



REPORT FOR INFORMATION

Supplementary Report - Amendments to Chapter 354, Apartment Buildings and Progress Update on RentSafeTO

Date: November 25, 2019

To: City Council

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

As directed by the Planning and Housing Committee at its November 13, 2019 meeting, this is a supplementary report for item PH10.4 Amendments to Chapter 354, Apartment Buildings and Progress Update on RentSafeTO. This report responds to directives from the Committee meeting, including conducting additional consultations, and outlines the feasibility of implementing the Committee recommendations.

Staff held additional consultation meetings with organizations representing both tenants and landlords to gather feedback on the recommendations made by the Committee. Feedback received from these meetings has been summarized in this report, and has been used to inform the response from staff.

A number of the Committee recommendations received support from tenants and landlords and can be implemented in the near-term, such as providing more information to tenants through the RentSafeTO webpage related to service standards, as well as the process for submitting and following up on complaints. Staff have also committed to issuing an RFP for a third party organization to conduct door-to-door tenant engagement, and providing notice 30 days in advance of a building audit to ensure tenants can make arrangements to participate and voice their concerns.

This report also makes note of work that is currently underway to improve the RentSafeTO program, such as reviewing and updating the tool used to conduct building evaluations, obtaining general contractor(s) to undertake remedial action in buildings, and establishing a system for Administrative Penalties. Staff will continue this work and report back with updates at a future Planning and Housing Committee meeting.

Finally, the report identifies challenges with some of the Committee's directives, including the creation of a rating system similar to the City's DineSafe program and investigating infractions under the provincial Residential Tenancies Act.

FINANCIAL IMPACT

There are no financial implications beyond what has already been approved in the current year's budget.

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

DECISION HISTORY

On November 13, 2019, the Planning and Housing Committee considered the report PH10.4 Amendments to Chapter 354, Apartment Buildings, and Progress Update on RentSafeTO, with amendments. The Committee directed the Executive Director, Municipal Licensing and Standards to consult with tenant and advocacy organizations, the Greater Toronto Apartment Association and the Federation of Rental Housing Providers on the Planning and Housing Committee's recommendations to City Council; and report directly to City Council with the result of these consultations, as well as the feasibility of the implementing the Committee's additional recommendations.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH10.4>

COMMENTS

This report responds to directives from the November 13, 2019 Planning and Housing Committee meeting including conducting additional consultation meetings with tenant and advocacy organizations and organizations representing apartment building owners and operators, as well as outlining the feasibility of implementing the Committee recommendations.

Outreach and Awareness

The Planning and Housing Committee recommended additional amendments to Chapter 354, Apartment Buildings and operational changes to increase the awareness of the RentSafeTO program among tenants. This includes:

- Amendment to require that landlords to post notices on the Tenant Notification Board 30 days prior to a building audit;
- Amendment to require landlords to provide information about the RentSafeTO program to tenants upon receiving notices of rent increases (i.e. N2 forms);
- Updating the RentSafeTO webpage (previously known as the "Tenant Information Portal"); and
- Issuing an RFP for tenant engagement.

Requiring 30 days' notice of audits

The Planning and Housing Committee recommended that tenants be notified at least 30 days in advance of an audit taking place at the building and that information be posted on the Tenant Notification Board, with appropriate contact information for City staff, so

that tenants may be able to contact City staff and register their complaints prior to the audit taking place. This would allow tenants sufficient time in advance to ensure that the audit process considers any pre-existing issues that the tenants are experiencing with the building.

Currently, landlords receive 10 days' notice from MLS Officers in advance of an audit. Staff advise that it is feasible to extend the time period to 30 days. Tenants would be directed to contact 311, rather than individual MLS staff, via the standard complaint process. MLS Officers will be made aware of the tenant requests, and inspect the issues. Tenants can also visit MLS Officers at the tenant engagement desk, which is set up in or near the apartment building during the audit to discuss in-suite issues with tenants.

N2 Forms - Notice of Rent Increases

Staff recommended that landlords be required to provide information to tenants about the RentSafeTO program annually and upon signing a lease agreement. The Planning and Housing Committee requested that staff also evaluate the feasibility of requiring that landlords provide all tenants with information about RentSafeTO when issuing N2 forms.

An N2 form is provided to tenants when a landlord increases rent by an amount higher than the annual guideline increase set by the Ontario Ministry of Municipal Affairs and Housing. Landlords of newer buildings (i.e. occupied for the first time for residential purposes after November 15, 2018) may increase rent above the guideline without approval from the Landlord and Tenant Board. Similarly, N1 forms are provided to tenants to notify of an increase in rent within buildings that cannot raise rent above the guideline. N1 forms are more common among registered RentSafeTO buildings as they are older buildings. Landlords must provide both of these notices at least 90 days prior to the rental increase taking effect.

The issuance of N2 forms is a requirement under provincial legislation and the process does not involve the City of Toronto. Landlords can choose to implement a rental increase and provide notice to tenants at any time throughout the year, and MLS Officers are not informed when N2 forms are issued. There are challenges in enforcing the requirement that RentSafeTO information be provided at the time of providing an N2 form.

Staff have recommended requiring landlords to provide RentSafeTO information to tenants annually, upon signing a lease agreement and upon request. This meets the same objective of sharing information frequently, and ensures that the information is shared regardless of whether an above guideline rent increase occurs.

Website Updates

The Planning and Housing Committee recommended that staff provide information on the RentSafeTO webpage on how to report or escalate property standards issues. Staff will update the RentSafeTO webpage for tenants to provide more detailed information

on how to report property standards issues through 311, and how they can follow up on and/or escalate these requests after they are filed.

RFP for Tenant Engagement

Staff have committed to issuing an RFP for a qualified organization to conduct door-to-door tenant engagement in 2020. Staff will consider other criteria that City Council established in 2017 and will work to ensure that the qualified bidder has experience engaging diverse communities, low-income tenants and those who face barriers around mental health and disabilities.

Evaluation Tool

Staff are currently in the process of reviewing the criteria and tool used to evaluate buildings through the RentSafeTO program. The first iteration of the evaluation tool scored 20 categories on a scale from 1 to 5, primarily related to cleanliness and maintenance of common areas within and outside of the building. Staff are assessing the current tool and exploring options to improve the process for the evaluations to be conducted in 2020.

The Planning and Housing Committee requested that City Council direct staff to evaluate the feasibility of expanding the criteria of building evaluations to include the condition of building roofs, pest infestations, the presence of mould, water pressure, the condition of unit windows, and compliance with existing Tenant Notification Board requirements. Staff will take these criteria into consideration in the ongoing review and update of the evaluation tool.

Remedial Action

If a building owner or operator fails to comply with an order to do work to correct a contravention under the RentSafeTO program, MLS has the authority to enter the premises and undertake the work at the building owner's expense. The building owner is required to pay the costs, and they can be added to the property tax roll for the building. MLS has taken some remedial action since the introduction of the RentSafeTO program in order to rectify issues related to waste and property standards in apartment buildings.

Moving forward, it is recommended that the division work with the City's Purchasing and Material's Management division to obtain general contractor(s) that can undertake remedial action a wider range of maintenance work.

Rating System

The Planning and Housing Committee recommended MLS create a rating system similar to the City's "Dinesafe" program that requires landlords to post a colour-coded sign that displays the City's rating of an apartment building in a prominent, publicly identifiable location, along with posting the same information on the RentSafeTO website.

City staff did not recommend an evaluation system similar to DineSafe. Instead, City staff recommended landlords be required to post the results of their evaluations on the tenant notification board, which is accessible to building tenants and visitors. It is also recommended that landlords be required to provide the results of the evaluation to any tenants, including both existing and prospective tenants. Individual building scores will also be available online. These recommendations ensure that tenants and prospective tenants are made aware of building evaluations.

City staff have assessed the feasibility of the request to create a rating system similar to DineSafe. This would require classifying the ratings as a colour-coded system, and staff note that there are considerations and challenges in implementing such a rating system.

Posting a sign visible from the outside of a building, provides neighbours and community members with information on the evaluation score of a building. Staff note that labelling apartment buildings with a red or yellow colour-code rating (which is associated with failure or higher-risk conditions) may be confusing as it may seem that the building is uninhabitable. As well, posting a colour coded sign that is visible from the outside of a building may cause stigmatization of the tenants who have homes there. This type of program could disproportionately stigmatize low-income individuals and families.

Staff also note that there are differences between DineSafe and RentSafeTO that make implementation a challenge. For example, where a Conditional Pass Notice (yellow sign) is issued through DineSafe, Toronto Public Health will do a re-inspection within 24 to 48 hours. When an establishment receives a red notice (Closed) staff re-inspect when notified by the owner/operator that the health hazard is abated.

The RentSafeTO program currently requires inspections every one, two, or three years. If the colour-coded rating system were to be implemented, staff would likely need to increase the frequency of inspections to ensure that the colour-coding is up-to-date. This would have resource and cost impacts.

Staff heard additional feedback on rating system approaches from tenant and advocacy organizations, as well as organizations representing landlords. See Consultation Summary on page 8 for more information.

Staff recommend that the City require landlords to display a copy of the building evaluation result document, received by the City following their last evaluation, on the tenant notification board, and provide copies to any persons who request it, in order to ensure that tenants are aware of the evaluation grade.

Capital Plan Requirements

Chapter 354, Apartment Buildings currently requires that landlords develop and maintain a state of good repair capital plan, including a list of the capital elements of the apartment building and a date upon which the element will be scheduled to be replaced or updated. Elements include the roof, elevators, building façade, windows, mechanical systems, underground garage, interior flooring, interior wall finish, balcony guards and

handrails. Landlords must provide a copy of the state of good repair capital plan to any tenant or prospective tenant upon request.

The Planning and Housing Committee recommended additional requirements for the capital plan. These include: requiring landlords to develop and maintain a capital plan that includes a comprehensive 5-year forecast extending beyond major capital repairs to include common element improvements. The capital plan would also include anticipated work that will impact tenants' access to, or enjoyment of, their rental property; and landlords would be required to make the plan accessible to tenants, upon request and within 60 days. The recommendation also listed a number of elements to be included in the capital plan requirement.

Most of the building elements that are proposed are already included in the capital plan repair requirements under the existing by-law, as well as the requirement to share with current or prospective tenants. Elements that are not currently included are air treatment systems, stairwells, and building access and emergency exit doors.

It is feasible to expand the requirements to include additional elements, and require landlords to create a plan that spans five years. If directed by City Council, MLS will coordinate and consult with other City divisions and external stakeholders that have an expertise in capital planning in order to develop a template that landlords can use to develop 5-year capital plans.

There is currently no time requirement for when a landlord must provide a copy of the capital plan to tenants when requested. It is feasible to introduce a requirement of 60 days in the bylaw to ensure that this is provided in a timely manner, although the enforcement of this requirement would depend on a tenant or prospective tenant maintaining record of when this initial request was made.

Service Standards and Standard Operating Procedures

The Planning and Housing Committee has requested that City Council reaffirm its direction to the Executive Director, Municipal Licensing and Standards to develop standard operating procedure service standards for Municipal Standards Officers, subject to annual review. Committee directed that the standards should provide targeted timelines by violation category to bring landlords into compliance with City by-laws from the date an order is issued, and that the standards be made available to the public on the RentSafeTO website by the first quarter of 2020.

Service standards refer to the target response times that MLS sets for the various work performed by the division. Currently, the RentSafeTO enforcement team works to meet the same service standards that apply to service requests made through Investigation Services.

Service requests related to property standards, noise, waste, long grass and weeds, zoning and other matters have an initial response time of 5 days. This excludes priority service requests such as no heat in apartment buildings, abandoned appliances, and pool fence enclosures, which have a 24 hour response time.

Staff continue to monitor response times in order to meet the service standards established across the division, and will ensure that these existing service standards are posted in a prominent manner on the RentSafeTO webpage for both tenants and landlords to understand the process.

Staff will work to develop more detailed service standards related to how many days after a request is made that an Officer will respond to the request, as well as a range of compliance timelines for specific violations. These will be developed and communicated on the RentSafeTO website in a way that is user-friendly and accessible to tenants and the general public.

In addition, a working group has been established within MLS to prioritize work and set timeline standards. There are considerations and complexities in setting service standards as MLS must prioritize its work, focusing on cases with health and safety impacts to the community. As a result, service requests for minor infractions that do not have an impact on public safety may take longer to resolve. The working group will take into account these issues and complexities as they update the service standards and aim to improve how service requests are responded to and managed.

Property Standards Committee Extensions

The Property Standards Committee consists of four panels of four members each corresponding to the City's four service districts. It is a quasi-judicial body required under the Building Code Act that hears appeals of minimum property maintenance standards for residential, multiple residential, and commercial properties contained in Chapter 629, Property Standards. The Property Standards Committee has authority under the Building Code Act, which cannot be changed by Council or staff, to confirm modify or rescind Orders as well as to extend the time for complying with Orders.

During the appeal process, the Property Standards Committee hears from the appellant (i.e. the property owner appealing the Order to Comply), who may request a longer period of time to complete the work necessary for compliance. The Committee also hears from the Officer who issued the Order. An Officer is required to give a property owner a reasonable period of time to comply with an Order, and supports this period of time on the appeal except in extraordinary circumstances. The Property Standards Committee considers the submissions of both appellant and the Officer, often taking into account the time that has elapsed from when the order was issued until the appeal, extending the period of time to comply accordingly.

Administrative Penalties

In 2017, City Council requested that staff review the Administrative Penalty Bylaw and consider increased set fines that would apply to the violations under Chapter 354, Apartment Buildings. The Planning and Housing Committee recommended reaffirming this direction and recommended that staff report back in the first quarter of 2020 with an Administrative Penalties By-law.

The City of Toronto Act allows the City of Toronto to use an Administrative Monetary Penalty System for violations of Chapter 354, Apartment Buildings and Chapter 629, Supplementary Report - Chapter 354, Apartment Buildings (RentSafeTO)

Property Standards. By implementing administrative monetary penalties for these by-law violations, the City of Toronto can aim to ensure that the matters are resolved through more streamlined processes administered by the City, without engaging the Provincial Offences Act court process.

Staff have begun consultation with Legal Services and Court Services to understand the feasibility, cost and appropriateness of establishing administrative monetary penalties for violations of Chapter 354, Apartment Buildings and Chapter 629, Property Standards. Creating this system is a long-term project that requires significant planning, resources, financial investment and business transformation.

The City currently has a set fine order for tickets issued under the Provincial Offences Act. An application for a new set fine order could be made to the Ministry of the Attorney General who reviews it and then forwards it to the Regional Senior Justice of approval. The current set fine order is relatively new and contains fines ranging from \$300 to \$500. While the maximum cap is \$1,000, the Regional Senior Judge may or may not approve increases.

Infractions under the Residential Tenancies Act

Planning and Housing Committee recommended that staff request the provincial government provide the City of Toronto's Officers with the ability to investigate infractions under the Residential Tenancies Act as part of the RentSafeTO program. If the Province was to grant this authority, there would be significant challenges with investigation and enforcement.

The Residential Tenancies Act, 2006 (RTA) is provincial legislation that provides protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. The City of Toronto does not have the authority to investigate infractions under this legislation.

The role of an MLS Officer under RentSafeTO is to enforce bylaws related to property standards and building maintenance. Offences under the RTA include coercing tenants into signing agreements, failing to make an evicted tenant's property available for retrieval in accordance with the law, and requiring or receiving a security deposit from a tenant contrary to the law.

These offences are beyond the scope and purpose of the RentSafeTO program. Expanding the role of an Officer to include investigations of infractions under the RTA would require significant training efforts, additional resources, system modernization and collaboration with the Government of Ontario.

Consultation Summary

The Planning and Housing Committee directed staff to consult with tenant and advocacy organizations, the Greater Toronto Apartment Association and the Federation of Rental Housing Providers on the Planning and Housing Committee's

Supplementary Report - Chapter 354, Apartment Buildings (RentSafeTO)

recommendations to City Council, and report directly to City Council with the result of these consultations. Staff also reviewed the deputations and noted concerns raised by deputants, including reviewing the 11 written deputations submitted to Committee.

On November 20, 2019, staff held two consultation meetings: one with tenant and advocacy organizations, and one with organizations representing apartment building owners and operators. Staff provided an overview of the recommendations made at the Planning and Housing Committee, and requested feedback from attendees. Below is a summary of the feedback received at these meetings.

Staff received feedback from tenant and advocacy organizations on the Committee motions as well as the program overall, including:

- Concerns regarding enforcement of the program, including the evaluation process and criteria. Attendees noted specific items that they would like to see considered in the upcoming review of the evaluation tool, such as pests, mould and air quality - although there was acknowledgement that some of these may be under the purview of other City divisions or levels of government (i.e. specifically those related to health concerns).
- Attendees noted that they would like to see more tenant involvement in the evaluation process and not just the audit process. They also would like to see other mechanisms used to trigger a building audit beyond failing the evaluation.
- There was support for expanding the current requirement for capital plans to consider longer term forecasts and outline in the bylaw specific time requirements to provide copies to tenants, although they noted that this must also be accompanied by more guidance and education for landlords on what capital planning should entail.
- Concerns regarding the lack of awareness of the program and the process involved in making service requests to the City. While some organizations support the RFP for a third party organization to conduct tenant engagement, other groups felt that these funds could be better spent on other elements of the program, and that engagement should be more of a responsibility for Councillors and existing tenant associations.
- All organizations in attendance were supportive of providing information on the evaluation results or another form of rating system, so long as it is posted in a prominent place. There were concerns about requiring this to be posted on the Tenant Notification Board, as many buildings do not yet have a board in place.
- While some organizations are supportive of a rating system modeled after the DineSafe program, some were also open to other systems such as providing a letter grade or evaluation score. Attendees noted that it will be important to provide information on the process that leads to any categorization, such as the notes and criteria used for an evaluation.

- Organizations are very supportive of introducing a system for Administrative Penalties for contraventions under the Apartment Buildings bylaw. There was also interest in expanding this type of tool for contraventions of other laws, although some would be beyond the jurisdiction of the City (e.g. renovictions).

Staff also received feedback from the Greater Toronto Apartment Association and the Federation of Rental-Housing Providers of Ontario, related to both the motions as well as the recommendations made in item PH10.4. Here is a summary of the key points that were raised:

- Concerns regarding the cost recovery tool - namely that the City was overlooking circumstances where buildings become uninhabitable as a direct result of a tenant's accidental or purposeful actions. Attendees felt that it is not appropriate for landlords to be required to re-house tenants in those cases.
- Concerns that the fees for cost recovery were variable in nature, and unknown to landlords. Attendees felt that the tool would have impacts on tenants, as the only way to pay the fees would be for landlords to pass on the costs to tenants through rent increases.
- Attendees recommended that an alternative option to the fees could be introducing requirements for tenants to obtain tenant insurance, noting that tenant insurance was a fairly low-cost option.
- Regarding the proposed DineSafe rating system model, they advised that it would lead to stigmatization of tenants; the buildings that would likely be most penalized under that system would be City-owned TCHC buildings; and that attempting to "shame" landlords into compliance is not an effective strategy.
- Regarding the proposal to expand the evaluation criteria to include other components of the building (i.e. roofs, windows, etc.), they noted that it was costly when Officers requested technical reviews of areas of the building in order to ascertain whether there were any risks to health and safety. In those cases, landlords may need to hire engineers to look into the issue which is cost-prohibitive. They recommended that RentSafeTO should only be evaluating areas that the City has expertise in assessing and do not require third-party inspections.
- Attendees noted that it is onerous to require landlords to distribute RentSafeTO materials, due to the cost of postage, printing, and distribution.
- Attendees noted that requesting authority from the province to enforce offences under the Residential Tenancies Act would produce duplication of enforcement efforts, as the province already enforces those provisions.
- Regarding the requirement to post pest control information on the notification board, they noted that they were uncertain whether pest control companies could issue documentation that does not indicate treated units, and that if not, this

could stigmatize and identify individual tenants. They also noted that if landlords were required to post product information for treatments, tenants may cause concern among tenants regarding chemicals used and raise objections.

- Finally, they recommended that the City introduce an exemption from the RentSafeTO program for buildings that are certified under the Certified Rental Building Program (CRBP), and offered to explore the potential of offering the City a seat on the governance committee of the CRBP.

CONTACT

Ginny Adey
Director, Policy and Strategic Support
Municipal Licensing and Standards
Tel: 416-338-5576
Email: Ginny.Adey@toronto.ca

SIGNATURE

Carleton Grant
Executive Director, Municipal Licensing and Standards