

NEWSLETTER

July 2006

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Bill 109—Residential Tenancies Act enacted What does it mean for landlords and suppliers?

On May 3, 2006, the provincial government introduced Bill 109 - the *Residential Tenancies Act, 2006*, an act to revise the law governing residential tenancies. The bill received Royal Assent on June 22. We expect the new law to be in force late in 2006 or early in 2007 when the regulations and forms will be ready.

There are some very important positive features in Bill 109, namely:

- maintaining vacancy decontrol,
- lowering interest on the last month's rent deposit,
- statutory right for a landlord to inspect rented premises,

However, most of the proposed changes are negative for the rental housing industry, most notably:

- the requirement that all eviction applications go to hearings — there will no longer be default orders;
- a greater ability for tenants to obtain rent abatement and rent reduction orders;
- costs no longer borne for capital expenditures and for utility costs;

- very restrictive rules concerning treatment of capital expenditures in above guideline applications;
- the re-introduction of orders prohibiting rent increases; and
- the liabilities being imposed on landlords who install smart meters.

The Ontario Rental Housing Tribunal will be known as the Landlord Tenant Board. The government will create new forms for landlords to use when giving notices to tenants and when filing applications.

Eviction Applications

The new Act, the RTA, eliminates the dispute/default process. Under the TPA, hearings are only held when ten-

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City of Ottawa Reduces Property Taxes for Multi-Res. Buildings

Landlords in the City of Ottawa have been working for many years to reduce the tax burden for multi-residential buildings. Up until 2006, multi-residential buildings paid more than twice the rate of residential homes. It is a regressive tax that cannot be justified.

Due in large part to the work of the Eastern Ontario Landlord Organization (EOLO) and a commitment made by EOLO's largest members to pass through all tax decreases

to tenants, Ottawa City Council decided to reduce the multi-residential tax ratio from 2.152 to 1.8 for 2006. That ratio reduction has saved the average apartment building a tax increase of 13%.

Tenants are an important part of the Ottawa effort to reduce the taxes on apartments. Many tenants do not realize that they pay the property taxes through their rent.

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EOLO Networking and Information Event—2006 Spring Event

On the evening of May 10th, EOLO held another very successful information and networking event for our landlord and associate members at the Centurian Conference and Event Centre.

As well, the landlord members were able to learn more about the products and services provided by our sponsors and other EOLO associate members.

Midway through the event all eyes turned towards the Ottawa Senators playoff match shown on the large screen plasma television set.

Over 45 landlord representatives (representing well over 15,000 rental units) left their Lazy-Boys to attend the event where they learned about the proposed Residential Tenancies Act, and received an update on our successful campaign to lower property taxes on multi-residential buildings.

Door prizes were handed out before the game and during commercial breaks. Special thanks to our door prize donors: Home Depot, Keyesbury Appliances, Giant Plumbing, Ottawa Citizen, Schindler Elevators, Direct Energy and Coinamatic. Many thanks also to All-Signs for providing the signage for the event.

Included in the gift bags, was an EOLO disk providing substantial details on the proposed Residential Tenancies Act along with other material of interest to those in the residential landlord industry. Members may contact us at dlyman@dickieandlyman.com if you were unable to attend, but would like a copy of the disk.

EOLO Thanks our event sponsors as noted below:

Many thanks to our Bar Sponsor:



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Bill 109—Residential Tenancies Act enacted

What does it mean for landlords and suppliers?

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ants dispute an eviction application, or if there appears to be a problem with the application on its face.

The RTA will force all applications to go to a hearing. This will require landlords or their lawyer/agent to appear at hearing for all eviction applications, even when the tenant has no dispute and will not bother attending.

Tenants who do attend their hearing can raise any claim and be granted rent abatements and other remedies without filing their own application. If that happens, landlords will either need to respond without having a reasonable opportunity to defend themselves, or be forced to seek adjournments that will allow the tenant to remain in the unit, potentially rent free, until a new hearing is scheduled.

The RTA introduces a fast track eviction process for wilful damage, shortening the notice period to 10 days from 20 days, and removing the tenant's opportunity to void the notice. The landlord can apply to terminate the tenancy immediately after serving the notice. However, if the landlord uses this process and the damage is not found to be "wilful", the landlord will have to start over.

In the original Bill, where a landlord lived in a building of no more than 6 units, they could proceed with a fast track eviction if the tenant interfered with their reasonable enjoyment of the building. However, with recent amendments to the Bill, this provision only applies to buildings of 2 or 3 units.

For non-payment applications, tenants will be able to pay the arrears and costs to void the eviction order until the moment the Sheriff arrives at the door. Fortunately, voiding the order after it is enforceable (but before the Sheriff arrives) will only be available once during a tenancy.

Rent Control

Vacancy decontrol remains, i.e. when a landlord rents a unit to a new tenant, the landlord and tenant are free to negotiate the rent without restriction.

Future guideline increases will be based on the consumer price index (CPI) for Ontario. We expect that CPI will be less than the 1986-2004 guidelines if inflation is low, but greater than the 1986-2004 guidelines if inflation rises significantly.

The interest payable on the last month's rent deposit will also be based on CPI. This is a significant improvement over the current system of forcing landlords to pay 6% interest.

Rent Control - AGIs

The RTA sets out some changes to the utility and capital components of above guideline rent increases (AGIs).

Where a landlord obtains an AGI based on utility increases, the landlord will be required to provide tenants with information on the cost of utilities in subsequent year(s), and to reduce rents if utilities decrease in subsequent year(s). This is known as "costs no longer borne."

As for capital work, the government has indicated that they will lower AGI increases for capital items, as they will be eliminating the management allowance, increasing the minimum useful life, reducing the financing rate and limiting the types of work that qualify as capital expenditures. Those issues will be dealt with in regulations.

The RTA caps AGI increases for capital items at 3% per year for a maximum of 3 years. Under the TPA, AGI increases are capped at 4% per year and the excess can be carried forward for as long as is necessary. Due to their circumstances, mobile home park owners may still obtain higher increases for major infrastructure work. Finally, the landlord will be required to decrease the rent after the useful life of the capital item has run (often 10 to 20 years after the application) for sitting tenants who received an AGI increase.

Rent Control - OPRI

Under the new legislation, an adjudicator will be able to issue an order prohibiting rent increases (OPRI) where there are outstanding property standards orders for which the compliance period has expired, or where the adjudicator orders specific repairs, replacements or other work related to a serious breach of the landlord's duty to repair.

OPRIs will be available as a remedy for a tenant application or they can be issued as part of an AGI application—an adjudicator could refuse or delay some or all of an AGI application if there are serious outstanding work orders or maintenance issues.

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An OPRI will remain in force on a unit until the landlord completes the items in the work order or those specified by the adjudicator, and will carry forward to a new tenant of the rental unit.

Submetering

Under the current legislation (the Tenant Protection Act), a landlord is not permitted to submeter a building and make the tenant responsible for their hydro without the tenant's consent and an appropriate rent reduction. While the new legislation allows landlords to submeter and transfer responsibility to the tenant without the tenant's consent, it provides many disincentives to doing so.

Under the RTA, when a landlord submeters a building, the landlord continues to pay hydro for one year after the installation to determine the appropriate rent reduction when responsibility is transferred to the tenant. There is

a danger that tenants will increase their hydro usage during that year in order to obtain a larger rent reduction. There may also be "start up" costs that appear on the hydro bills during the first year that are not related to usage and that could result in higher (but unjustifiable) rent reductions for tenants.

Tenants in a submetered building will be able to bring applications based on excessive electricity conservation of their appliances or other aspects of the rental unit, i.e. inadequate weather stripping, single pane windows, etc.

Other Changes

Some other important changes to note:

- Landlords will be required to give new tenants information about their rights and responsibilities.
- Maximum rent (applicable only to pre-TPA tenants) will be eliminated.
- Evicted tenants will have 72 hours, rather than 48 hours, to collect their property from the unit.

City Council Reduces Tax Ratio on Multi-Residential Properties

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When taxes go up, provincial legislation allows landlords to pass those increases through as rent increases. When taxes go down by 2.5% or more, landlords are required to reduce their rents dollar for dollar with the tax decrease.

The Province of Ontario has legislated a range of fairness of 1.0 to 1.1 for multi-residential properties. Where the multi-residential tax ratio in a City is higher than a threshold percentage, the City is prohibited from raising the tax ratio. However, due to assessment increases over the past few years the Province has permitted municipalities to increase the tax ratios to neutralize the assessment shifts between tax classes.

EOLO will continue to lobby Ottawa City Council to reduce the tax ratio until multi-residential buildings are taxed at the same rate as single family homes.

EOLO will be sending out packages to our members in the Fall including forms that landlords can use in calculating their automatic rent reductions due to property taxes and informing their tenants. Any landlord in the City of Ottawa who does not receive this package, may obtain one by contacting EOLO Vice-President, David Lyman by phone at (613)235-0101 or by mail at 440-55 Metcalfe Street, Ottawa ON K1P 6L5.

Smoke Detector Reminder

This is a reminder about the importance of installing and maintaining smoke detectors. They are critical life-safety equipment that landlords are responsible for. The Ottawa Fire Department is carrying out inspections. If a smoke detector is missing from where it is required (or inoperable for any reason), you will be charged under the Fire Code.

Sometimes tenants disable smoke detectors. For you to use this as a defence to a charge, you need accurate re-

records of installing and checking the relevant smoke detectors. For your own protection, you must keep a record of testing all needed smoke detectors on tenant turnover and at least annually thereafter.

CFAA Goals relevant to the Ontario Rent Control Issue

The Canadian Federation of Apartment Associations (CFAA) has two main goals, namely improving the federal tax treatment of rental housing, and improving federal housing policies. Both goals impact on rent control, which is a key issue for landlords in Ontario.

Restriction of new supply

In the early 1970's purpose-built rental starts averaged 30,000 units per year in Ontario. Then the federal income tax treatment of rental property changed against our industry, and in 1975-76 rent controls were introduced on a "temporary" basis. Rental starts plummeted to less than 5,000 units per year, and then fell even further in the 1990's.

Coupled with the excess demand caused by rent control, the reduction in starts resulted in shortages of rental housing. Those on-going shortages manifested themselves in much reduced vacancy rates. For example, the average vacancy rate in Toronto was 2.2% pre-controls (1963-1975), 0.9% during strict rent controls (1976-1998), and 2.4% under the *Tenant Protection Act* (1999-2005).

CFAA, EOLO, and the Federation of Rental-Housing Providers of Ontario (FRPO) have worked on the rental housing supply issue with all three levels of government. In those discussions, the Province has blamed rental supply shortages on the federal tax rules, while the Federal government has blamed the provincial rent control rules. Both were correct, but positive action by each government was slow in coming until 1998.

The Tenant Protection Act resulted in a modest growth in new rental starts in Ottawa and other centres, which rose from around 1,000 per year in 1997-1999 to almost 5,000 in 2003 across Ontario. To obtain ample new purpose-built rental supply, both rent control and tax policies need to be positive for landlords. Regrettably, Ontario has now moved in the wrong direction on rent control by tightening the rules in many respects.

Housing and income policies

Also relevant to rental housing supply and demand are provincial and municipal housing and income policies. Due to low interest rates, rental demand has been flat or fallen over the last decade, whereas the demand for home ownership has increased strongly.

This is reflected in the markets for rental units and for homes for owner-occupation between 2001 and 2005.

	Average Rent Increase	Average condo sale price increase	Average price increase single family houses and condos
Ottawa	0.6%	47%	39.0%

Sources: CMHC, Ottawa Real Estate Board and City of Ottawa

The market is clearly saying that under existing conditions, the need is for more single family homes and condos but no more rentals. Yet despite the evidence of where the shortages lie, Ottawa's housing policies continue to restrict the conversion of rental property to condominiums in many market situations, and are moving to restrict the development of single family homes.

Moreover, much provincial and municipal policy still seeks to promote the building of new "affordable housing." Under recent market conditions such new supply will crowd out private supply. In other words if a new affordable rental unit is built it will result in other rental units leaving the rental market (for example, by demolition, conversion or sale to an owner-occupier). Despite being built at a huge expense to taxpayers, new "affordable housing" is unlikely to add much new rental supply on a net basis.

In the last two years CFAA has succeeded in freeing federal housing money for demand side programs, such as rent supplements and housing allowances. Now it is up to the industry's local and provincial associations to push for demand side programs in their jurisdictions.

It is through direct assistance to tenants that housing affordability problems can best be solved. Housing allowance programs can target assistance quickly to those in the greatest need, and address these needs more broadly and equitably than occurs when new "affordable housing" is built.

When rental housing is more affordable to those in need, there should be less public pressure to control rents. In turn, less control on rents will reduce excess demand, and lead the private market to provide more supply. CFAA promotes such affordability policies at the federal level.

A healthy housing market is one that is free to respond to supply and demand, and operates within an environment of positive tax and housing policies.

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CFAA Goals (continued)

CFAA's Conferences and Goals

At CFAA's Annual Conference and AGM in June of this year, the CFAA Board reviewed CFAA's priorities for 2006-2007. Due to the current federal political environment, the CFAA Board has decided to re-orient CFAA's efforts mostly toward the various tax issues facing landlords.

In conjunction with CFAA's internal conference, CFAA and EOLO held a Housing Conference to promote housing allowances. 67 people attended, including Lisa MacLeod, MPP for Nepean-Carleton. Both Conferences were a great success and the CFAA Board decided that it wants another Housing Conference in June 2007.

The CFAA Board also expressed its approval of the work Dickie & Lyman LLP has done for CFAA, and renewed the President's contract with an increase in services to be provided. The budget and CFAA dues were approved with minor amendments.

The Board is pleased with CFAA's current governance structure, namely the directors meeting one month out of every two, with the Government Relations and Communication Committee and the Membership, Fundraising and Finance Committee meeting during the alternate months. We will continue with that structure.

CFAA also decided to create two short term Task Forces, one on the issue of bed bugs and pesticides, and one on tenant and credit reporting. Any member with a particular interest in those areas is invited to contact presi-

dent@cfaa-fcapi.org

CFAA looks forward to continuing to advance the interests of the rental housing industry at the federal level. We work closely with provincial and local associations, including EOLO, since rental housing and tax policies interact in many ways.

EOLO is pleased to support CFAA as one of 16 member associations across Canada. Together, our members own or manage more than 1,000,000 rental homes. CFAA is the sole national organization representing the interests of Canada's \$30 billion rental housing industry. For more information, go to www.cfaa-fcapi.org.

CFAA Sponsors

EOLO is proud to be a member of Canadian Federation of Apartment Association - Fédération Canadienne des Associations de Propriétaires Immobiliers (CFAA-FCAPI). The following sponsors support CFAA-FCAPI.



Garbage Charges

As indicated in previous newsletters, the City of Ottawa decided this year to take the cost for the collection and disposal of garbage off the property tax bill.

City Council agreed to impose a lower charge for bin service (used in most apartment buildings) than for curbside pick to reflect the lower cost to the City.

In 2006, every residential and multi-residential property's final tax bill will have a special charge for the annual solid

waste service. For curbside service, the 2006 charge is \$78.90 per unit. For bin service, the charge is \$32.40 per unit.

We understand that the City does not have reliable unit counts for each property. As a result, all landlords will want to ensure that the City is not using inflated number of units in their calculation of the garbage charge.

New Municipal Act will give the City of Ottawa more power

In previous newsletters, EOLO expressed concern that the Province was going to give more powers to municipal governments across Ontario.

The City of Toronto Act was enacted on June 12, but has not yet been proclaimed in force. It will permit the City of Toronto to increase taxes on consumers and businesses, and to expand the City's ability to regulate and license businesses.

On June 15, the government introduced Bill 130 which

will amend the Municipal Act, 2001 and other Acts in relation to municipalities. If enacted, Bill 130 will give the other municipalities all the new powers Toronto will have except for new tax powers.

This could lead to Ottawa requiring residential landlords to be licensed in order to operate in the City. It may lead to new City regulations in many areas. For more information on why EOLO objects to more powers for the municipalities, see www.jobscalition.ca.

Tips to get ready for Residential Tenancies Act

1. Ensure your leases do not tie you to paying interest at higher than necessary amounts (e.g. "the Landlord shall pay interest on the LMR at the rate of 6% per annum" or "the Landlord shall pay interest on the rent deposit as required under the Tenant Protection Act")

HAVE YOUR LAWYER REVIEW YOUR STANDARD FORM LEASE

2. If you have recently completed capital expenditure work, consider applying for an AGI application as soon as possible, especially if the work included hallway renovation. Landlords will almost certainly receive a higher increase for a successful AGI applica-

tion if it is filed before the new Act is proclaimed (likely in late 2006 or early 2007),

CONTACT YOUR LAWYER OR RENT CONTROL CONSULTANT FOR MORE DETAILS

3. If you have been planning to install sub-metering in your building, you should speak to your lawyer and your energy consultant regarding the expected effect of the submetering provisions in the new Act on your building.

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If you have any questions about the issues raised in this bulletin, please contact John Dickie (Chair) or David Lyman (Vice-President) at 235-0101, or Luigi Caparelli (President) at 723-6169.

Please contact David Lyman at (613) 235-0101 to discuss advertising opportunities.