracking of cases at the Rental Board and collaboration with city inspectors seems to be having an impact. There is also a strong public health campaign on this issue. This work suggests that health and safety problems can be prioritized and that when they are, the recourse can be very effective.

In the previous sections, I have explored several themes that have emerged in this study. I will now propose several suggestions, recommendations and ideas for further exploration. These recommendations are informed by the findings of this study and by participants' recommendations, but also by all of the literature from academic, government and community sources I have read for this project. While some recommendations are specific, others are suggestions for issues to explore.

Table 11: Recommendations Regarding the Quebec Rental Board

<p>Research/ Information</p> <ul style="list-style-type: none"> • Collect, make publicly available data about who uses the Rental Board and why • Research tenant experiences at the Rental Board, including observation/ analysis of hearings • Research relevant initiatives in other housing tribunals and courts
<p>General Orientation</p> <ul style="list-style-type: none"> • Commit to a real access to justice for all users of the Rental Board (tenant and landlord) • Ensure an equal access to justice for tenants and landlords (for example, ensure that repair concerns are given the same priority as receipt of rent; ensure that waiting times are equal)
<p>Resources</p> <ul style="list-style-type: none"> • Ensure the Rental Board has a sufficient number of commissioners to hear all urgent cases within a few days and all cases at the tribunal within three months (and that commissioners continue to hear eviction cases). • Explore the possibility of making interpretation services available at the Rental Board, or subsidizing these services for people not eligible for Legal Aid.
<p>Representation</p> <ul style="list-style-type: none"> • Expand access to Legal Aid; ensure that amounts adequately cover costs related to proof • Explore ways to reduce legal costs for tenants not eligible for Legal Aid • Explore ways to encourage more lawyers to practice in this field • Explore the idea of modifying legislation to broaden the possibilities for representation for tenants; a role should only be given to housing groups if they want it and are funded for it
<p>Services, Administration and Procedure</p> <ul style="list-style-type: none"> • Limit recourse to Service-Québec for telephone services • Improve the quality of information and assistance services • Clarify and reassess prioritization system; ensure that urgency is determined in relation to the situation itself, not in relation to the recourse sought • Examine the role currently played by commissioners; if needed, develop protocols to ensure commissioners are providing assistance and explaining procedures as required • Explore ways to simplify procedures so tenants can represent themselves more effectively • Explore ways to facilitate the provision of proof • Enable commissioners to leave the tribunal to visit dwellings more often • Evaluate material to help tenants prepare for a hearing; translate into several languages and distribute widely • Improve community organizations' capacity to help tenants prepare for hearings • Sensitize commissioners to the reality of tenants and their experiences at the Rental Board • Explore ways to ensure that orders are respected, including requiring landlords to submit proof they have complied
<p>Training</p> <ul style="list-style-type: none"> • Ensure commissioners have training to provide an understanding of tenant realities • Explore the possibility of a program like the one developed by the Nova Scotia Court
<p>Legislation</p> <ul style="list-style-type: none"> • Allow tenants to introduce health and safety problems in non-payment cases • Simplify mechanisms for dealing with problems in the execution of decisions
<p>Prevention</p> <ul style="list-style-type: none"> • Ensure the Rental Board actively engages in its responsibility to protect the housing stock • Explore the possibility of working with the city inspection departments in tracking serious problems • Explore prevention efforts in other places (for example, programs that require landlords to regularly submit inspection reports demonstrating they comply to standards, classification systems)

Table 12: Recommendations Regarding the Borough Inspection Service

<p>Research/ Information:</p> <ul style="list-style-type: none"> • Explore the possibility of a publicly accessible database of violations to the municipal regulation (taking into account privacy and confidentiality concerns) • Make statistics on the use of the inspection service publicly available
<p>General Orientation:</p> <ul style="list-style-type: none"> • Commit to a rigorous and timely application of the regulation in every borough • Commit to equal access and quality in every borough
<p>Resources:</p> <ul style="list-style-type: none"> • Ensure that each borough has sufficient human resources to be able to respond quickly to both urgent and non-urgent complaints and to follow up promptly at every stage • Significantly reduce the waiting times at municipal court; explore the possibility of setting up a specific part of the court or a fast-track for health and safety violations • Ensure financial resources to allow more use of the provision enabling boroughs to do work in place of the landlord • Explore the possibility of setting up a team to do these emergency repairs • Have inspectors specialize in housing; Explore ways to improve the retention of inspectors • Provide resources to do surprise visits
<p>Administrative/ Procedure:</p> <ul style="list-style-type: none"> • Ensure systematic follow-up in all cases • Ensure that files are not closed without a declaration from the complainant • Improve communication tools and explore the possibility of producing tools in different languages; use clearer and simpler language in communication with tenants; simplify procedure as needed • Schedule appointments for inspections • Systematically give landlords a shorter time to make the repairs • Initiate court proceedings immediately when deadlines are not met • Substantially increase use of the intervention fund • Implement a pilot project/ study in which fines are automatically applied for every violation • Evaluate the effectiveness of the “<i>télétraitement</i>” letter; eliminate or reduce its use if warranted • Equip inspectors with tools to deal with mould cases, and/or increase collaboration with public health; this should include making testing for the toxicity of mould publicly available • Explore ways to reduce time and stress associated with court for inspectors (for example, testify by report as is the case at the Rental Board) • Organize meetings between inspectors, housing organizations, health workers and other interested parties, with a view to identifying challenges and improving collaboration • Through expropriation or through liens acquired through use of the intervention fund, acquire buildings belonging to landlords with many violations for conversion into social housing
<p>Training:</p> <ul style="list-style-type: none"> • Ensure all inspectors have full training on health and safety issues • Ensure all inspectors have training on communication issues, working with people with mental health problems and working with people of diverse origins
<p>Legislation:</p> <ul style="list-style-type: none"> • Require landlords to correct any infractions attached to a building before selling it • Modify legislation to prevent the “flipping” of buildings
<p>Prevention:</p> <ul style="list-style-type: none"> • Increase the application of fines and make rigorous enforcement of the code very visible • Public awareness interventions on housing issues related to health • Public awareness interventions regarding housing rights and recourse (in several languages) • As above, explore prevention efforts in other places

Table 13: Recommendations Regarding the Link Between Two Recourses

Link Between Rental Board and City Inspection Service:

- In all cases where violations have been signalled to the landlord, have inspectors provide tenants with a letter confirming these to help with the Rental Board application
- Ensure city inspection testimony is delivered quickly in all boroughs
- Explore collaboration between the City Inspection Service and the Rental Board in initiatives to preserve the housing stock

Limitations

There were several limitations to this study. First, as already noted, this study did not include content from tenants themselves, whose input would have provided the most accurate information about the barriers and obstacles they faced in trying to enforce their rights. The absence of a participant from the Rental Board was also a serious limitation. Although housing workers had extensive experience working with tenants, three worked in organizations where staff do not regularly follow individual cases; they did not always hear what happened, for example, when a tenant went to the Rental Board. Only the lawyer had direct experience at the Rental Board, and while her participation was invaluable in many respects, her views could not reflect the experience of tenants who are unrepresented. In addition, housing workers were only able to talk about their experiences with people who had sought the services of their group; this means that the perspective of tenants who use these recourses without any assistance from a housing group or a lawyer was not at all represented. The small number of study participants was also an important limiting factor.

At the borough level, as already stated, the fact that participants had experiences with different boroughs made it difficult to draw conclusions and impossible to generalize findings, even to all neighbourhoods in Montreal; although the goal initially was to get a sense of what is happening in different boroughs, it would have been helpful to focus only on one or two boroughs. Finally, the fact that interviews with key informants took place over a ten-month period was also potentially limiting, in that, although no major policy changes were introduced during this time, it is possible that some minor policy shifts took place.

The inability to obtain statistics despite repeated Access to Information requests at both the Rental Board and the city levels made the broader analysis hoped for in this study impossible. In addition, because of space and time constraints, several important issues were omitted (for example, evacuation situations and the issue of expropriation). Finally, as an exploratory study this project was not able to look in great depth or detail at each of the issues raised.

Suggestion for Further Research

Further research on health and safety in housing and the recourse for tenants experiencing problems would be very relevant at several levels. First, it would be helpful to have a better understanding of the prevalence, location and causes of unhealthy housing in Montreal, as well as more detailed analysis of who is affected. Research on who uses each of the different recourse would also be useful.

At the level of the Rental Board, studies on hearings, perhaps similar to Thomasset (1987) and Bezdek (1992) but with a tenant participation component, would be very helpful in understanding what happens in practice, including the extent to which commissioners provide assistance and inform both parties of the rules of evidence, as required under the law. Although challenging, it is also important to better understand the full range of reasons tenants do not use the Rental Board more for health and safety cases. Comparison with tribunals in other places and more research on access to justice for tenants, particularly studies of the simplification of court proceedings, could also make an important contribution.

At the municipal level, a more detailed examination of the effectiveness of the borough-level service in neighbourhoods across the city would be very relevant, as would a full evaluation of the city's Action Plan on unhealthy housing. Research on evacuation procedures and the support provided to tenants who must relocate because of health and safety problems would also be very useful, as would research on expropriation and social housing development.

Studies on the enforcement of housing codes and on the different philosophical approaches would be pertinent as well.

Research on the mental health impacts of all kinds of housing problems, including those considered “less urgent”, would also be useful. Finally, research on means of preventing health and safety problems in housing could shape new approaches and interventions.

Conclusion

While door-knocking in Côte-des-Neiges I sometimes found myself speaking with tenants who lived in conditions I would not have believed possible in present-day Montreal: no heat, no hot water, rats, mould, cockroaches, water leaks and the other terrible problems we see periodically on the news when these kinds of buildings come to public attention. Often, I met tenants whose situation was less dramatic, but who were nonetheless struggling to make sure that their home was free of various threats to their physical or mental health. I believe that unhealthy housing is simply unacceptable, and that all of these problems – large or small - need to be taken seriously. I also remain profoundly convinced that we can solve these problems, even within our current policy framework.

Recent municipal and public health initiatives suggest that unhealthy housing has become a priority, and are encouraging: the city’s Action Plan on unhealthy housing, collaborative strategies to deal with bedbugs, public education on humidity problems and mould. As noted above, recourse in cases involving bedbugs appears more effective, thanks to these efforts. An important next step is to move beyond the prioritization of certain problems, and to ensure timely, effective recourse in every case.

Clearly, the issue of unhealthy housing reaches beyond the perspective chosen in this study; there are many angles from which it can be examined. In addition to the individual level at which tenants exercise their rights, unhealthy and unsafe housing is a serious social, economic and public health issue (Bashir, 2002; Krieger & Higgins, 2002; Shaw, 2004). The involvement of many actors – health and social services, public health, the community sector, municipal

inspection departments, the Rental Board, municipal and provincial governments, landlords and many others - is therefore essential. It is also inextricably linked to poverty (Shaw, 2004) and inequality (Krieger & Higgins, 2002); beyond recourse, efforts must include long term solutions, like the development of social housing and the reduction of poverty.

The involvement of tenants themselves is a critical part of these processes. At an individual level, tenants need to be able to defend and enforce their housing rights, but at a collective level they have much to contribute toward finding solutions. As Bashir (2002) notes, “support for grassroots efforts is essential to the struggle to address and eliminate the environmental hazards posed by substandard and inadequate housing” (p. 738). Through commitment, collaboration, political will and resources, we can and must ensure that every Montrealer’s right to live in a healthy home is respected.

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APPENDIX A: Health and Safety-Related Housing Problems Identified By Participants

As part of the interview process, key informants were asked to describe the health and safety problems tenants they worked with experienced. This list summarizes all of the problems identified:

- Mould, humidity problems
- Vermin (rats, mice)
- Cockroaches
- Bedbugs
- Heating problems
- Water infiltration
- Plumbing problems (sinks, bathtubs, toilets)
- Lack of access to water
- Problems with water (“bad” water; rusty water)
- Unstable walls, unsafe balconies
- Problems with the roof
- General maintenance (windows that are not watertight, brickwork, broken stairs, broken railings, cracked or chipping plaster, peeling paint, broken tiles, dirty walls and floors)
- Poor insulation
- Problems related to very old crawl spaces
- Broken locks; broken or missing intercom systems
- Inaccessible or broken safety doors
- Problems related to clutter, hoarding; people in distress (complaints more likely to come from other tenants or landlords)
- Problems with neighbours
- Noise
- Overcrowding
- Rent increases/ rent fixation