



Long-Term Affordable Housing Strategy Update

Proposals to Encourage Small Landlords
to Provide Rental Housing

Consultation Paper

Ministry of Municipal Affairs and Housing

April 2016

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INTRODUCTION

On March 14, 2016, Ontario announced the details of the update to the Long-Term Affordable Housing Strategy (LTAHS). The updated strategy charts a bold, transformative, co-ordinated, and progressive course towards housing policy and programs that are relevant to current realities and reflect new research and best practices, and supports the government's goal of ending chronic homelessness in 10 years. The strategy also supports the government's vision that every person has an affordable, suitable and adequate home to provide the foundation to secure employment, raise a family and build strong communities.

The updated strategy recognizes the critical role that the private sector, including private landlords, play in providing a wide range and mix of housing, to meet current and future housing needs. The strategy also recognizes the need for strong partnerships with the private sector in order to increase the supply of affordable housing and proposes a range of initiatives to facilitate the development of more affordable housing. This includes second units (more commonly referred to as secondary units), which are recognized as an important form of affordable housing for many low-to-moderate income households.

As part of these initiatives, changes to the *Residential Tenancies Act, 2006* (RTA) are being considered to encourage small landlords and private homeowners to participate in the rental housing market, while maintaining strong protections for tenants. This could help increase the supply of affordable rental housing options, and choices available to low-to-moderate income tenants.

The proposals include initiatives that would remove barriers for small landlords. The purpose of this consultation paper is to seek feedback from tenants and landlords on these proposals.

In addition, the RTA requires the Minister of Municipal Affairs and Housing (MMAH) to initiate a review of the rent increase guideline rules in 2016. This consultation paper also seeks feedback on the effectiveness and fairness of these rules.

BACKGROUND

The Residential Tenancies Act, 2006

The *Residential Tenancies Act, 2006* (RTA) sets out the rights and responsibilities of landlords and tenants for most residential rental properties in Ontario.

The RTA establishes the framework for the regulation of residential rents in Ontario, and provides protection for tenants from unlawful rent increases and unlawful evictions, and requires landlords to keep rental buildings in a good state of repair. In addition, the RTA ensures tenants' right to privacy, reasonable enjoyment, and provides protection from harassment.

The RTA also establishes the Landlord and Tenant Board (LTB) as the independent tribunal with authority to adjudicate disputes that fall within the purview of the legislation.

The RTA applies to most residential tenancies in Ontario including rented single and semi-detached dwellings and condominium units, basement apartments/second units, and special tenancies such as mobile homes and care homes. While non-profit and social housing is generally covered by security of tenure and eviction rules, and maintenance provisions, it is exempt from most rent rules. Newer residential buildings (post 1991) are exempted from the rent increase guideline.

Increasing the supply of affordable housing

The government values the contribution of small landlords in the rental housing market. Small landlords play an important role in providing affordable rental options, including secondary units, for low and moderate-income households. For example, landlords renting out a basement apartment in their home, a second property, or units in a triplex can increase choices available to tenants, and support a wider range and mix of housing in Ontario communities. In addition, small landlords who rent secondary units can earn additional income, allowing homeownership to be more affordable.

The government has heard that barriers may exist that could prevent prospective small landlords from considering entering into tenancy agreements. These unique challenges can impact their ability to enter into and stay in the rental housing market. For example, some small landlords have indicated that bearing the cost of tenants' utility arrears is a significant financial strain. Small landlords and landlord representatives have also pointed out that, in some instances, they do not have the same procedural rights as tenants, which impacts the financial feasibility of being a landlord. While tenants can access the LTB for certain issues up to a year after a tenancy has ended, landlords do not have the same

level of access post-tenancy. To recover any costs after a tenancy has ended, like rent arrears or costs relating to damage, landlords generally need to file a claim in Small Claims Court.

Landlords have also raised concerns regarding provisions in the RTA that allow tenants to raise issues at eviction hearings for rental arrears with no prior notice to landlords. Landlords may be unaware of tenant concerns until they are raised at the hearing, and will often need to request an adjournment to address the issue. This can prolong the process and cause financial and emotional hardship on small landlords with limited resources. At the same time, the government has heard that many tenants are not sufficiently aware of their right to raise issues at the hearing until the day of the hearing. Some tenants and landlords have advocated for additional rules that would allow smoke-free and pet-free buildings. Some have also suggested opportunities to modernize operations and support greater business efficiencies to benefit landlords and tenants alike, such as allowing the delivery of certain notices by email.

While many of the above concerns impact all landlords, small landlords are disproportionately impacted. Some small landlords may not be familiar with how to screen prospective tenants. Additionally, small landlords generally have fewer resources than larger landlords, making it difficult for them to easily absorb the costs of damage, unpaid utility bills, and legal and filing fees, and to withstand lost revenue.

The RTA applies equally to small and large-scale landlords, with only a few exceptions, as all landlords have the same responsibilities to their tenants. The proposals in this consultation paper therefore apply to all landlords, except for one initiative relating to pet-free buildings, which is targeted only to small buildings where the landlord also resides. While the proposals generally apply to all landlords, they are intended to address challenges specific to small landlords and support a healthy rental market that includes options that are affordable to tenants at various income levels.

WE WANT YOUR VIEWS

We want input from landlords, tenants, and their representative organizations, and other interested parties on these proposals.

This document identifies various proposals that the government is considering or exploring to ensure that the system works well for both landlords who meet their responsibilities and tenants who act in good faith. This document provides some background information on these proposals, and key questions to consider.

In addition, the government would also like your feedback on the effectiveness and fairness of the rent increase guideline rules.

This paper is organized into two parts:

1. Encouraging Small Landlords to Provide Rental Housing:
 - Increasing access to LTB remedies
 - Making processes more fair
 - New protections for landlords and tenants
 - Business and operational efficiencies
2. Rent Increase Guideline Review

HOW TO PARTICIPATE

We invite you to participate in the consultations on proposed changes being considered to the *Residential Tenancies Act, 2006*.

Please send us your written feedback and responses on the discussion questions included throughout this paper by June 30, 2016. You can provide your input by email or by post.

Email: residential.tenancies@ontario.ca

Mail: Residential and Commercial Tenancies Unit
Housing Policy Branch
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PART I: ENCOURAGE SMALL LANDLORDS TO PROVIDE RENTAL HOUSING

1. INCREASING ACCESS TO LANDLORD AND TENANT BOARD REMEDIES

1.1 Proposal: Allow landlords to pursue unpaid utility arrears at the Landlord and Tenant Board (LTB) during a tenancy

In some cases landlords include the cost of utilities (e.g., heat, electricity, water) within the fixed charge for rent. In other cases, utilities are not included in the rent and the tenant may be responsible for either making payments directly to the utility provider or reimbursing the landlord for making the payments.

If utilities are included in the rent and a tenant fails to pay the rent owing, the landlord may apply to the LTB for remedies. This includes payment of the rental arrears, and termination of the tenancy and eviction of the tenant. However, in situations where utilities are not included in rent, if a tenant fails to make a utility payment, the landlord may have to bear the utility costs.

For example, a landlord may incur costs if the tenant fails to reimburse the landlord for making the utility payments. The landlord could also incur costs related to the shut-off and re-connection of utility services resulting from the non-payment of utility bills. In addition, the *Municipal Act, 2001* enables municipalities to add tenants' arrears for municipal public utilities (e.g., water) to the owner's property taxes.

Non-payment of utility arrears may cause significant financial hardship for small landlords with limited resources. To recover utility arrears, landlords generally need to file a claim in the Small Claims Court, rather than seeking compensation at the LTB. This is because the LTB currently has no jurisdiction to order or collect payments for utility arrears.

It is proposed that, if a tenant is responsible for paying for utilities separately from rent, but fails to make the payment and the landlord has paid the outstanding amount, the landlord could apply to the LTB for remedies. This would provide a more cost-effective and efficient means for landlords to recover unpaid utility charges.

Questions for Discussion

1. Should landlords be allowed to seek remedies for unpaid utility arrears at the LTB?
2. If yes, what remedies should be available to landlords (e.g., repayment of utility arrears, termination of tenancy)?
3. In seeking repayment of utility arrears, should the landlord be compensated for other utility charges (e.g., service fees, connection fees, late payment interest, infrastructure charges, etc.)?

1.2 Proposal: Explore whether to allow landlords to pursue certain issues (e.g., rental arrears, utility arrears, damage) at the LTB for up to 12 months after a tenancy has ended

Currently, tenants can access the LTB for remedies in certain instances for concerns that arose during a tenancy, for up to 12 months after they have moved out (e.g., for illegal rent or interference with reasonable enjoyment). However, landlords do not have the same access to LTB remedies post-tenancy under the current legislation. For example, landlords cannot make an application to the LTB for rental arrears or damage that occurred during a tenancy after the tenant has moved out. This can have significant resource implications for small landlords.

The government is exploring whether to allow landlords to pursue certain actions at the LTB for up to 12 months after a tenancy has ended. This proposal could help increase equity between landlords and tenants in terms of access to LTB remedies post-tenancy, allow landlords to recoup arrears and monies owing for damage, and provide landlords with an alternative to the Small Claims Court.

Questions for Discussion

4. Should landlords be allowed to apply to the LTB after a tenancy has ended? If yes, for what issues should landlords be allowed to apply?
5. There may be barriers that limit the effectiveness of post-tenancy applications (e.g., serving a notice to a former tenant who has not left any contact information, ensuring former tenant participation at hearings, enforcing orders). How can these obstacles be addressed?

1.3 Proposal: Allow landlords to apply to the LTB to resolve landlord-tenant disputes without seeking to terminate the tenancy

Under the RTA, a landlord may apply to the LTB to terminate a tenancy for certain reasons, such as interfering with reasonable enjoyment or causing undue damage to the rental unit. This could include situations where tenants are hoarding or disturbing neighbours.

However, some landlords – particularly social or supportive housing landlords – may prefer to work with the tenant to resolve the issue rather than evict the tenant.

The government is proposing to allow landlords to apply to the LTB to resolve landlord-tenant issues, without serving a termination notice. This approach to conflict resolution could support stronger landlord-tenant relationships.

Questions for Discussion

6. What types of conflicts/issues could be addressed without serving a termination notice?
7. Many of these applications could likely be resolved by mediation or consent orders. Do you think this would be an effective process to resolve landlord and tenant disputes?

2. MAKING PROCESSES MORE FAIR

2.1 Proposal: Require tenants to disclose any issues that they intend to raise at rental arrears eviction hearings to the landlord prior to the hearing

Tenants currently have the ability to raise issues (e.g., maintenance issues) at eviction hearings for rental arrears without any prior notice or disclosure to landlords.

Some landlord advocacy groups indicate that this is unfair for landlords as it places a disproportionate onus on landlords to prepare for all possible arguments at the hearing, while the tenant only needs to prepare for the issues raised in the application. As a result, the landlord may need to request an adjournment for additional time to address the issue.

The government is proposing to require that tenants disclose the issues they plan to raise to landlords, prior to the hearing. This would not only reduce any undue delays resulting from adjournments, but also ensure that tenants are aware of their rights and continue to have the opportunity to raise their concerns.

This proposed change can also help ensure that both landlords and tenants are better prepared, allowing for more productive hearings.

Questions for Discussion

8. Do you think this proposal will make hearing processes more fair, equitable and productive?
9. How long before a hearing should a tenant be required to disclose issues they plan to raise at the hearing?
10. With respect to this proposal, are there any other considerations to ensure that tenants continue to have fair access to justice?

2.2 Proposal: Clarify that only motions that indicate the full amount was paid will be accepted and treated as a “stay” of the eviction order

Under the RTA, tenants who have received an eviction order for rental arrears can pay the full amount owing to void the order before the eviction is enforced. Where the tenant has paid this amount after the date that the landlord could go to the sheriff for enforcement, the tenant’s motion to void acts as a “stay” of the eviction order and a hearing is scheduled. Currently, an eviction order can be

stayed even if the tenant fails to provide any proof or indication that the necessary amounts were paid.

The proposal is to clarify that only motions that indicate the full amount owing was paid will be accepted and treated as a “stay” of the eviction order. Requiring tenants to provide proof that the full amount owing under the eviction order has been paid may help to reduce undue delay, prevent potential abuse of the system, and make processes more fair.

Question for Discussion

11. Do you have any comments on this proposal?

2.3 Proposal: Explore whether any changes should be made to the process for appealing decisions of the Landlord and Tenant Board to the Divisional Court

Under the RTA, a party to an LTB order has a right to appeal the LTB’s decision to the Divisional Court on a question of law. When appealing an eviction order, a tenant is also granted a stay, permitting the tenant to remain in the rental premises until the appeal is heard and a decision is rendered by the Divisional Court (*Statutory Powers Procedure Act*, ss. 25(1), Rules of Civil Procedure, Rule 63).

Landlord organizations claim that some tenants abuse the appeal rights, and the accompanying stay provisions, in order to remain in their units without paying rent for an extended period of time. This can cause particular hardship, both financial and emotional, for small landlords and may deter some prospective small landlords from entering the market.

Questions for Discussion

12. What information do you have available or are you aware of with respect to the scope of the concern that has been raised, including the number of tenants involved and the number of landlords impacted annually?

13. What changes could be made to the appeal process to address the concern raised?

14. Are there any changes, other than changes to the appeal process, which could be made to address the issue in a targeted or more proactive way?

3. NEW PROTECTIONS FOR LANDLORDS AND TENANTS

3.1 Proposal: Explore whether to allow landlords to terminate a tenancy based on violation of no-smoking provisions in tenancy agreements

While the RTA does not prohibit a landlord from including a no-smoking clause in a tenancy agreement, smoking in violation of a no-smoking clause is not currently a ground for eviction. However, where smoking may be an issue, a landlord may terminate a tenancy on the ground that the tenant has caused undue damage, seriously impaired the safety of any person, or substantially interfered with the reasonable enjoyment of the landlord or other tenants.

Landlords and some tenants have advocated for enhanced rules that would provide for completely smoke-free environments. Small landlords, especially those providing a second unit in their home, may have a particular interest in having better means to enforce no smoking rules to accommodate their families' and tenants' preference for a smoke-free environment.

The government is exploring whether to allow to landlords to terminate a tenancy, if a tenant violates a no-smoking agreement. In these cases, landlords would not be required to prove that smoke has caused damage, impaired safety, or interfered with reasonable enjoyment. This would better support landlords to provide for smoke-free environments.

Questions for Discussion

15. Should landlords be able to terminate a tenancy and evict a tenant based on violation of a no-smoking provision in a tenancy agreement?
16. Should no-smoking provisions apply to all types of smoking (e.g., tobacco, e-cigarettes)? What, if any, exceptions should apply?
17. Should the RTA specify where no-smoking provisions can apply (e.g., indoor spaces, balconies, within certain distance from residential complex)?

3.2 Proposal: Explore whether to allow landlords to prohibit pets in tenancy agreements in small buildings where the landlord also resides

The RTA currently voids any provision in a tenancy agreement that prohibits the presence of animals in or about the residential complex. However, where a pet has caused problems, a landlord may terminate a tenancy on the ground that the tenant has caused damage, seriously impaired the safety of any person, or

substantially interfered with the reasonable enjoyment of the landlord or other tenants.

If the notice of termination is grounded on the presence, control or behaviour of an animal in or about the residential complex, the RTA requires the LTB to be satisfied that certain criteria are met to terminate the tenancy and evict the tenant, for example – the species or breed is inherently dangerous, the past behaviour of an animal of that species has substantially interfered with reasonable enjoyment, or an animal of that species has caused a serious allergic reaction to the landlord or another tenant.

Some landlords and tenants have advocated for enhanced rules that would allow pet-free environments. This may be particularly important for small landlords concerned about allergies, pet odours, or damage, and any resulting cost implications.

The government is exploring whether to allow landlords to prohibit the keeping of pets in small buildings where the landlord also resides. This would allow small landlords to provide pet-free environments and terminate a tenancy if a tenant violates a no-pet agreement without having to prove that the pet has caused damage, impaired safety, or interfered with reasonable enjoyment.

Questions for Discussion

18. Should landlords be able to prohibit the keeping of pets in small buildings where the landlord also resides?

19. Some tenants may feel that the current right to keep a pet is central to their reasonable enjoyment. Do you have any comments on this?

3.3 Proposal: Explore opportunities to protect Ontario tenants from the potential health-related impacts of radon

Concerns have been raised by some stakeholders regarding the potential presence of radon in some forms of rental housing (e.g., basement apartments), and health risks that could result from long-term exposure to high concentrations of radon.

Radon is a radioactive gas that is formed naturally by the breakdown of uranium in soil, rock and water. As a gas, radon is slowly released from the ground, water, and some building materials that contain very small amounts of uranium, such as concrete, bricks, tiles and gyproc. Radon gas breaks down further to form additional radioactive particles called radon "progeny" that can be breathed into the lungs.

When radon is released from the ground outside, it mixes with fresh air and gets diluted, resulting in concentrations too low to be of concern. However, health agencies have noted that when radon enters an enclosed space, which is not properly ventilated (e.g., a basement or houses in winter), it can accumulate to high concentrations over the long-term, and lead to increased lifetime risk of developing lung cancer. As a result, some stakeholders have voiced concerns regarding the potential presence of radon in basement apartments.

While radon cannot be detected by the senses (e.g., it is colourless, odourless and tasteless), it can be detected with relatively simple-to-use and inexpensive radon testing kits. Do-it-yourself radon test kits are available through online purchase and at some home improvement retailers. Additionally, landlords, tenants, and homeowners concerned about radon can hire a certified radon measurement professional to test their homes/basements. Health Canada has also developed standard protocols, instructions, and educational materials on how to perform a radon test that landlords, tenants, homeowners, and radon testing companies can refer to.

Question for Discussion

20. What approaches could be considered regarding radon safety in rental housing, particularly in basement apartments?

4. BUSINESS AND OPERATIONAL EFFICIENCIES

4.1 Proposal: Allow emailing of certain landlord and tenant notices, upon consent of both

Currently under the RTA, landlords and tenants must deliver notices either by hand or by post. Other methods of delivery, such as e-mail, are only sufficient where it can be proven that the contents of the notice actually came to the attention of the recipient.

The government is proposing to allow consenting landlords and tenants to deliver certain notices electronically (e.g., notices of entry or rent increase). This could provide for a faster and more effective means of delivering notices, and modernize communication and business practices. For example, email use makes it easier for landlords who live far from their rental properties to deliver timely notices to their tenants, rather than travelling long distances, or having to allocate additional time for postal services.

Emails may not be appropriate for some notices that are more sensitive or have serious consequences (e.g. notice of termination of the tenancy by the landlord).

Questions for Discussion

21. What notices should landlords and tenants be allowed to deliver by email?
22. Should other forms of electronic communication be considered for the delivery of notices (e.g., texting)?

4.2 Proposal: Further clarify provisions for substantial compliance with the RTA with respect to the content of certain forms, notices and other documents

The RTA requires the LTB to adopt the most expeditious method of determining the issues brought before it. To support this, it provides that substantial compliance with the RTA is sufficient with respect to the content of forms, notices or documents. For example, if a signature is inadvertently omitted from a form, the LTB may still accept the documentation as long as the contact information is provided.

However, some landlord stakeholders indicate that technical, non-substantive issues on forms and notices can still cause delays at the LTB.

The government is exploring opportunities to provide further clarification on the requirements and processes for substantial compliance with the RTA respecting

the contents of forms, notices or documents, to reduce the potential for delays at the LTB, without prejudicing tenants' interests.

Questions for Discussion

23. In what instances can non-compliance with RTA-related documentation requirements cause potential delays? Provide specific examples, if possible.
24. What approaches could be considered to address these concerns?

4.3 Proposal: Allow landlords and tenants to file unsworn statements in support of applications and motions, rather than affidavits

There are a number of filings under the RTA that must be accompanied by an affidavit – for example, an application where the tenant has breached a specified condition in an order or mediated agreement, or a motion to void an eviction order where the tenant has paid the amount owing to the landlord. Affidavits are legal documents that must be sworn, making it difficult to complete and file them electronically.

The proposal is to allow landlords and tenants to file statements that do not need to be sworn, instead of an affidavit. This would save landlords and tenants considerable time and resources as unsworn statements can be completed and filed more quickly and easily electronically.

Regardless of whether affidavits or unsworn statements are used, it is an offence under the RTA to furnish false or misleading information in material filed with the LTB.

Questions for Discussion

25. Do you have any concerns with a change to the LTB process that would allow unsworn statements to be filed in support of application and motions, rather than affidavits?
26. Is there another method of supporting the truth of the information filed?

4.4 Proposal: Allow the LTB to combine a conditional order with a subsequent eviction order to simplify enforcement

Under the RTA, where the LTB issues a conditional order on an eviction application and the tenant fails to comply with the conditions, the landlord can file a new application on the basis of this non-compliance, if the conditional order includes a provision for doing so. The LTB can, in the new order, require payment of rent arrears that have accrued since the original conditional order

was issued. However, this may leave the landlord with two separate LTB orders for payment to enforce – any initial payments ordered under the first order that have not been paid, and additional payments ordered under the second order.

The proposal is to allow the LTB to cancel the conditional order (for payment of arrears, damage, and potentially utility arrears) and incorporate any unfulfilled terms of the order into a new order for both the full amount of arrears owing as well as eviction. Allowing the LTB to combine the orders would simplify the enforcement of Board orders by landlords, as they would only have to enforce one order for payment, rather than two.

Question for Discussion

27. Do you have any comments on this proposal?

4.5 Proposal: Allow the LTB to include payments owing for damage from prior mediated agreements in eviction orders

Under the RTA, where a mediated agreement is reached between the landlord and the tenant on an eviction application, the landlord can file a new application if the tenant doesn't meet a condition specified in the agreement, and the agreement allows the landlord to file the new application. If a tenant defaults on the agreement and the landlord files a new eviction application, the LTB can issue an eviction order, and can order the tenant to pay any rent arrears already agreed upon in the mediated agreement. However, if the settlement included an agreement for the tenant to pay compensation for damage, the LTB cannot currently order that payment as part of a subsequent eviction order.

The proposal is to allow landlords to apply for an order that the tenant pay any amount owing for damage as set out in the mediated agreement. This change would make it easier for the landlord to enforce the mediated agreement and collect any agreed upon payments. The proposed RTA recognition of compensation for utility arrears may also be reflected in this change.

Question for Discussion

28. Do you have any comments on this proposal?

PART II: RENT INCREASE GUIDELINE REVIEW

RENT INCREASE GUIDELINE REVIEW

The *Residential Tenancies Amendment Act (Rent Increase Guideline), 2012*, requires a review of the annual rent increase guideline formula every four years.

The RTA establishes Ontario's framework for rent regulation and sets out the formula for determining the annual rent increase guideline, which is the maximum amount by which a landlord may increase rent for most Ontario tenants.

The guideline formula is calculated based on the average Ontario Consumer Price Index (CPI) over a 12 month period (June to May). The CPI is a measure of inflation or the rate of price change for goods and services bought by consumers – a transparent measure, which is calculated by Statistics Canada.

The guideline applies to all residential buildings occupied prior to November 1, 1991. Buildings first occupied after this date are exempt from the guideline.

In 2012, the RTA was amended to ensure that the annual rent increase guideline is not more than 2.5 per cent.

The rent increase guideline for 2016 is 2.0 per cent, and for previous years has been calculated at:

- 2015 - 1.6 per cent
- 2014 – 0.8 per cent
- 2013 – 2.5 per cent
- 2012 – 3.1 per cent

Question for Discussion

29. Is the rent increase guideline formula fair and effective?