TORONTO

STAFF REPORT
ACTION REQUIRED

Residential Tenancies Act (RTA): Changes to Notification of Tax Decreases and Rent Reductions for Residential Rental Properties

Date:	May 28, 2009
To:	Community Development and Recreation Committee
From:	General Manager, Shelter, Support and Housing Administration
Wards:	All
Reference Number:	

SUMMARY

This report responds to the Tenant Defence Sub-Committee's request to report on recommended changes to the *Residential Tenancies Act* (RTA*)* that would improve the City's program for notifying landlords and tenants in residential rental properties about tax decreases and rent reductions. The report discusses the issues staff have encountered in administering the notification program since 1998 and makes recommendations for improvements to be implemented by the Minister of Municipal Affairs and Housing.

RECOMMENDATIONS

The General Manager, Shelter, Support and Housing Administration, recommends that City Council:

1.	request that the Minister of Municipal Affairs and Housing implement the following changes to the *Residential Tenancies Act* (RTA) that would improve the City's program for notifying landlords and tenants in residential rental properties about tax decreases and rent reductions:

	a.	Require that the Municipal Property Assessment Corporation provide an accurate tax assessment database to help municipalities notify landlords and tenants about tax decreases and automatic rent reductions, which would include identifying properties that are exempt from requirements for notification of automatic rent reduction and the reason for the

exemption, and distinguishing between owner-occupied properties and tenant-occupied properties;

b.   Amend the *Residential Tenancies Act* to extend the time limit for tenant applications for rent reductions due to property tax decreases so that tenants unaware of their right to a rent reduction may apply to the Landlord and Tenant Board for the rent reduction within one year of becoming aware of the property tax decrease;

c.   Waive the application fee for tenants applying for a rent reduction due to property tax decrease;

d.   Amend the *Residential Tenancies Act* to require that where the Landlord and Tenant Board decides that rents should be reduced for a particular unit in a building based on one tenant's rent reduction application, all tenants in the building would be automatically added as parties to the application and would all benefit from the ordered reduction in rent;

e.   Implement any legislative and operational changes required to ensure that tenants benefit from property tax decreases of more than 2.49% in cases where the property taxes are reduced after the notification period;

f.   Provide specific direction on tax and rent reduction calculation methods where there is a rent reduction due to an assessment shift and when there is a tax decrease in a mixed use property; and

g.   Pay the City's costs for administering the Rent Reduction Notification Program, including the cost for database management, education supports, and the printing and mailing of rent reduction notices.

Financial Impact

The recommendations in this report will have no financial impact beyond what has been approved in the 2009 operating budget of the Shelter, Support and Housing Administration Division.

DECISION HISTORY

At its meeting on March 25, 2009, the Tenant Defence Sub-Committee (the "Sub-Committee") considered a communication from Councillor Gord Perks regarding an issue about notification of property tax decreases and rent reductions in some rental residential properties in the Parkdale area. The Sub-Committee recommended that the General Manager, Shelter, Support and Housing Administration, be requested to report to the May 8 meeting of the Community Development and Recreation Committee (the "Committee") on recommended changes to the *Residential Tenancies Act* (RTA) that would improve the

City's notification program. At its meeting on April 16, the Committee directed that staff submit a report to its meeting on June 11.

City Council has previously adopted a number of recommendations to improve the notification program which were forwarded to the Minister of Municipal Affairs and Housing, including:

1. "Evaluation of the City of Toronto's Notification Program on Automatic Rent Reductions and Tax Decreases" - Council meeting on July 24, 25 & 26, 2001.
    http://www.toronto.ca/legdocs/2001/agendas/council/cc010724/pof11rpt/cl005.pdf

2. "Response to the Ontario Government's Consultation Paper on Residential Tenancy Reform" – Council meeting on June 22, 23 & 24, 2004:
    http://www.toronto.ca/legdocs/2004/agendas/council/cc040622/cms4rpt/cl001.pdf

This report provides new recommendations for improving the notification program, and updates on previous recommendations made to the Minister of Municipal Affairs and Housing.

ISSUE BACKGROUND

Under the *Residential Tenancies Act* (RTA) and previously the *Tenant Protection Act* (TPA), when the property taxes of a rental residential property decreased by more than 2.49% between two consecutive years, landlords were required to reduce the rents of their rental units, without the tenant having to make an application (automatic rent reduction). Both the RTA and TPA require municipalities to provide notices to landlords and tenants when their building is subject to an automatic rent reduction and contains more than six units (i.e. multi-residential rental properties). The City has implemented this program, as mandated under the RTA, since 1998.

Municipalities are not required to notify landlords and tenants of buildings with six or fewer units (i.e. residential rental properties). In 2001, the City established a policy that rent reduction notices must also be sent to buildings with six or fewer units where the taxes have decreased by more than 2.49% to ensure that tenants in smaller rental buildings have the same opportunity as tenants in multi-unit buildings to automatically reduce their rent.

Automatic rent reductions start December 31 of the year that taxes decreased by more than 2.49%. The rent reduction percentage is determined by multiplying the percentage amount of the property tax decrease by either 20% (for buildings with more than six units) or 15% (for buildings with six or fewer units). For example, if the taxes decreased by 2.5% for a building with more than six units, the tenants are permitted to automatically reduce their rent by 0.5% (20% x 2.5%). The reduction only applies to the tenant of the unit as of the December 31 date, and not future tenants moving into the unit.

Notices are sent out by September 15 to the affected landlords, and by December 15 to the affected tenants. These deadlines are set out in regulations to the RTA.

Where the tax decrease is 2.49% or less, tenants cannot automatically reduce their rent and municipalities are not required by law to provide them with a notice (although the City makes this information available to tenants through its City-funded Tenant Hotline). Unless the landlord voluntarily agrees to reduce the rent, these tenants must apply to the Landlord and Tenant Board (the Board) for the rent reduction. There is a charge for making this application ($45 for the first tenant, and $5 for each tenant who joins the application).

Some rental residential rental properties are exempt from automatic rent reductions. These include new rental housing (i.e. those built or occupied as rental after November 1, 1991), public housing, non-profit housing projects, non-profit co-operatives, rent supplement units in a privately owned rental building, and rental units in which the tenants share facilities (e.g. kitchen and bathroom) with the landlord.

COMMENTS

The Notification Program is the method by which most tenants are informed of tax decreases and their right to automatically reduce their rents. While the Notification Program has generally been successful in helping tenants to benefit from property tax decreases, the City has encountered a number of issues in implementing the Notification Program due to the complex legislative and operational framework that governs it, and gaps in that framework.

It is reasonable to expect that every tenant of a non-exempt building where the taxes have decreased by more than 2.49% should be able to automatically reduce their rent, however, that is not always the case. If for some reason the tenant is not aware of the tax decrease and the landlord decides not to pass it on, the tenant may not be able to get the rent reduction; only the landlord would benefit from the property tax savings.

There are a number of reasons why a tenant may not be aware of a tax reduction that exceeds 2.49%, such as:

-       tenant not receiving the notice through the mail or not opening it;

-       the landlord not telling the tenants about the tax decrease and their right to a rent reduction; or

-       the tax change happening after the notices have been sent for the year, primarily due to actions by the Assessment Review Board (ARB) or the Municipal Property Assessment Corporation (MPAC), for example, tax decrease due to an appeal as a result of reduction in Current Value Assessment or tax class change.

Further, landlords should expect that they and their tenants would only receive notices where the unit is regulated by the RTA, which is not always the case. The property assessment data the City receives from MPAC does not provide information about which buildings are exempt from the RTA provisions for rent reduction notification. Any decisions by the Landlord and Tenant Board (the Board) related to landlords' application for exemption are not included in the MPAC data base or provided to the City. City staff are not permitted to make determinations about exemptions, as that is a matter for the Board to decide. Nonetheless, to avoid confusion and costs, where the exemption appears obvious (such as social housing), no notice is sent.

In light of the issues the City has encountered in the administration of the Notification Program, this report recommends that the Minister of Municipal Affairs and Housing implement the following improvements:

- Require MPAC to include information about properties that are exempt from the RTA's rent reduction provisions in the MPAC database and to update the information on tenancy in the MPAC database.

- Extend the tenant application period and add all units to applications for rent reduction due to tax decreases.

- Develop and implement a process to address property tax decreases that occur after the notification period.

- Provide additional direction on the rent reduction calculation.

- Request provincial funding for the notification program.

Include Information about Exempt Properties and Update Tenancy information in the MPAC Database

The Notification Program begins with the transfer of a property assessment database from MPAC to the City. The database does not identify properties exempted by the RTA from the Notification program. The result has been that staff identify exempt properties by collecting data from a variety of sources, and the data must be updated manually on a regular basis. There is a risk in having staff identifying exempt properties as, ultimately, only the Board has authority to do this. However, sending notices to all possible properties is unfair to both tenants and landlords, as it is misleading and also costly. Despite this, notices have been sent to exempt properties in some instances where the exemption is not obvious.

Staff have been put in a difficult situation by landlords who believe their properties should be exempt from rent reductions and are critical of the City for sending the notices. However, only the Board has authority to determine whether or not a rental residential property is exempt. Board orders about exemptions are not provided to the City.

In addition, the MPAC database does not always have up-to-date information on tenancies. As a result, notices have been sent to properties that are no longer rented (e.g. a basement apartment converted to owner occupied), or where a co-owner or a spouse is identified as a tenant in the classification.

These information gaps in the MPAC database have resulted in unnecessary costs for sending incorrect notices, have created confusion and complaints from homeowners, landlords and tenants, may lead to costly landlord and tenant applications, and have required significant staff time to investigate and to send correction notices.

City Council previously recommended that:

"The Municipal Property Assessment Corporation provide an accurate tax assessment database to help municipalities notify tenants about automatic rent decrease." ("Response to the Ontario Government's Consultation Paper on Residential Tenancy Reform", adopted by Council in June 2004, Recommendation 14(d)).

As a result of our experiences in implementing the Notification Program, this report expands upon that recommendation by requesting that the Minister of Municipal Affairs and Housing work with MPAC so that the City can be provided with the information it needs to provide accurate notices, and to reduce the number of notices sent to exempt and owner-occupied properties.

Extend the Tenant Application Period and Add All Units to Applications

Although landlords are required to reduce the rent when the tax decrease is more than 2.49%, there is no proactive oversight by the Board or the Ministry of Municipal Affairs and Housing to ensure that this occurs. The onus is on the tenants to enforce the law by filing an application (at a cost of $45 and $5 for each additional tenant on the same application) within a relatively short period of time (i.e. within 12 months of the effective date of rent reduction, e.g. the tenant must apply by December 30, 2009 for a rent reduction effective December 31, 2008). Unless a tenant is aware of the time limitation for making an application and does make the application, the tenant will not be able to obtain the rent reduction. While the notices sent by the City help to make tenants aware of the reduction, if a tenant does not receive a notice, the obligation rests with the landlord to reduce the rent and this obligation should be enforced by the Board or the Ministry of Municipal Affairs and Housing.

Furthermore, if the landlord refuses to reduce the rent due to a tax decrease, tenants are required to apply to the Board individually for a rent reduction even though the rent reduction is applicable to all tenants in the same building. If the Board were to order a reduction in response to a tenant application, it would only apply to the rents of the tenants whose names appear in the application even though the property tax decrease is for the whole building.

Council has previously recommended that the Province should:

a.   a*llow all tenants in a rental building to co-apply for a rent reduction when property taxes have decreased*; ("Response to the Ontario Government's Consultation Paper on Residential Tenancy Reform", adopted by Council in June 2004, Recommendation 14(b));

b.   w*aive tenants' application fee for rent reduction due to tax decrease; (* "Response to the Ontario Government's Consultation Paper on Residential Tenancy Reform", adopted by Council in June 2004, Recommendation 14(c)); and

c.   c*hange the regulations to ensure that where the Ontario Rental Housing Tribunal [now the Landlord and Tenant Board] decides that rents should be reduced for a particular unit in a building based on one tenant's rent reduction application, all tenants in the building are added as parties to the application and thereby benefit from the reduction.* ("Evaluation of the City of Toronto's Notification Program on Automatic Rent Reductions and Tax Decreases", adopted by Council in July 2001, Recommendation 6(b)).

After ten years of implementing the Notification Program, these recommendations remain relevant. If all tenants are added to an application for a rent reduction by the Board, then all tenants would benefit without the need for separate applications or co-applications, which would save time and costs. In addition, since the tenants would otherwise be eligible for a reduction in their rent, it is reasonable that they should not have to pay to enforce this right.

Based on our experience, this report expands upon these recommendations to recommend that the time limit for tenant application for automatic rent reductions due to tax decreases be extended. The one-year period to apply should start when the tenant becomes aware of the property tax decrease, instead of the current requirement to apply within one year of the rent reduction date. In such situations, if the tenant can establish that they did not receive a notice due to an error or because the tax decrease was determined after the notification period (for example, due to an appeal decision or change in tax class) they would still have the right to apply for a rent reduction.

Address Property Tax Reductions that Occur after the Notification Period

As discussed earlier in this report, the City is required to send notices only once a year to landlords (by September 15) and tenants (by December 15).

When a landlord files an appeal to reduce the property assessment value for a particular year, often the Assessment Review Board (the ARB) issues the decision to the City in the year after the year the rent reduction notice would have been issued and the reduction would have taken effect. There is a similar delay where the tax class of the property is changed. For example, if an assessment appeal is issued in 2009 that would significantly

reduce the 2008 taxes, the tenants in the building as of December 31, 2008 would not receive notices and may need to apply to the Board for the rent reduction.

However, the tenant would likely not know that the taxes have been retroactively reduced. Neither the ARB nor the MPAC is required to send notices in cases where a decreased assessment value or property tax class change leads to a property tax decrease of more than 2.49%. There is no provision in the RTA that gives the City authority to send notices outside of the regulated deadline. Therefore, unless the landlord passes on the decrease, or the tenant finds out about it and makes an application to the Board, the tenant will not benefit from the property tax decrease.

To resolve this may require an ongoing notification process, and legislative amendments to permit retroactive rent reductions and longer periods for landlord and tenant applications. This report, therefore, recommends that the Minister of Municipal Affairs and Housing implement any legislative and operational changes required to ensure that tenants benefit from property tax decreases of more than 2.49% in cases where the property taxes are reduced after the notification period.

Provide Additional Direction on the Rent Reduction Calculation

While the RTA and its regulation set out rules on determination of rent reduction due to tax decrease for residential rental properties, there is no specific direction on calculation methods for rent reduction when the taxes of the residential portion of a property are reduced due to: (a) complete class changes from the multi-residential tax class to the residential tax class; or (b) changes from the residential to the commercial tax class; or (c) when a tax decrease occurs in a mixed use property (e.g. having both residential and multi-residential portions).

The absence of a clear methodology has resulted in the City not being completely certain about what rent reduction notification should be given in such situations and how the rent reduction should be calculated, although the principle that the tenants should benefit from the tax reduction is certain. The City's experience has been that landlords and tenants in those properties were confused and often requested clarification from staff about the reason for the reduction or how the reduction was calculated. This may also have resulted in applications to the Board that may have otherwise been avoided.

This report recommends that the Minister of Municipal Affairs and Housing provide specific direction on the methodology to be used in calculating rent reductions when taxes on the residential portion of a property are reduced due to an assessment shift from the residential to the commercial tax class, or when a tax decrease occurs in a mixed use property.

Request Provincial Funding for the Notification Program

Although compliance with the legislative requirements to administer the notifications is costly, no funding is provided by the Province for the program. On average, the City

spends about $80,000 in reassessment years and $30,000 in non-reassessment years for the printing, mailing and educational supports for the program, excluding staff costs. These averages exclude the first three years of the Notification Program because the range of notices sent differed from the current program (in 1998 all rental buildings received notices whether the taxes decreased or increased; and in 1999 and 2000 properties with six or fewer units were not sent notices).

Council has previously recommended that *"The Province should pay the City of Toronto's cost for administering the rent Reduction Notification Program"*. ["Response to the Ontario Government's Consultation Paper on Residential Tenancy Reform", adopted by Council in June 2004, Recommendation 14(e)]. This would include the cost for database management, education supports, printing and mailing of automatic rent reduction notices. This recommendation continues to be relevant. The Notification Program will continue to be costly, particularly in reassessment years and years when the multi-residential rental tax rate is significantly reduced.

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