

Federation of Metro Tenants' Associations

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FMTA Responding to the Green Paper

A full response to the issues raised in the Residential
Tenancy Reform Consultation Paper

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Introduction

As the Public Consultation period concludes, this paper is intended to give a perspective from the Federation of Metro Tenants Associations on the status of rent reform in Ontario.

Tenants in Ontario have spoken in large numbers. They have been speaking about the unfairness of the Tenant Protection Act for more than six years. Tenants will continue to speak and be part of the process of developing legislation and regulations.

The case for real rent control, a new and fair law, and an overhauled Tribunal is strong.

Responding to the Residential Tenancy Reform Consultation Paper (The Green Paper)

These comments are provided in the same order as the Green Paper.

Principles for Change

“We intend to introduce legislation that would bring back real rent control.” We fully agreed with that principle on April 20. We still agree now. Nothing since the publication of the paper has shown any need to stray from that goal and that promise.

Eliminate Vacancy De-control – This is very necessary. The experience of the last six years is that when tenants are vulnerable to exploitation – they are exploited. Vacancy de-control has distorted the rents in buildings. At some future time, the Government should consider remedial action to restore balance and fairness in rents within buildings or complexes. Prior to the Tenant Protection Act being enacted, evidence was brought forward to show that the average tenant moves once every five years and therefore there is frequent exposure to new rental situations. Vacancy de-control has been a barrier to people considering entering the rental situation for the first time. Young people are much more likely to live with their parents for a longer time, retirees are less likely to choose the rental option, and families often double or triple up to make ends meet.

The existence of vacancy de-control has been a failure in creating new affordable housing. The 2001 census actually showed about a 3% decline in the number of rental units in Toronto.

The Green Paper also raises the possibility of two-tier rent control. This means some tenants are protected and others are not. This idea of regional de-control should be dropped as no tenant in Ontario should be left vulnerable.

We will be discussing the issue of vacancy rate later. We reject the idea of one barometer to measure what is in the best interests of tenants.

We continue to support the principle of protecting existing rental housing from unreasonable demolition or conversion to condominiums or other freehold housing.

Rents for New Tenants

As stated, we support the Government in standing against vacancy de-control. Rents will not go up simply because a new tenant is unaware of the previous rent and/or unable to bargain fairly for a starting rent. We believe a rent registry can be established and maintained at a reasonable cost. The previous implementation of a registry was not well managed, but with improved technology and an emphasis on the basic information, tenants can be best protected with this method.

It may be that a disclosure system by the landlord could work, but a central Government registry would provide more assurance of fairness.

Requiring new tenants to find previous tenants is not practical.

As for rent increases for new tenants, this should follow a pattern as if the previous tenant had stayed. If the rent was due to go up in three months, then the new tenant may have to pay an increase at that time if properly notified. Similarly, if there is to be Above Guideline Increases, then the new tenant may have to take their share of that increase.

All tenants in Ontario deserve protection under the law.

Exemptions from rent control should be phased out. Any units first occupied between November 1, 1991 and December 31, 1994 should be immediately covered by new legislation. Units first occupied between January 1, 1995 and the date of proclamation of the new Act should be covered ten years after the date of first occupation. Units first occupied after the proclamation of the new Act should be exempt for five years.

Rent Increase Guideline

We strongly support the elimination of the 2% bonus in the guideline increase for 2005 and we call for the permanent removal. We have previously provided the Government with analysis of the unfair effect of the 2% provision.

An allowance of 55% of the rate of inflation is sufficient to cover increased costs. Rental units are different because they are not products that are reproduced on a yearly basis. The largest number of units was built in the sixties as a response to the baby boom after World War 2. They were built at the prevailing costs of the day, and rented usually for \$100 to \$200 per month.

Only operating costs are subject to inflation. Operating costs are less than 50% of current rents. To allow 55% is actually a gain for the landlord.

For example, a typical unit renting for \$1000 per month has an operating cost of less than \$500 per month. If inflation is 3%, the landlord needs an increase of \$15 to break even. At 55%, they will be given an increase of \$16.50. Therefore, they receive a profit of 10% (\$1.50) on inflation. Adding anything to that will continue to unjustly enrich the landlord at the expense of tenants.

Costs No Longer Borne for Utility Costs

Our expectation was that the Government was committed to fixing this inequity.

The paper only deals with a possible mechanism to correct any further allowances for above guideline increases. We need retrospective measures to remove the unfair allowances currently found in the rents of so many tenants. Tenants in Ontario are counting on this Government to correct the situation. Both the Ombudsman and the Divisional Court have expressed concerns on this major issue.

The key point is that there is no need to allow an extra increase for utility cost spikes if the guideline takes into account all changes in utility costs. The Rent Control Act provided for an extraordinary operating cost increase, but it had to be truly extraordinary with a threshold component of more than 50% above the average.

Costs No Longer Borne – Capital Expenditures

We recognize some complexities in dealing with costs no longer borne. However, tenant advocates can offer a range of mechanisms to achieve some justice. For example, previous legislation such as the Residential Rent Regulation Act and the Rent Control Act had provisions.

If the Government does not correct the inequities of the past, it must prevent them from happening in the future. Another approach is to use costs no longer borne as a defense against future applications by landlords.

For example, if there is an ability for landlords to apply for Above Guideline Increases in the future, then surely in a system of “real rent control” the tenants

should be able to mitigate claims by raising costs no longer borne from previous applications under previous legislation. This can prevent layering of capital applications (each one compounding on another without regard to past applications).

If a landlord applies for another increase, all previous Orders should be placed on the file and made part of the record. If a landlord succeeds on a capital item, a future mechanism such as that used in the Rent Control Act can be used. Alternatively, a re-working of the regulations for useful life periods, interest rates, management allowances and other considerations can prevent the absolute need for costs no longer borne in a new Act. For example, a doubling of the useful life periods could provide some balance for the omission of costs no longer borne.

Maintenance and Rent Increases

Currently, rent increases are guaranteed by the Tenant Protection Act while maintenance is not. We completely support the freezing of rents for any non-compliance with a minimum standard.

We also support option © in the Green Paper to enhance the ability of a Tribunal to do more to deal with landlords who fail to meet their obligations. There is a need for very simple mechanisms for tenants to use when a landlord is not doing what the rent pays for! The new Tribunal must be simpler and much more user friendly. A tenant should not have to figure out one or more of the six tenant application forms. A simple stating of their case should lead the system to find justice (after hearing from both sides in a less formal manner).

Various barriers need to be removed to ensure justice for rent paying tenants. These include extending the statutory time for evidence from 12 months to 36 months, to having night or Saturday hearings, to having translators more available, eliminating fees, and to having more hearings held in the community.

We also add, that when a landlord applies for a rent increase above the guideline that the standard of maintenance in the building should be an issue in defense of that application.

Regional De-Control

A fair law is for every tenant and landlord in Ontario. We attended eight of the ten town hall meetings. Tenants in smaller cities expressed their need for true protection as much as we did in Toronto. We say no to a two-tier rent control system.

Vacancy rates no longer reflect the realities that tenants face. It is no longer true that 3% is a healthy vacancy rate. When that axiom may have been true, all assumptions were that vacancy rate was primarily driven by supply. Now, most vacancies are caused by unaffordable and unfair rents.

Over the last six years, rents have climbed dramatically, while costs have not. For example, this year is the first year that multi-residential property tax has seen an increase since 1997 in Toronto. The 2004 increase was 1.5%. Utility costs have fluctuated and those increases are reflected in the guideline. Other operating costs have increased by about the rate of inflation. Therefore, the operating profits of landlords have increased substantially and they can afford to choose to carry vacancies instead of dramatically lowering rents for existing customers. When conditions change favourably for landlords in future years, they will be able to get the current high rents and more.

Interest on Rent Deposits

We support the retention of the 6% interest rate. A landlord has an option. They can return the deposit to the tenant and avoid paying interest.

A deposit is a protection for the landlord against a tenant falling behind in the rent.

We are more concerned that we continuously hear from tenants that they are not receiving the interest.

Dispute Resolution

Our colleagues in the Community Legal Clinics have done excellent work on this important issue. We support their position entirely.

The principle is to ensure that no one in Ontario is ever unjustly evicted. Every one is entitled to a hearing, and the default process has denied that to many.

The five day dispute rule is unfair to tenants. By ensuring a hearing, every tenant can choose to appear or not appear on the day of the hearing. By ensuring proper service of documents (by the Tribunal) to the tenants, no one should be evicted without their knowledge. A simplification of forms is necessary. Alternatives to eviction, such as the Rent Bank, need to be available and understood.

Making Landlords and Tenants Aware of Their Rights and Responsibilities

The Tenant Protection Act and the previous Government were deliberately regressive on this matter. It is time to be progressive again. We would like to explore better ideas to improve the situation for rent paying tenants. Posting information on tenant rights is only a beginning.

Tenants in Ontario pay billions of dollars in rent each year, and pay taxes too. For this multi-billion dollar industry to be fair to consumers, there must be more resources available to tenants. A section of the former Residential Rent Regulation Act opened the door to progressive actions in this regard by allowing for community grants and other partnership initiatives.

Demolition and Conversion

We are pleased to see the Government responding to this concern. The artificial constricting of supply affects all tenants in a municipality.

There is a state of confusion and uncertainty on this issue. We applaud the City of Toronto for its leadership in trying to protect existing rental housing.

The right thing to do is to ensure that municipalities have the tools they need to protect existing stock with the application of Provincial standards.

We do, however, raise our concern again with respect to using the vacancy rate as a barometer.

Other Issues and Concerns as Per the Green Paper

Tribunal Processes

The Tribunal charges excessive fees, does not disclose or publish Orders, has a bad mediation system where parties are pushed into settlements that are not in their interest, and gives little opportunity for parties to participate. The Tribunal has failed to come close to the standards of justice and fairness expected in Ontario.

Rent Banks

Obviously, we are pleased that more help is available to prevent evictions. A rent bank should not be an excuse for higher rents. We also have concerns about the limitations of the rent bank. The fairer rents become in Ontario, the less need there will be for a rent bank.

Mobile Homes

We support the efforts of mobile home tenants to achieve justice. The tenants who came forward in Kingston and Thunder Bay made their case.

Energy Savings through Sub Metering

This is an idea worth exploring, but not necessarily in the context of the new legislation.

We support energy conservation and if it can be assured that tenants will not lose by sub metering, we would be pleased. We would be concerned for families that have legitimate needs for higher utility use.

The Federation disputes the suggestion that there could be as much as a 30% savings. Tenants are almost always responsible people and do not deliberately waste. Like every one else, we are interesting in conserving.

Other Concerns Not in the Green Paper

Above Guideline Increases

It was a disappointment to us that the issues of Above Guideline Increases were passed over in the Green Paper.

In the last six years, thousands of buildings, with hundreds of thousands of tenants have faced Above Guideline Increases. Tenants have been given little to work with in defending these applications.

Tenants cannot argue maintenance. Tenants cannot argue neglect. Tenants cannot argue quality of work. Tenants cannot question the price. Tenants cannot question the useful life of capital expenditures. Tenants cannot question the business acumen of the landlord. Tenants cannot argue unjust enrichment. Tenants cannot argue that the increase is unaffordable. Tenants cannot raise costs no longer borne in defense. Tenants cannot argue personal circumstances. Tenants cannot argue the 2% add on to the guideline and its' cumulative effect. Tenants get no say in what capital work is performed. Tenants cannot argue the future savings for energy efficient windows.

Tenants will have to pay an additional 5% management fee. Tenants will have to pay for things long after they are paid for. Tenants will be charged interest on capital expenditures.

Tenants can not apply for an abatement of rent because of living in a construction zone while capital work is done.

Tenants can be targeted for an Above Guideline Increase because they have been there a long time and were not exposed to vacancy de-control.

These are the frustrations that tenants have with the current system.

The whole system must be revised – if not eliminated. A true regulatory system takes all issues into account.

Landlord and Tenant Issues

Tenants call our Hotline about a number of issues that the Green Paper does not address. These include not being given proper notice for entry, security and lock issues, charging fees for air conditioners, threatening to charge rents for pets, harassment, not dealing quickly with maintenance issues, taking away services such as lockers, blocking attempts to assign tenancies, and interfering with tenants' basic rights to knowledge and freedom of association.

Recently, tenants have reported a new practice. Visitors are being charged for parking! This must be stopped in the regulations to the Act.

Responding to the Landlord Arguments

As noted earlier, we have attended eight of the ten Town Hall meetings. No one should be fooled by the arguments raised by landlords.

The landlord position is that the Tenant Protection Act is working well and is good for tenants and landlords. They further argue that the market is healthy and tenants have choice. They suggest that rents are going down, but paradoxically they don't want rent controls to prevent them from getting increases. They also argue against rent controls because it will mean no new supply for tenants – according to them.

We note a key absence in the position of landlords from previous debates. They are not arguing that they are not getting an adequate rate of return on their investment. This is because of the great benefits they have enjoyed from six years of the Tenant Protection Act. As one landlord said at a Town Hall, "I am here to protect my interests".

The Tenant Protection Act is not working well, has not worked well, and will never work well. In October 2003, tenants chose change too. Massive rent increases, rising homelessness, increasing lines at food banks, the ORHT as an

eviction factory, a growing waiting list for non profit housing, and more and more people unable to rent their first home are all signs of the disaster. There are plenty of buildings where landlords took the benefits of the rent increase system, but failed to adequately maintain their building. In Scarborough, a tenant delivered to the Government an 18 page indictment of her landlord's failure to maintain the building. It took a fire to bring attention to the building.

The market is not healthy. It is distorted and disfigured. The market works where supply meets demand at a fair price. Rental housing is now taking a far higher percentage of people's incomes and thus leading to an erosion of quality of life. In our view, the asking price of rental housing exceeds fair value by 20% or more. Almost all buildings have been bought and paid for. A typical rental unit now enjoys an operating profit of more than \$500 a month.

Wages, social assistance, ODSP, and pensions are not keeping pace with the increase in rents. Some landlords suggest that income problems are not their responsibility. Some were good enough to support the need for increased shelter allowances (although we don't recall them saying that while the previous Government was in power). The problem is that these landlords expect a jump in their profit every year almost as a matter of right.

Effective rent controls work towards a balance by stopping unnecessary price increases. When the market fails to deliver a necessary product at an affordable price, it is up to the public to step in. That is a prime responsibility of Government.

Rent Control is a non-factor in supply, but a convenient scapegoat for the private sector. We need to return to a program of affordable non-profit housing, and we do need to address income and taxation issues. We do not need to leave the millions of people in Ontario who rent at the mercy of an unmerciful market place.

Rental Housing is a much different commodity than anything else. Housing is something we all need. In fact, we believe it is a right in Canada. If the price is unbearable or unfair, we are exploited. We cannot do without housing, and we cannot simply move to a slum apartment so that we can get a cheaper price. Even the price of moving makes a tenant's ability to move problematic. More important, tenants are renting a home.

We need decent affordable housing. Landlords want to maximize their profit. The balance is struck if affordable housing is available at a modest profit or a non-profit basis.

Effective laws with strong protection for tenants are essential.

Conclusion

The Government is concluding a rather unique consultation period. It is now time to draft a new and better law.

Many voices have been heard. Many have not been heard. Many people knew about the process and many did not.

The Federation of Metro Tenants Associations has done everything we can to improve participation. We held several of our own town hall meetings. We promoted the downtown Toronto Town Hall held by the Government. We have helped local MPPs meet with their constituents. We have promoted the process in our newsletter, on our web site, and by mailing out thousands of Government questionnaires and thousands more of our own.

We now look forward to our stakeholder meeting. We are doing all of this out of our own sense of responsibility to the tenant community, but also to offset the many advantages that landlord lobbyists have.

If the Tenant Protection Act were in tenant interests, we would be obligated to say so. If rent control were not in tenant interests, we would be obligated to say so.

We have talked and listened to tens of thousands of tenants. We only seek fairness. We only expect a good law.

We ask that this Government do the right thing for the tenants of Ontario. We ask that you listen to the tenants of Ontario.