

Getting Back On Track

Rental Housing Policy Reform in Ontario

Spring 2004

Introduction

The past eight years of Conservative rule have been a disaster for tenants across Ontario. Upon taking power at Queens Park in 1995, the Tories signalled their intention to turn back the clock on two decades of progressive landlord-tenant legislation enacted by successive administrations of all three political parties. Their instrument was the Tenant Protection Act.

Its key policies included: the elimination of rent controls by such methods as vacancy decontrol; the allowance for unreasonable above-guideline rent increases; the loosening of restrictions surrounding demolition and conversion of rental properties; and the establishment of the landlord-friendly Ontario Rental Housing Tribunal. These policies are directly responsible for moving tens of thousands of rental apartments out of the affordable column and for putting thousands of Toronto's tenants out on the street.

The McGuinty Government has committed to making substantive changes to rental housing policy in Ontario. Any new legislation must address the following key tenant concerns:

Rent Control

Government intervention in the rental housing market is necessary to ensure the availability of an adequate supply of affordable rental housing. The City of Toronto has always maintained that the best way to achieve this is through rent control.

The Tenant Protection Act replaced rent control with "vacancy decontrol" – which permits landlords to raise rents to whatever the market will bear once a sitting tenant moves out of an apartment unit. Vacancy decontrol has caused rents to skyrocket, especially among those apartments that were traditionally considered affordable - placing them out of reach of low to moderate income tenants. Furthermore, vacancy decontrol provided landlords with an incentive to get rid of the tenants who had been in their apartments the longest because a vacancy permits the landlord to substantially raise the rent.

Vacancy Decontrol must be replaced with a strong re-commitment to Rent Control.

- Re-establish the provincial rent registry
- Establish legal maximum chargeable rents
- Re-introduce rent control on all rental apartments regardless of changes in tenancy.

Demolition/Conversion

The former Rental Housing Protection Act (1986) was very effective at preventing the loss of affordable rental housing by giving municipalities the power to refuse applications for demolition, condominium conversion or luxury renovation of rental apartment buildings. The Tenant Protection Act removed this decision-making authority from municipalities and granted it to the Ontario Municipal Board, which proved to be far less discriminating in allowing these types of applications.

Approval/refusal of applications to demolish or convert rental apartment units should rest with municipalities.

- Restore the Rental Housing Protection Act.

Maintenance and Repairs

Orders to Prohibit Rent Increase (OPRI's)

Prior to the introduction of the Tenant Protection Act, provincial legislation prevented landlords from raising rents if there were outstanding municipal work orders issued against the building. This was known as an Order to Prohibit Rent Increase (OPRI). OPRI's are an extremely effective tool in gaining timely compliance with property standards violations because they provide a direct and continuous incentive to have deficiencies corrected.

From 1992 to 1996, the Province issued over 5000 OPRI's in the City of Toronto. Of those, 72% were withdrawn before the rent increase prohibition went into effect because the landlord had satisfied the conditions of the work order(s).

Rent increases should be prohibited on apartment buildings with outstanding municipal work orders.

- Restore the Order to Prohibit Rent Increase (OPRI)

Municipal Licensing of Apartment Buildings

The current inspection system for issues related to property standards in apartment buildings is complaint-based. The system depends on tenants to work with their landlord to address maintenance issues and to contact Municipal Licensing and Standards offices should a problem persist.

There are concerns that many tenants may not use the complaints system due to barriers related to language, culture or out of fear of retaliation from the landlord – leading to unsatisfactory living conditions and often, more expensive solutions once a problem is revealed.

In December 2003, the City of Toronto Planning and Transportation Department issued a report proposing a framework strategy to ensure that privately owned, multi-unit apartment buildings are maintained in accordance with the provisions of the municipal code. This would include: the introduction of an apartment licensing system with pro-active building inspections and a yearly license fee; the establishment of enforcement protocols; and the creation of a web-based disclosure system in which information on violations is available to the public on the city website and is also posted in the common areas of apartments.

Property standards in apartment buildings must be properly enforced with pro-active rather than complaint-based inspections.

- Remove Regulation 243/02 of the Municipal Act, 2001 in order to allow municipalities to establish a regulatory regime for multi-residential apartment buildings, including:
 1. a licensing system for apartment buildings
 2. enforcement protocols
 3. an inspection disclosure system

Capital Expenditures and Above-Guideline Rent Increases

The Tories introduced the Tenant Protection Act in June of 1998 with the assurance that it would protect rental affordability through the establishment of an annual ‘guideline rent increase’ (between 2.5-3.0%) A more detailed reading of the legislation revealed a series of exceptions allowing landlords to increase annual rents well in excess of the guideline limit. These include rent increases based on the following:

1. Capital Expenditures – roughly calculated by adding the actual cost of the work done, plus a 5% management allowance divided the improvement’s “useful life”. While the capital expenditure allowance is capped at 4% per year, any remaining costs are carried over to the following year. Furthermore, due to the compounding nature of above-guideline rent increases, tenants continue to pay for an item even after the landlord recovers the original expense.
2. Extraordinary Operating Costs – any increase in utility costs, and/or municipal taxes and charges in excess of the annual guideline allowance can be passed on to the tenants. The increase is permanent. There is no provision to reduce rents when utility costs decrease and there is no cap on the maximum allowance in any one year.

3. Increased Cost of Security Services – allows landlords to pass on the cost of installing or upgrading building security services at a maximum of 4% above the guideline.

New policies regarding rent increases must be implemented to establish a fair system for landlords and tenants which balances the desire to preserve existing rental housing stock in good condition with the need to maintain affordability.

- Reduce the annual guideline rent increase.
- Implement an automatic ‘cost no longer borne’ provision for above-guideline increases related to capital expenditures requiring landlords to reduce rents by the appropriate amount once the work has been paid for (amortized).
- Eliminate the ‘extraordinary operating cost’ increase as this amount is already reflected in the annual guideline rent increase.
- Require the establishment of capital reserve funds financed by a small percentage of each tenant’s monthly rent to be deposited into an account registered to the apartment building.

The Ontario Rental Housing Tribunal

The Ontario Rental Housing Tribunal is the quasi-legal administrative body established in 1998 to administer the Tenant Protection Act. It is institutionally biased in favour of landlords and offers an efficient, streamlined process for raising rents and evicting tenants.

The reputation of the Tribunal as ‘an eviction factory’ is widely held by tenants and tenant organizations across the Province. The environment at the Tribunal does not even present the appearance of impartiality. Tenants feel powerless. A whole segment of the community is disenfranchised.

The Ontario Rental Housing Tribunal must be abolished

- Establish a new quasi-legal body designed to ensure fairness to tenants.
- Implement a new selection process for adjudicators administered by the Civil Service and approved by Cabinet.
- Extend the term of office for adjudicators and extend their term of office.
- Expand the tenant duty counsel program.
- Refer eviction matters to the Court system as done previously under the Rent Control Act.

Short-Term Strategies

Policy Changes (by regulation)

- Enact a moratorium on all rent increases pending development and implementation of new landlord-tenant legislation.
- Develop and implement approaches to help tenants at risk of eviction, including linkages to: community supports; housing help services; rent banks and other eviction prevention services.
- Follow through on commitments to build new affordable housing

Administrative Changes (at Ontario Rental Housing Tribunal)

- Provide copy of Above-Guideline Rent Increase applications to tenants at no charge.
- Improve clarity of forms, mail-outs and notices of eviction and provide tenants with clear instructions on how to respond.
- Expand the length of time tenants have to respond to an eviction application from five days to twenty working days minimum.
- Introduce a minimum threshold of \$500 (in arrears) before a landlord can apply for an eviction due to non-payment of rent.

Prepared by: Councillor Michael Walker & Neil Carter, March 10, 2004.