

Submission to the Standing Committee on  
General Government  
With Respect to Bill 109,  
*Residential Tenancies Act, 2006*

Submitted by  
The Federation of Metro Tenants' Associations

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## Bill 109, *The Residential Tenancies Act*

The Federation of Metro Tenants' Associations (FMTA) would like to thank the government for this opportunity to speak to Bill 109.

The FMTA is a membership based organization that works with tenants throughout the City of Toronto. We have been fighting for tenant rights since 1974. Our Outreach & Organizing Team has helped tens of thousands of tenants in hundreds of buildings cope with Above Guideline Increases and other negative actions by landlords and our Tenant Hotline has offered information and referrals to thousands of tenants every year trying to cope with the ramifications of a bad law.

Bill 109 is the fifth permanent rent regulation law that we have dealt with.

We must begin by saying how devastating the Tenant Protection Act has been on tenants. The demise of that Act is long overdue.

We were pleased when Dalton McGuinty, in his pre-election letter, agreed with us that, "Eight years of the Harris-Eves Government has had a devastating effect on tenants," and we were thrilled when he promised that, "We will bring back real rent control ... We will get rid of vacancy de-control which allows unlimited rent increases."

With that in mind, we'd like to turn our attention to the proposed bill.

## **Vacancy Decontrol**

We are deeply disappointed and distressed that the devastation of vacancy decontrol has not been addressed by the proposed Residential Tenancies Act. We call on the Legislature to amend section 113 upon third reading of the bill. If vacancy decontrol remains, then this Act runs the risk of being as “devastating” to tenants as the Tenant Protection Act.

The Minister said in the House on May 3 that CMHC had assured him that vacancy rates would not decline in the next three years, but the critical question is, “What happens after that?” According to Frank Clayton, a researcher who has done work for landlord organizations, “Better times are ahead for landlords, because of strong immigration and a widening gap between renting and owning. Overall vacancy rates will decline over the medium term, thereby allowing landlords to pass rent increases through more easily in the future.” (Ellen Roseman, Toronto Star, January 29, 2006).

If the market does work, then having rent control doesn’t hurt anyone and acts as a safety net in the event that the market changes. Vacancy decontrol gambles with a free market and leaves tenants vulnerable. If market forces do *not* stop rent increases, then tenants will remain vulnerable; some more than others. Vacancy decontrol is far from Dalton McGuinty’s pre-election bottom line: “Real protection for tenants at all times.”

## **The Annual Guideline**

Bill 109 proposes allowing a minimum increase equal to inflation even though only operating costs, and not buildings, are subject to inflation.

Currently, operating costs are less than 50% of current rents. We take no issue with using the Consumer Price Index over the previous index based on rental costs alone, but applying the Consumer Price Index to costs not subject to inflation returns to the practice of giving landlords an unnecessary bonus. We submit that the guideline formula should be amended to be 55% of the rate of inflation.

### **Above Guideline Increases**

Above Guideline Increases are patently unfair. However, we appreciate that the Government listened to us and brought in improvements over the previous Above Guideline system. We would like to suggest further improvements.

In keeping with our previous point about the true operating costs of apartment buildings, we believe that the starting point of an Above Guideline Increase should be 50% of the guideline. Not only is this a much fairer accounting of the actual costs of an increase, but will also help deter trivial applications by creating the potential that the landlord might receive a lower increase than the guideline amount.

The introduction of a limit of 3% per year for a maximum of three years for capital expenses is good. However, as it may be some months before this Act is proclaimed, we are asking the Government to introduce an amendment to make the 3% for three years limit effective as of June 1, 2006. This will prevent a rush of landlord applications hoping to take advantage of the generousities of the TPA.

We see no need for applications for Above Guideline Increases for “extraordinary” increases in utility costs or municipal tax costs. Utility costs increases can be a result of lack of energy efficient appliances or other

anomalies that tenants should not have to pay for. Above average tax increases occur because buildings have gone up in value, which is often the result of increased rents, so it is absurd that tenants should pay even more rent as a result.

If extraordinary operating increases must remain in the Act, then there *must* be a threshold for “extraordinary”, as there was under the Rent Control Act, of over 50%. We also call for utility and tax increases to be included in the three percent increase cap, so that the highest possible Above Guideline Increase a tenant can ever receive is 3% per year.

We are encouraged by the Government’s statements on tightening definitions of capital expenditures. We applaud the move to allow tenants to raise maintenance issues in response to an Above Guideline Increase application. We have heard from tenants time and time again that they have been hit by drastic increases for capital expenditures while their concerns about repairs in their own units remain unaddressed.

## **Costs No Longer Borne**

There needs to be a way of addressing the fact that tenants continue to pay for capital items that have long since been paid off. Bill 109 recognizes that costs no longer borne is a significant issue for tenants, but the proposed legislation does not address the fact that tenants continue to pay over and over again. Both the Ombudsman and Divisional Court spoke against the lack of redressing tenants for the over \$40 million dollar spike for heating costs a few years ago. We need an amendment that retrospectively helps tenants stop paying unfair rents for these costs no longer borne.

## **Orders Prohibiting Rent Increases**

Though the section on Orders Prohibiting Rent Increases is promising, the main concern we have with the provision is that the onus is on tenants to enforce the orders. Landlords will continue to go unpunished for maintenance violations if tenants are unable or too intimidated to make an application. Orders Prohibiting Rent Increases under Bill 109 will not be effective unless they are made automatic.

## **One Year Limitation Period**

We call for an amendment to extend the limitation period of an unlawful act to three years. The one year limitation allows the potential for landlords to take advantage of tenants who cannot assert their rights. Again, the purpose of the law ought to be real protection for tenants at all times.

## **Exemptions**

As time passes, more tenants will be left unprotected by the Government of Ontario. Bill 109 continues the exemption of rental units built since 1991. This is unacceptable. It also exempts many tenants living in condominium units – who are often neglected in this debate – and shows a lack of commitment to real rent regulation.

## **Eviction Prevention**

Over 64,000 households in Ontario faced eviction applications in 2005. There is an inadequate supply of affordable housing; rents are too high and incomes are too low.

We applaud the elimination of default evictions in Bill 109; though we share concerns expressed in the community legal clinic system about the lack of a set aside provision.

We are also concerned about the vulnerability of social housing tenants because this Act takes the view that the landlord is always right when it comes to calculating the proper rent. Currently, there is no external body to review a social housing tenant's rent. Surely, *all* tenants deserve a fair hearing based on the merits of their case, whether they are in social housing or in private market units.

We take issue with the Government articulation that the purpose of the proposed Residential Tenancies Act is to “protect good tenants and good landlords”. ‘Good’ tenants can lose their jobs. ‘Good’ tenants can struggle with a health crisis. ‘Good’ tenants can suffer the loss of a household income provider. Losing one’s home under these circumstances is devastating. The purpose of the law should reflect the Government’s intention to protect tenants at *all* times; this includes times of crisis.

## **Maintenance**

Bill 109 takes some positive strides on maintenance issues. With the unnecessarily high rents being collected in Ontario, there is no excuse for not doing maintenance. It is good that tenants can now raise maintenance in defense of any landlord application.

Landlords who perform regular maintenance and repairs should have no concern about being confronted with these matters at a hearing.

## **Interest on Last Month's Rent**

The 6% interest requirement has been with us since Bill Davis was Premier. If landlords choose to collect a deposit from tenants, then 6% interest is the price they ought to pay for security against a non-paying tenant. If landlords do not wish to pay interest, they can avoid doing so by simply not collecting last month's rent.

Sitting tenants will notice in 2007 when they do not receive their annual 6% and they will remember that the Government reduced their interest to the CPI when they are at the ballot box.

## **Landlord and Tenant Board**

We trust that there will be balance and transparency in the appointment of adjudicators at the new Landlord and Tenant Board. We hope that the Board will continue to develop best practices and ensure fair hearings for everyone.

## **Information Requirements**

We are encouraged by the measures in Bill 109 requiring information to be given to a tenant when they enter into a new Tenancy agreement, though we are concerned about non-compliance. We recommend that if a landlord does not give a copy of the required information to a tenant, the obligation to pay rent is suspended. We would also like to see that same right be extended to the matter of receipts.

## **Regulations**

Bill 109 prescribes 75 different matters to regulations. Many of the problems experienced by tenants with regard to Above Guideline Increases were a result of unfair regulations. These matters will all require care in drafting and input from the tenant community. We look forward to the work ahead in these matters.

## **Conclusion**

We have waited a long time to rid ourselves of the Tenant Protection Act. The Residential Tenancies Act makes some improvements for tenants, but falls short of Premier McGuinty's promise of "real protection for tenants at all times". We urge the Government to consider our amendments and substantially improve Bill 109 in the interest of fairness for tenants.