

Tenant Defence Fund Review

Date: September 27, 2017

To: Tenant Issues Committee and Community Development and Recreation Committee

From: General Manager, Shelter, Support and Housing Administration

Wards: All Wards

SUMMARY

The Tenant Defence Fund (TDF) was created in 2000 in response to the creation of the Provincial *Tenant Protection Act, 1997*. The TDF provides grants and outreach for tenants to access legal representation to fight above guideline rent increases. The TDF is complemented by a Tenant Hotline that provides telephone information services for private market tenants in Toronto.

Shelter, Support and Housing Administration initiated a review of the TDF given there have been few changes to the TDF since 2000, new tenant legislation, and a changing rental market.

The review of the TDF found that the program is administratively challenging and its limited scope hinders it from addressing the broad range of issues that tenants face. As well, new changes to Provincial legislation and the Landlord and Tenant Board (LTB) hearing process are anticipated to change tenants' need to acquire legal representation to dispute landlord applications and make tenant applications at the LTB.

This report summarizes key findings from the review of the TDF and recommends program enhancements, including:

- A modest funding increase for the Tenant Hotline to respond to increased call volume;
- Amending Toronto Municipal Code Chapter 797 Tenant Support Grant Program to:
 - Expand the scope of the program to include tenant applications to address building-wide maintenance issues, and
 - Reduce the signature requirement required by applicants to qualify for a grant; and
- Increasing funding for the Tenant Support Grant Program to meet increased service levels resulting from a broader scope.

RECOMMENDATIONS

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

1. City Council authorize the General Manager, Shelter, Support and Housing Administration, to increase the value of the Federation of Metro Tenants' Associations Tenant Hotline program contract by \$25,000, from \$180,800 to \$205,800, to support the agency's ability to respond to increased call volume for the term January 1 to December 31, 2018;
2. City Council authorize the General Manager, Shelter, Support and Housing Administration, to increase funding for the Tenant Support Grant Program by \$50,000, from \$50,000 to \$100,000 annually beginning January 1, 2018, to support additional applications to the Landlord Tenant Board, including for maintenance and repairs affecting private market rental buildings;
3. City Council authorize the General Manager, Shelter, Support and Housing Administration, to broaden the scope of the Outreach and Organizing program to better support tenant groups to develop internal capacity and improve resiliency;
4. City Council amend Toronto Municipal Code Chapter 797, Tenant Support Grant Program to implement the changes set out in Attachment C to this report subject to such technical and stylistic amendments as required by the City Solicitor and the General Manager, Shelter, Support and Housing Administration;
5. City Council amend Toronto Municipal Code Chapter 797, Tenant Support Grant Program to reflect the recommendations and changes set out in Attachment C to this report and authorize the City Solicitor and General Manager, Shelter, Support and Housing Administration, to re-structure, consolidate and simplify all existing requirements to improve the readability of the Bylaw; and
6. City Council reiterate its previous positions on tenant issues, as set out in Attachment B, to the Province of Ontario's Ministry of Housing and Ministry of the Attorney General.

FINANCIAL IMPACT

There is no financial impact arising from this report. The recommendations in this report include an enhancement of \$75,000 for tenant support programs. During the 2015 budget process, City Council increased SSHA's base budget by \$75,000 for enhanced tenant supports as part of poverty reduction initiatives. Shelter, Support and Housing Administration (SSHA) will use this base budget funding in 2018 to support the proposed enhancement to tenant support programs.

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

DECISION HISTORY

On November 2, 2016, the Tenant Issues Committee adopted "Update on Review of the Tenant Defence Fund". The report provided an update on the review of the Tenant Defence Fund, including a broader look at the TDF in the context of broader tenant support initiatives at SSHA.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TD4.3>

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 May 17, 2016, the Tenant Issues Committee adopted "Next Steps for Review of the Tenant Defence Fund", which proposed a workplan for the review of the Tenant Defence Fund.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TD3.1>

On March 10 and 11, 2015, City Council adopted the "2015 Capital and Operating Budgets", which included the addition of \$75,000 in SSHA's base operating budget as for enhanced tenant supports as part of poverty reduction initiatives.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX3.4>

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

Origin of the Tenant Defence Fund Program

The Tenant Defence Fund (TDF) was created by Council in late 1999 in response to a rapid increase in applications to the Landlord and Tenant Board (LTB) for above guideline rent increases (AGIs) resulting from passage of the *Tenant Protection Act, 1997* (predecessor of the current *Residential Tenancies Act, 2006* (RTA)).

The TDF was established to provide financial and educational assistance to groups of tenants who wished to dispute the AGI applications before the LTB. One year later, the mandate was expanded to include assistance to groups challenging appeals to the Ontario Municipal Board (OMB) for building demolitions and conversions to condominiums.

Structure of the Program

The TDF program assists tenants through two sub-programs that complement each other: the Tenant Support Grant Program and the Outreach and Organizing Program. More information on these programs is included in Attachment A.

The Tenant Support Grant Program (Grant Program), administered by SSHA, provides direct grants to tenant groups to retain legal and other representation for participation in the legal process regarding AGI applications, and demolition or condominium conversion appeals.

The Outreach and Organizing Program (Outreach Program) helps tenants organize to prepare their defence before the LTB and/or the OMB, and to make applications to the Grants Program. SSHA currently has a contract with the Federation of Metro Tenants' Associations (FMTA) to deliver this program.

In addition to the TDF, the City currently funds the FMTA to provide a Tenant Hotline. The Hotline provides telephone information services to private market tenants in Toronto.

Provincial Tenant Legislation and Above Guideline Rent Increases

Private market tenancies in Ontario are governed by the Provincial *Residential Tenancies Act, 2006* (RTA). 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 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 is calculated using the Ontario Consumer Price Index, a Statistics Canada tool that measures inflation and economic conditions over a year.

In addition to guideline increases, landlords may apply to the LTB for a rent increase that is above the guideline amount for any of the following reasons:

- The landlord's costs for municipal taxes and/or utilities 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.

An increase is considered extraordinary if it is greater than the guideline plus 50% of the guideline. 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.

COMMENTS

TDF Program Reviews

The TDF was reviewed by external consultants in 2001, 2007 and 2015. The reviews identified challenges and provided recommendations for changes to the TDF. The most recent review in April 2015 was entitled *Tenant Support Grant Review* and prepared by Action Consulting & Community Development Inc. The objective of the review was to identify administrative issues, evaluate the effectiveness of the program and provide recommendations for improvements. Recommendations included reducing the number of signatures required from tenant groups to access the grant and reviewing how tenants receive information about the Grant Program.

Stakeholder Feedback

As part of SSHA's TDF review, a series of external stakeholder meetings were held in November and December 2016. Stakeholders included community organizations, advocacy groups and tenant leaders. These meetings were held to gain feedback on the TDF and issues faced by tenants more broadly. Overall, stakeholders agree that while the TDF is a valuable tool for tenant groups to dispute AGIs, tenants face an increasing number of challenges and require assistance navigating these challenges.

Feedback included:

- Expand the scope of the Grant Program to include tenant applications about maintenance for building-wide issues. The process for tenants to file an application against their landlord at the LTB is confusing and overwhelming for tenants, which means that many building maintenance issues go unresolved.
- Create or enhance programs that focus on building knowledge of tenant rights and responsibilities. Stakeholders cited the increasing number of illegal evictions and illegal charges, and the low number of tenants who file applications against landlords at the LTB as examples of why this is important.
- Tenant empowerment, with a view to building self-sufficient communities, is an important area for action. While the assistance of a paralegal is helpful, tenant associations are a key part of building tenant capacity as they provide more formal mechanisms to support large groups of tenants to negotiate their rights with landlords long-term.

Other Factors Impacting Tenants in the Private Market

Stakeholders stated that AGIs are not the most serious issue impacting tenants, but they can be the difference for a low-income tenant between being able to pay rent and going into arrears.

Low vacancy and turnover rates in Toronto create a supply-driven market where landlords can choose who they want to rent to and, in setting rents at the level the market will bear, are quickly reducing the supply of affordable housing in Toronto.

Vacancy decontrol is a key contributor to rising rents in Toronto. When a unit becomes vacant, the landlord can set the rent for that unit at any level before renting it again. This means that if a long-term tenant moves from a unit, the landlord could increase the rent for the next tenant to whatever the market will bear.

Provincial Actions Impacting the TDF

The Rental Fairness Act, 2017

The *Rental Fairness Act, 2017* (RFA), which received Royal Assent on May 30, 2017, expanded rent control to all private units by eliminating the post-1991 exemption. This means all buildings are now subject to the guideline. The RFA also introduced additional measures to protect tenants from eviction due to abuse of the landlord's own use provision in the RTA. These were both amendments previously requested by City Council in submissions to the Province.

In addition, the RFA removed extraordinary increases in the cost for utilities from the list of costs that qualify for AGIs and require landlords to submit to the LTB any outstanding orders relating to elevators in the building, with the intent of preventing landlords from increasing rent above the guideline where they have failed to keep their elevators in a state of good repair.

The City has made other requests of the Province and this report recommends reiterating the requests that have not yet been addressed, which are outlined in Attachment B.

Case Management at the LTB

The Province made changes to the AGI hearing process at the LTB, effective March 1, 2017. The LTB now holds case management hearings for applications filed by landlords who want an AGI for capital expenditures. The case management hearing gives both sides an opportunity to discuss, and possibly agree on, a fair rent increase. The intent of these changes is to reduce the number of AGI cases that go to hearing and, therefore, reduce the burden on tenants of acquiring legal representation to dispute AGIs.

Proposed Changes to the Tenant Defence Fund

Based on the 2015 consultant review of the TDF and SSHA's subsequent review, program modifications are being recommended in the areas outlined below.

Tenant Hotline

This report recommends increasing the value of the FMTA's Tenant Hotline program contract by \$25,000, from \$180,800 to \$205,800, for the term January 1 to December 31, 2018, to support the agency's ability to respond to increased call volume.

Tenant knowledge of rights and responsibilities was identified as a key concern in the TDF Review and the Tenant Hotline is an important information service for tenants renting in the private market. Call volume to the Tenant Hotline has increased year-over-year consistently. FMTA has had VOIP-call tracking since November 2012, which shows:

	2013	2014	2015	2016	2017*
Total Calls	20,598	19,413	21,035	24,162	27,690
Percentage Change		(6%)	8%	15%	15%

* projected based on 8 months of call data

Outreach and Organizing Program

Currently, FMTA is funded to provide a number of tenant workshops to newcomer groups on tenant rights and responsibilities. This report recommends broadening the scope of the Outreach and Organizing program by removing restrictions around who these workshops can be provided to in order to better support tenant groups to develop internal capacity and improve resiliency. This will allow FMTA flexibility to build partnerships with new agencies, offer more train-the-trainer sessions to expand the impact of the workshops, etc.

Tenant Support Grant Program

This report also recommends increasing funding for the Tenant Support Grant Program from \$50,000 to \$100,000 annually, beginning January 1, 2018, to support additional applications to the Landlord Tenant Board, including for maintenance and repairs affecting private market rental buildings, and amending Chapter 797 accordingly.

As well, this report recommends amending Chapter 797 to:

- Add the definitions of Basic and Additional Grants and include in the definition of Additional Grant: a grant for a tenant group to make or dispute an application at the LTB not otherwise specified, impacting housing affordability in Toronto, as deemed appropriate by the General Manager.
- Reorganize sections of the Chapter by application type to include in each section information and applicable criteria related to Basic Grants for Landlord Applications, Basic Grants for Tenant Applications and Additional Grants.
- Update staff titles and names of statutes; for example, changing references to the Commissioner of Community and Neighbourhood Services to General Manager, Shelter, Support and Housing Administration.

As noted in the 2015 consultant review of the TDF, tenants and community organizations have cited the signature requirement, which is used to determine eligibility for a grant, as a challenge. Currently, 50% of tenants in buildings with less than 100 units must sign a petition to indicate they are in favour of disputing the landlord

application. In buildings with 100 or more units, 33% of units must sign a petition. This report recommends reducing the signature requirements in Chapter 797 to the following:

	Current	Recommended
If less than 100 units are affected by the AGI application	50% of tenants	25% of tenants
If 100 or more units are affected by the landlord application	33% of tenants	25% of tenants with a cap of 30 units

Next Steps

The contracts for the Outreach and Organizing Program and the Tenant Hotline end on December 31, 2018 with no renewal options. SSHA will issue a Request for Proposals in the spring of 2018 for these services, including the enhancements discussed in this report.

Recognizing that Provincial tenant legislation and legal support services have changed significantly since 2000 when the TDF was created, and will likely continue to change, SSHA will continue to monitor developments and assess their impact on the TDF.

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ATTACHMENTS

Attachment A: Structure of the Tenant Defence Fund

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

Attachment C: Proposed Amendments to Municipal Code Chapter 797, Tenant Support Grant Program

Attachment A

Structure of the Tenant Defence Fund

The Tenant Support Grant Program (2017 City Funding \$50,000)

The Tenant Support Grant Program provides the following direct grants for tenant groups:

- Basic grants, which provide a maximum of \$1,000 to each eligible tenant group to pay for basic representation and administrative costs to dispute a landlord application for an AGI at the LTB; and
- Additional grants for:
 - Costs for obtaining professional assistance beyond the basic grant level such as legal, accounting or engineering services (maximum \$5,000);
 - Defence of a landlord appeal to Divisional Court of a Board Order regarding an AGI application (\$10,000 maximum);
 - Defence of a landlord application to Divisional Court for judicial review of the proceedings of an AGI application (\$10,000 maximum); and
 - Defence of a landlord appeal to the OMB on applications for demolitions or conversion to condominiums (\$15,000 maximum).

The eligibility criteria, application process and payment process for the program are set out in the City of Toronto Municipal Code Chapter 797, Tenant Support Grant Program, and currently include:

- The landlord has made an application to the Landlord and Tenant Board, Divisional Court or the OMB.
- The application does not relate to rent-geared-to-income units.
- The tenant group making the grant application has the support of:
 - In buildings with 100 or fewer units, 50 percent of tenants residing in affected units; and
 - In buildings with more than 100 units, 33 percent of tenants residing in affected units.
- Those units supporting the grant application must have a current rent which is at or below CMHC average market rent plus 15%, which SSHA publishes at the beginning of each year in the grant application form.

Grant applications are made by tenant groups and are assessed by SSHA staff. If the tenant group is determined to be eligible for funding, their grant application is approved. In the last few years, SSHA received no applications for additional grants that met the mandate of the Grant Program.

When all required documentation has been received, staff prepare payment for the tenant group, which is responsible for paying approved expenses, including most commonly the group's paralegal. SSHA does not have any direct relationship with paralegals or other professionals.

The Outreach and Organizing Program (2017 City Funding \$199,216)

The Outreach and Organizing Program is currently administered by the FMTA to provide support to tenants facing an AGI by:

- Notifying tenants in buildings affected by AGIs. FMTA receives a monthly list from the LTB of buildings receiving AGIs. FMTA staff go to the impacted buildings and put up flyers advising tenants of the dispute process through the LTB. If requested, staff will provide information sessions to the tenants about the AGI dispute process;
- Assisting tenants to apply for a Tenant Support Grant through SSHA; and
- Developing and conducting workshops annually for tenants who are also newcomers to Canada, in respect of the RTA.

The Tenant Hotline (2017 City Funding \$180,800)

In addition to the Outreach and Organizing Program, as part of the Tenant Defence Fund, SSHA currently funds the FMTA to provide a Tenant Hotline. This program provides telephone information services that are accessible to all tenants in private market rental housing in the City of Toronto.

Telephone inquiries relate to different topics including: the RTA, LTB, repair and maintenance issues, rent increases, tenancy agreements, and discrimination. FMTA makes referrals, when appropriate, to other services such as Legal Aid.

Attachment B

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

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 additional, 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.