

## **City Position on Amendments to O. Reg. 516/06 under the Residential Tenancies Act**

**Date:** October 31, 2017

**To:** City Council

**From:** General Manager, Shelter, Support and Housing Administration

**Wards:** All Wards

### **SUMMARY**

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As directed by the Community Development and Recreation Committee at its meeting on October 23, 2017, this report recommends that City Council adopt a position on proposed amendments to the Residential Tenancies Act and reiterate Council's previous positions on tenant issues.

Ontario's Fair Housing Plan was released on April 20, 2017, introducing 16 measures aimed at helping more people find affordable homes, increasing housing supply, protecting buyers and renters and bringing stability to the real estate market.

Two actions to protect renters were included, which partially addressed previous requests made by City Council to the Provincial government. These included expanding rent control to all private rental units in Ontario, including those built after 1991, and strengthening the *Residential Tenancies Act, 2006* (RTA) to further protect tenants and ensure predictability for landlords.

The *Rental Fairness Act, 2017* (RFA), which received Royal Assent on May 30, 2017, made the changes effective April 20, 2017; however, several amendments to the RTA are not yet proclaimed and in force. As part of the process of implementing these changes, Ontario has posted proposed amendments to O. Reg. 516/06 under the RTA on the provincial Regulatory Registry and is accepting comments on the proposal until November 16, 2017.

A draft City submission is attached to this report as Appendix A: City of Toronto comments on proposed amendments to O. Reg. 516/06 under the Residential Tenancies Act, 2006.

## RECOMMENDATIONS

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

1. City Council adopt and submit to the Provincial Regulatory Registry the positions on the proposed amendments to the Residential Tenancies Act and reiterate City Council's previous positions on tenant issues, both as outlined in the submissions set out in Appendix A.

## FINANCIAL IMPACT

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There is no financial impact arising from this report.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## EQUITY IMPACT

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Private market rentals and most social, affordable and alternative housing providers are covered by the *Residential Tenancies Act, 2006*. Around half of Toronto households are renters and almost three quarters of these households do not meet the national standard for housing affordability.

Housing and homelessness services serve a range of equity seeking groups including people experiencing homelessness, the working poor, youth, seniors, Indigenous peoples, and other vulnerable groups. The proposed amendments to the *Residential Tenancies Act, 2006* may support these groups to find more affordable rental housing and achieve greater housing stability.

## DECISION HISTORY

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On October 23, 2017, Community Development and Recreation Committee adopted "Tenant Defence Fund Review", requesting SSHA to report to City Council on November 7, 2017, with a formal submission to the Government of Ontario's current Above Guideline Rent Increases (AGI) review.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.CD23.7>

On June 12, 13, 14 and 15, 2016, City Council adopted "City of Toronto Position on Proposed Changes to the Provincial *Residential Tenancies Act*", which included the City's submission to the Ontario Ministry of Housing regarding proposed changes to Provincial tenancy legislation and reiterated previous Council positions on issues related to private market tenancy.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.CD13.14>

On December 16, 17 and 18, 2013, City Council adopted "Tenant Issues Related to the *Residential Tenancies Act*", which requested the Government of Ontario to take certain actions concerned with the quality of rental housing, as described in Attachment B of this report.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX36.2>

## ISSUE BACKGROUND

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Ontario's Fair Housing Plan was released on April 20, 2017, introducing 16 measures aimed at helping more people find affordable homes, increasing housing supply, protecting buyers and renters and bringing stability to the real estate market.

Two actions to protect renters were included. These included expanding rent control to all private rental units in Ontario, including those built after 1991, and some actions to strengthen the *Residential Tenancies Act, 2006* (RTA) to further protect tenants and ensure predictability for landlords.

The *Rental Fairness Act, 2017* (RFA), which received Royal Assent on May 30, 2017, made the changes effective April 20, 2017; however, several amendments to the RTA are not yet proclaimed and in force. As part of the process of implementing these changes, Ontario has posted proposed amendments to O. Reg. 516/06 under the RTA on the provincial Regulatory Registry and is accepting comments on the proposal until November 16, 2017.

The proposed amendments to O. Reg 516/06 will strengthen tenant protections under the RTA and SSHA supports the proposed changes. However, the City has made submissions to the Province on the need to address rental housing affordability, most recently in June 2016. While Ontario's Fair Housing Plan and the RFA address parts of previous requests made by City Council to the Provincial government, other key issues identified by City Council remain outstanding.

## COMMENTS

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### Provincial Tenant Legislation and Above Guideline Rent Increases

The RTA mandates an annual guideline rent increase, which is the maximum a landlord can increase most tenants' rent during a year without the approval of the Landlord and Tenant Board (LTB). The guideline applies to most private residential units covered by the RTA, excluding vacant residential units, social housing units, nursing homes and commercial properties. The guideline, which is capped at a maximum of 2.5% annually, is calculated using the Ontario Consumer Price Index, a Statistics Canada tool that measures inflation and economic conditions over a year. The annual guideline rent increase is set at 1.5% for 2017 and 1.8% for 2018.

In addition to guideline increases, landlords may apply to the LTB for an above-the-guideline rent increase (AGI) for any of the following reasons:

- The landlord's costs for municipal taxes have increased by an extraordinary amount;
- The landlord did extraordinary or significant renovations, repairs, replacements or new additions to the buildings or to individual units; and
- The landlord's costs for security services increased, or the landlord began providing security services for the first time.

A cost increase is considered extraordinary if it is greater than the value of a guideline increase plus 50% of the guideline for all rents in the building.

The most common landlord application for an AGI is for capital expenditures. A capital expenditure is an amount that was spent for an extraordinary or significant renovation, repair, replacement or new addition that has an expected benefit of at least five years. It does not include routine or ordinary work, regular maintenance work, work that is considered substantially cosmetic in nature or work that is designed to enhance the level of prestige or luxury offered by the complex.

The attached submission requests that the Province eliminate eligibility of capital expenditures for the purpose of an AGI related to protecting or restoring the physical integrity of the residential complex or part of it, or for maintaining the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system. Landlords should have capital repair plans that protect the physical integrity of the building and address regular replacement of the buildings system. In addition, while an AGI is not intended to apply to work that is considered cosmetic, tenants have reported to City staff and community organizations that they have experienced landlords who circumvent this control.

### **The Term of a Rent Increase**

When the LTB awards an AGI for capital expenditures, the LTB order specifies a date on which tenants who continue to occupy the rental unit must be given a rent reduction. AGI terms are often between 10 and 20 years. Given the first AGIs were awarded in 2007, some tenants may be eligible to reduce their rent. However, the process surrounding AGIs is complex and it is unlikely these tenants know they are, or will be, eligible for rent reductions. It is also unlikely that landlords will know or take action to reduce tenants' rents.

The recommendations made by Tenant Issues Committee on October 13, 2017 and adopted by Community Development and Recreation Committee on October 23, 2017 address this issue. The attached submission includes a request for the Province to provide public notice upon the completion of the term of a rent increase associated with an AGI and require landlords to provide a commensurate rent reduction.

## **CONTACT**

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## **SIGNATURE**

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Paul Raftis  
General Manager (I)  
Shelter, Support and Housing Administration

## **ATTACHMENTS**

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Attachment A: City Council Position on Areas Relating to the Residential Tenancies Act and the proceedings of the Landlord and Tenant Board

## **Attachment A**

### **City Council Position on Proposed Amendments to O. Reg 516/06 under the Residential Tenancies Act (RTA) and other Areas Relating to the RTA and the proceedings of the Landlord and Tenant Board**

The City of Toronto supports the proposed amendments in O. Reg. 516/06 under the Residential Tenancies Act.

In addition, City Council requests the Government of Ontario amend Section 126 of the Residential Tenancies Act, 2006, to:

1. Provide public notice upon the completion of the term of a rent increase associated with an Above Guideline Rent Increase (AGI);
2. Require landlords to provide a commensurate rent reduction upon the completion of the term of a rent increase associated with an Above Guideline Rent Increase (AGI);
3. Eliminate a Landlord's ability to levy an Above the Guideline Rent Increase for costs prescribed in Subsection (1)1 of the Act relating to municipal taxes;
4. Eliminate eligibility of capital expenditures for the purpose of an Above the Guideline Rent Increase under the categories prescribed in Subsection (7) a, b, and c of the Act that constitute repair and maintenance of the property;
5. Require Landlords to save 10 percent of rental income for a maintenance account to be accessed for capital expenditures related to the categories prescribed in Subsection (7) a, b, and c of the Act; and
6. Provide that no rent increases be permitted related to the enactment of the provisions contained in Recommendations 3, 4, 5 above.

On July 12, 13, 14 and 15, 2016, City Council requested that Ontario review the Above Guideline Rent Increase (AGI) regulations and provide an opportunity for public consultation on the impact of AGIs to ensure these regulations are not compromising housing affordability in the province. The City requested the following areas be reviewed:

- The applicability and appropriateness of allowing AGIs in buildings with significant reserves and the potential for the LTB to review building reserves within the AGI application process as a criterion for awarding an AGI;
- Recognizing that the weighted useful life of capital expenditures for which AGIs were awarded will begin to expire in the next several years, the possibility of creating publicly available lists of buildings where tenants are entitled to a rent reduction and a process for how tenants can receive these reductions given turnover in tenancy; and

- In response to community concerns, the frequency of AGI applications made for building envelope work that is cosmetic in nature and used in pursuit of creating luxury buildings, reducing the supply of affordable rental housing.

The City reiterates the City Council decision from June 12, 13, 14 and 15, 2016, in which City Council requested the Province to consider the following:

- A review of the Above Guideline Rent Increase (AGI) regulations to provide an opportunity for public consultation on the impact of AGIs to ensure these regulations are not compromising housing affordability in the province.
- An opportunity to improve scheduling processes within Toronto, at the LTB, for both landlords and tenants. Currently, there are often long wait times, resulting in lost time and wages and frustration on the part of all parties.
- Strengthening tenant issues Duty Counsel at the LTB and increasing funding to Legal Aid Ontario to provide support on tenant specific issues such as AGIs and evictions.
- To help mitigate problems around tenant access to information, including an information sheet on tenant supports in every notice and order from the Landlord and Tenant Board (LTB) in plain and accessible language, providing phone numbers for all services listed, including 211, Housing Help Centres, financial support services such as rent bank programs and energy assistance programs, tenant information services and Legal Aid services.
- Making available a simple, accessible fact sheet on landlord and tenant rights and responsibilities in all Ontario communications with landlords and tenants.

In addition, the City reiterates the City Council decision from December 16, 17, and 18, 2013, in which City Council requested Ontario to:

- Institute an automatic rent freeze in rental buildings for non-compliance with work orders, beyond work orders related to elevators;
- Collaborate with the City to set up an automated system that would allow the LTB direct access to work orders; and
- Amend the City of Toronto Act to enable the City to improve the quality of rental housing in Toronto through measures such as rent freezes and vacancy control.