



STAFF REPORT INFORMATION ONLY

Tenant Issues Related to the Residential Tenancies Act

Date:	October 15, 2013
To:	Executive Committee
From:	General Manager, Shelter, Support and Housing Administration
Wards:	All
Reference Number:	

SUMMARY

This report responds to a request by the Executive Committee at its meeting of May 28, 2013 to review and report back on a motion concerning two tenant issues related to the *Residential Tenancies Act* (RTA) in private rental housing.

The motion recommended that the City request the Government of Ontario to:

- a) discontinue the exemption pertaining to rent increases for rental housing built or occupied after November 1991;
- b) institute an automatic rent freeze in rental buildings for non-compliance with work orders; and;
- c) collaborate with the City to set up an automated system for direct access to work orders to eliminate the need for tenants to provide proof of the work orders to the Landlord and Tenant Board.

This report is provided for information only. It has been prepared in consultation with the Affordable Housing Office, City Planning Division and Municipal Licensing and Standards Division.

FINANCIAL IMPACT

There is no financial impact beyond the 2013 Approved Operating Budget of Shelter, Support and Housing Administration (SSHA).

DECISION HISTORY

At its meeting on May 28, 2013, the Executive Committee referred EX32.33 to the City Manager for review and report back to the Committee. The item recommended that:

1. City Council request the Government of Ontario to discontinue the exemption pertaining to rent increases for rental residential units built or occupied after November 1, 1991, in order to provide the same rent control protection for tenants renting these units.
2. City Council request the Government of Ontario to implement an automatic rent freeze on all rent increases where there is non-compliance with outstanding work orders and to collaborate with the City in setting up an automated system for direct access for work orders to eliminate the need for tenants to provide proof of the work orders
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX32.23>

The recommendations made in this motion were included in a previous report from the Commissioner of Community and Neighbourhood Services with respect to rent control and protection of rental housing, entitled "Response to the Ontario Government's Consultation Paper on Residential Tenancy Reform". All the fifty recommendations contained in the report were adopted by City Council at its meeting on June 22, 23 and 24, 2004. In accordance with the Council direction, the report was forwarded to the Ontario Minister of Municipal Affairs and Housing for consideration, when the Government of Ontario was contemplating replacing the then *Tenant Protection Act* (TPA) with a new regulatory regime.
<http://www.toronto.ca/legdocs/2004/agendas/council/cc040622/cms4rpt/cl001.pdf>

ISSUE BACKGROUND

The former Provincial *Tenant Protection Act* (TPA) provided exemption from certain rules relating to rent for rental units and buildings that were occupied or built after November 1991. These exemptions included the rules limiting rent increase to the annual guideline increase and the rules for above-guideline rent increases and rent decreases. The current *Residential Tenancies Act, 2006* (RTA) continues to provide these exemptions.

Prior to the TPA, rent freeze orders were issued to buildings or units subject to work orders on property standard deficiencies such that landlords were not permitted to increase rents until they had complied with the work order. The TPA removed this provision and only allowed tenants to apply to the Ontario Rental Housing Tribunal for remedies such as orders requiring the landlord to make repairs or return all or part of the rent paid during the period when maintenance was inadequate.

The current RTA permits a rent freeze as one of the remedies if a landlord fails to comply with maintenance standards or a work order, however, the rent freeze is not automatically ordered by the Landlord and Tenant Board (LTB). Tenants must apply to the LTB and provide evidence of non-compliance at a hearing, typically a copy of the outstanding work order or by summoning a Municipal Licensing and Standards inspector as a witness.

Exemption of New Units from Rent Control

Almost one-half of Toronto residents rent their homes. The City's rental housing, with a range of building forms and rent levels, is an essential part of a healthy mix of urban residential dwellings.

Since 1992 when the *Rent Control Act* came into force, successive provincial governments and the private rental sector have supported the exemption of new buildings from rent control as an incentive to stimulate new housing supply.

Supporters argue the regulatory flexibility provided by the exemption has resulted in the development of new private rental housing (both purpose built and condominium rentals) and a reinvestment in rental homes constructed after November 1, 1991. They also maintain that the construction activity associated with new developments supports many thousands of local jobs.

Tenant advocates support removing the post-1991 exemption. They argue that tenants face the risk of economic eviction should rent increases be too high, and furthermore that tenants in rented condominiums have less security, as they may be required to vacate should a current or new owner require the unit for their own use or for their immediate family's use.

In its submission to the Province of Ontario in 2004, the City maintained that the exemption incentive did not have a significant impact on rental housing production and suggested that the more significant determinants for investment and development in new rental housing are related to economic factors. As such, the City recommended that the Province "discontinue the exemption of new units or buildings from rent regulation, and discontinue the exemption applied to units and buildings that have been built or first occupied since 1991."

Data from the Canada Mortgage and Housing Corporation (CMHC) shows that ownership units continue to make up the majority of all residential completions. Of the rental units produced, most are rented condominiums and relatively few would be considered as purpose-built (non-condominium) rental housing.

CMHC's 2012 report also provides information on the average rent for private market units by year of construction. It shows that those buildings constructed in 1990 and after have rents that are 37% higher than the rents in the overall rental market (\$1,512 versus \$1,103/month). This information alone, however, does not demonstrate the impact of exemption of rent control in newer relative to existing buildings and must be used with caution. Many newer buildings are in a much better state of repair and offer additional amenities and features not found in the older stock.

Automatic Rent Freeze for Non-Compliance with Work Orders

Under the RTA, landlords are required to keep rental buildings in good repair and comply with health, housing and safety standards, while tenants are responsible for ordinary cleanliness of their units and for repairs of damage to their units by themselves or their guests.

The majority of Toronto's rental stock is more than 40 years old and many of the buildings are in need of continuous maintenance and often substantial capital work to remain in good condition. Many complaints have been made by tenants to the City about poor and sub-standard living conditions and health and safety issues in their buildings.

Similar to the rent control exemptions of newer buildings, the notion of automatic rent freezes to enforce building maintenance draws strong views from landlord and tenant groups. Supporters of this proposal maintain that, although the Act allows the LTB to order a rent freeze, tenants must first apply and provide evidence to the Board, putting an unfair onus on them. Opponents argue the RTA already requires landlords to maintain their buildings in a good state of repair and fit for habitation and provides sufficient remedies to deal with non-compliance of work orders.

In its response to the Province of Ontario respecting the reform of the TPA in 2004, the City suggested that the Province should provide an effective tool for enforcing maintenance and standards and recommended that "the Province freeze all rent increases where the landlord has not complied with a work order, and expand what the Tribunal can order a landlord to do when there is inadequate maintenance, such as forbidding rent increases or forcing permanent rent reductions". The City also recommended that "the Tribunal (currently the LTB) should work with the City to set up an automated system for direct access to work orders and notices. This will improve efficiency in implementing rent freezes due to non-compliance."

COMMENTS

Exemption of New Units from Rent Control

On June 5, 2013, a Private Member's Bill (Bill 82) called "The Residential Tenancies Amendment Act (Rules Relating to Rent Increases)" was introduced at the Ontario Legislature by MPP Cindy Forster, the New Democratic Party's Municipal Affairs and Housing Critic, and passed First Reading. The Bill is intended to eliminate the exemption from rent regulations for buildings constructed after November 1, 1991.

However, the Province of Ontario recently indicated that it has no plans to review the RTA. The Minister of Municipal Affairs and Housing issued the following statement on April 29, 2013 (Canada.com /Postmedia):

"The post-1991 rent exemption was originally introduced - and has been maintained over time - as an incentive for private landlords to build new rental accommodation. This incentive not only helps to renew the rental housing stock but also creates jobs in the construction sector. As such, any changes to this incentive could have an adverse effect on the rental housing sector, the economy and job creation."

In the past few years, City Council has undertaken a number of actions to support the creation of new purpose-built rental housing in Toronto.

In October 2013 City Council adopted EX34.1, Development Charges By-law Review, which recommends that Council request the Deputy City Manager and Chief Financial Officer to establish a Staff-Rental Apartment Industry Working Group to recommend an incentive mechanism to enable the deferral of Development Charges for purpose built rental housing. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX34.1>

At its meeting of July 11, 2012 Council adopted clause EX21.30, Housing Makes Economic Sense - Report from the Private Sector Housing Roundtable. The report recommended all governments create a more positive rental housing construction and regulatory environment and encouraged investment in existing private rental housing. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX21.30>

Council at its meeting of August 5, 2009, adopted Clause EX33.47, Housing Opportunities Toronto: An Affordable Housing Action Plan 2010-2020. The Plan affirms the opportunity for all Toronto residents to have a safe, secure, affordable and well-maintained home, while also recommending the creation of new affordable rental housing and the preservation and repair of existing rental housing. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX33.47>

Automatic Rent Freeze for Non-Compliance with Work Orders

Multi-Residential Apartment Building (MRAB) Audit Program

As one of the approaches to address the non-compliance issues, the City initiated the Multi-Residential Apartment Building (MRAB) Audit Program in December 2008. Operated by the Municipal Licensing and Standards Division (ML&S) with a dedicated team of investigation officers, this program conducts proactive audits of multi-residential rental buildings to ensure that property standards are adequately maintained and to improve housing conditions for tenants of rental apartment buildings.

Staff intend to inspect at least 200 buildings per year throughout the City, starting with those identified as priority buildings based on complaints from tenants, Councillors or the community. In addition to auditing common areas in rental buildings, staff also inspect individual tenant suites with consent of the tenants. If maintenance issues or infractions are identified, the investigating officer will issue work orders. Each order has a distinct compliance time and re-inspections are conducted following completion of voluntary compliance. If the work order is ignored by the building owner, staff may proceed with a prosecution.

Automated System for Access to Work Orders

Currently, there is no system between the City and the LTB for sharing information on work orders issued to audited buildings. Information on work orders issued under MRAB is posted on the ML&S website (http://www.toronto.ca/licensing/mrab/audit_activity_by_ward.htm). This website allows anyone to obtain information about outstanding work orders at a given address.

However, these work orders generally deal with common elements of the building. If a tenant wants to obtain a copy of the work order about their own unit as evidence for a LTB application, the tenant needs to make a Freedom of Information (FOI) request, and the release of the information is subject to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). The response time may be up to 30 days and there is a nominal \$5.00 cost for making the copies of requested documents. Alternatively, tenants may serve a "Summons to Witness" for a ML&S inspector to be a witness at a LTB hearing. The summons fee has been waived for tenants.

More detailed information about the MRAB program and its results is provided in the report "Multi-Residential Apartment Buildings (MRAB) Audit and Enforcement Program Update". <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.LS20.2>

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SIGNATURE

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