

A NEW TENANT LAW

Suggested Changes to Current Tenant Law in Ontario

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Introduction

The Government of Ontario proclaimed the Tenant Protection Act (TPA) in 1998. The name of the Act is a misnomer; The Tenant Protection Act has in fact taken away many of the protections that tenants have won over the past 25 years.

The Federation of Metro Tenants' Associations has seen firsthand the harm that the current law has caused to tenants. We have worked with tenants from every part of the City of Toronto. In November, 2002, members of the FMTA approved a 15 point resolution for change. In November 2003, members approved a 29 point "Redprint for Tenant Law Reform." This document builds on these resolutions and reflects the unfairness experienced by tenants and their hopes for change.

Since the introduction of the Tenant Protection Act, tenants have suffered the result. Tenants have been hit with skyrocketing rents – the result of excessive and compounding rent increases. Tenants' units fall into disrepair while cosmetic upgrades are made to the buildings they live. When tenants seek some sort of relief from the law, they are forced to turn to an inaccessible and unfair Ontario Rental Housing Tribunal.

The following are some basic descriptions and facts concerning the worst parts of the Tenant Protection Act, and some suggestions to make a more fair and equitable law.



THE ANNUAL GUIDELINE

Description

The Annual Guideline (2.9% in 2004) is comprised of an inflation factor of 55% for costs of rental property (taxes, utilities, maintenance etc.) plus 2%.

Background

The 2% bonus to the Annual Guideline was first introduced in 1987. The compounding effect has added 42% to current rents. The Rent Control Act of 1992 designated the 2% for capital expenditures and this would be subtracted from Above Guideline Applications. The Tenant Protection Act gives no reason for the 2% figure above the inflation factor, and it is not considered in Above Guideline Increase applications.

Solution

- Eliminate the 2% annual bonus for Landlords



CAPITAL EXPENDITURES

Description

Landlords undertake capital expenditures to protect their rental properties as an asset. Capital expenditures include replacing worn out or obsolete parts of the building; work done to reduce other costs; beautification in order to entice higher paying tenants. Landlords recover Capital Expenditure Costs through Above Guideline Increases.

Background

The Tribunal calculates rent increases for capital expenditures as follows: the actual cost of the work done, plus a 5% management allowance, divided by the "useful life" (an arbitrary amount set out in the regulations), as well as an interest allowance at typical mortgage rates. Capital Expenditure Costs calculations do not take into account annual guideline increases taken by landlords. Above Guideline Increases can be applied to all or "any" tenants in a building. Most often, it is longer-term tenants that are targeted for above guideline increases, as a way to bring their rents up to the excessive amounts that new tenants pay as a result of vacancy de-control. Due to the compounding nature of above guideline increases, tenants continue to pay for an item even after the landlord recovers the original expense.

Solution

- Eliminate 5% management bonus and interest allowance
- Rewrite useful life regulations
- Require evidence of competitive bidding
- Calculate increases based on previous increases for the similar work done in the past; allow net cost of Capital Expenditure only
- Stop targeting of sitting tenants
- Do not allow Above Guideline Increases for unnecessary work (e.g. beautification), unless previously agreed to by tenants
- Require notification to tenants of any proposed work
- Allow tenants to make "mitigating arguments" about capital expenditures (such as outstanding maintenance and repair issues)
- Include an automatic costs no longer borne provision to all above guideline increases



EXTRAORDINARY OPERATING COSTS

Description

In any year that utility costs go up more than the guideline allowance, landlords can apply for an increase based on Extraordinary Operating Costs, even though the guideline already reflects any changes in utility costs. There is no provision to reduce rents when utility costs decrease. The increase is permanent. Similarly, a landlord that experiences even a modest increase in property taxes can pass this increase on to tenants.

Background

The original concept of extraordinary operating cost increases was based on the common meaning of "extraordinary." Previous regulations required that the "extraordinary" cost be 50% more than the annual guideline.

Solution

- There is no need for Operating Cost Increases; the annual guideline already reflects operating costs
- A new law should include a reduction in rent for all tenants who fell victim to Extraordinary Operating Costs Increase provisions under the Tenant Protection Act



COSTS NO LONGER BORNE

Description

Once a Landlord is granted an Above Guideline Increase for Capital Expenditures or Extraordinary Operating Costs, a tenant continues to pay for that item into perpetuity. Costs No Longer Borne provisions provide a necessary mechanism to allow landlords to recoup the cost of an expense without forcing tenants to pay for an item several times over.

Background

For 28 years, under 4 different laws, landlords have been getting permanent and compounding rent increases for capital expenditures. The original Residential Tenancies Act did not consider Costs No Longer Borne. Tenant Advocates have pointed out this flaw, and advocated for change. The Residential Rent Regulation Act included a provision that once an item had been approved, any subsequent application for the same item must deduct the cost of the first approval. The Rent Control Act had an automatic Costs No Longer Borne provision. Capital Expenditures were set aside from the total rent a tenant paid, and were then to be automatically removed from a tenant's rent once the tenant paid for cost of an item (usually over a period of 10 or 15 years). The Tenant Protection Act dropped this provision entirely.

Solution

- Return to the automatic Costs No Longer Borne provision similar to the previous Rent Control Act
- Make Costs No Longer Borne retroactive to June 1998 so that Capital Expenditures approved under Tenant Protection Act will not be included in a Tenant's Rent forever
- Allow tenants to raise Costs No Longer Borne as a defense against Capital Expenditure Increases in buildings that have already been granted Above Guideline Increases for Capital Expenditures for similar work done in the past



VACANCY DE-CONTROL

Description

Under the Tenant Protection Act, landlords can demand whatever rent they want from prospective tenants.

Background

The Tenant Protection Act ended the Ontario Rent Registry. The proponents of the Tenant Protection Act believed in the application of "market" theories to rental housing. It was believed that higher rents would provide incentive to landlords to build new rental housing. Supply has not increased. Condos are far more lucrative for developers. As a result, tenants are left moving into housing they cannot afford, or leaving the rental housing market altogether. Young people and retired people are reluctant to enter a distorted market. The reality is that landlords and tenants do not have equal footing in the "marketplace." Housing is a necessity and therefore the ultimate market balance of choice is missing.

Solutions

- Develop a Rent Registry based on average rents in each building
- Establish a maximum legal chargeable rent
- Allow tenants to apply for reductions based on excessive vacancy de-control rate increases



MAINTENANCE AND REPAIRS

Description

The cost of maintenance and repairs is part of a tenant's rent and is a statutory requirement under Section 24 of the Tenant Protection Act.

Background

Every law governing rent has recognized the right of tenants to maintenance, yet every law has failed to provide for adequate enforcement of that right. Whereas most tenants can be assured of regular rent increases, they do not have equal assurance of regular maintenance.

Solutions

- Prohibit rent increase where there are outstanding property standard violations
- Allow for building-wide rent reduction applications based on inadequate maintenance and repairs
- Simplify procedures for tenant applications in the matter of rent abatements
- Allow tenants to withhold all, or part, of their rent after reasonable written requests for maintenance and repairs have been ignored
- Allow tenants to use inadequate maintenance as a defence against rent increase or eviction applications
- The province should support pro-active property standards by-laws in municipalities



THE ONTARIO RENTAL HOUSING TRIBUNAL

Description

The Ontario Rental Housing Tribunal is a quasi-legal administrative body introduced in 1998 to administer the Tenant Protection Act. Adjudicators are appointed by the government. Mediation is strongly encouraged by the Tribunal.

Background

The Tribunal is institutionally biased in favor of landlords. The Tribunal offers an exact system for raising rents and evicting tenants. For tenants, the Tribunal procedure is unclear and inaccessible. Daytime hearings, lack of interpreters, the cost of filing applications, and the cost of copying files are some of the barriers to tenants. The Tribunal is non-inquisitive. Settlements are pushed by mediators who are evaluated on quantity.

Solutions

- The Tribunal must be abolished
- Tenants should be included as part of any legal or quasi-legal body governing tenant issues to ensure fairness for tenants
- Eviction matters should be returned to the Ontario court
- Duplicate copies of files should be available at nominal cost
- Allow for evening hearings at more accessible locations.
- Simplify tenant applications
- Allow for independent reviews of mediated settlements
- Expand duty counsel program
- Introduce \$500 or more thresholds for evictions
- Offer translation services



EVICCTIONS

Description

The eviction process is outlined in the security of tenure and termination of tenancies section of the Tenant Protection Act. Tenants can be evicted for a certain number of reasons. Tenants are often left defending themselves against charges, and a procedure, that they do not fully understand.

Background

Last year, more than 62,000 tenant households in Ontario faced eviction at the Tribunal, 80 per cent because of non-payment of rent, according to the Tribunal's figures. About 60 per cent of those were ordered evicted by the Tribunal without a hearing. Those figures are 25 per cent higher than in 1997, the year before the Tenant Protection Act was enacted. In total, 267,018 tenant households have faced eviction for rent arrears from June 1998, when the Tribunal was set up, until the end of 2003. Nearly 60 per cent, or 158,565 households, were ordered evicted by "default" meaning they did not reply in writing to the tribunal within five days. The Tenant Protection Act gives tenants only 5 days – not business days – to dispute an eviction notice. Eviction notices and notices of hearing are often difficult to understand or misleading, the process intimidating and confusing. The process that leads to someone losing his or her housing should be easy to understand and fair.

Solution

- Allow tenants reasonable time to file a dispute
- Notices of Hearing should be in plain language
- Stop imposing filing costs on tenants
- Prevent bad settlements
- Train adjudicators on security of tenure
- Expand resources for tenant advocates to help educate tenants about their right and to assist tenants in defending themselves against unfair rent increases, which lead to economic evictions



Conclusion

The Tenant Protection Act has put an undue burden on the tenants of Ontario. The law needs to be changed to encourage a more equitable relationship between landlords and tenants. The government of Ontario has already expressed an interest in doing this. We strongly encourage the government to enact these changes as quickly as possible; tenants have been struggling under the Tenant Protection Act for far too long.

