

What tenants need to know about Bill 109, the Residential Tenancies Act:

Rent Control

Under the Tenant Protection Act, annual rent increases are regulated on occupied units and there is no regulation of rent increases on vacant units. This would not change under Bill 109.

Annual guideline increases on occupied units would be limited to the increase in the consumer price index, and agreed-upon increases (for example, where the landlord is providing an additional service or facility) would be limited to 3% per year (down from 4% under the Tenant Protection Act). This is improved tenant protection.

Landlords can apply for rent increases above the guideline amount for extraordinary increases in utility costs, capital costs and property taxes. This does not change under Bill 109. However, Bill 109 includes provisions for a reduction in rent once the capital expenditure has been paid for. The impact of this otherwise positive change is muted by the fact that rent increases on vacant units remain unregulated.

Procedural Fairness

Bill 109 gives tenants facing eviction the right to attend a hearing to explain why they should not lose their housing. Tenants will have the opportunity to try to settle their dispute by attending a mediation meeting on the day of their eviction hearing. However, the current Bill does not give protection to tenants who miss their hearing date through no fault of their own, and who want to stay in their housing. We need an amendment to give tenants the right to bring a set aside application in these circumstances. ***This is better tenant protection but needs to give tenants the protection of a set aside option in appropriate cases.***

Bill 109 would permit a tenant, at a hearing of a landlord's application for eviction due to arrears of rent, to raise maintenance and repair issues, claims about the landlord's conduct, and any other claims that the tenant could otherwise make in a separate application, in order to defend against eviction. ***Note: If tenants are required to pay all the arrears in to the Board before making their claims, then this will be of limited value to tenants.***

Tenants would still have only one year in which to make most of their claims, as compared to most landlord applications which have a two-year limitation period. ***This does not protect tenants.***

Bill 109 specifically states that the Board would have no power to review the cancellation/variation of a rent-geared-to-income subsidy by a social housing provider. ***In other words, the Board would be unable to make determinations regarding the "lawful rent" for some of the most vulnerable tenants in the province. This does not protect tenants.***

Like the *Tenant Protection Act*, Bill 109 would impose a one-year limitation period on tenants who seek to challenge the legality of the rent. After one year the rent is deemed to be legal. ***This does not protect tenants.***

Tenancy Agreements

Bill 109 gives the landlord the right to unilaterally transfer utility costs to the tenant even though the tenant rented on the understanding that the rent would include hydro. ***This is of significant concern as it would permit landlords to ignore the tenancy contract. Tenants may be required to pay more than the actual cost of the hydro service. This does not protect tenants.***

Evictions

Bill 109 fails to recognize that eviction should be the remedy of last resort.

Default evictions - under Bill 109 tenants would no longer have to file a written dispute and all applications would be scheduled for either a hearing or mediation. ***However, there is no mechanism for a tenant to ask for a quick rehearing of an application where the tenant was unable to attend the hearing date (for***

example, due to bad weather, illness, an accident on the way to the hearing, an important prior appointment). This is a problem because tenants have no say as to when the hearing will take place. We understand that the government is proposing that in these situations tenants would file a request to review the order, but this would be a more complicated, and likely more expensive, proceeding than an automatic right within a short time frame to file a motion to set aside the order. **This is improved protection but it is undercut by the absence of a set aside option.**

Bill 109 states that where a tenant vacates pursuant to a landlord's notice to vacate, the tenancy is considered terminated on the date the tenant moves out. **This is improved tenant protection.**

Bill 109 allows quick evictions with no opportunity for the tenant to rectify in certain situations where the landlord is alleging damage, substantial interference with the landlord's enjoyment of the unit and illegal act. **This does not protect tenants.**

Privacy

A landlord's right to enter would be expanded by permitting entry on 24-hours written notice for maintenance and repair inspections. *This right could be abused.* **This does not protect tenants.**

Maintenance

Bill 109 appears to permit tenants to raise maintenance issues in defence to an application by a landlord for an above-guideline rent increase. It would prohibit an above-guideline increase where the Board has found that the landlord is in serious breach of its obligation to repair and maintain the unit. **This is improved tenant protection.**

Tenants will be able to ask the Board to prohibit further rent increases where there are outstanding work orders on the property. *Bill 109 would not make this mandatory.*

Bill 109 does not contain a provincial minimum standard for heat, water and repair and maintenance of rental units.

Bill 109 would increase a tenant's liability for damage by making him/her liable for "undue" damage rather than damage caused by "willful or negligent conduct". **This does not protect tenants.**

Window Dressing

Bill 109 would repeal the Tenant Protection Act, replace it with the Residential Tenancies Act and create the Landlord and Tenant Board. **Tenant protection is not significantly improved.**

Conclusions/Next Steps

Bill 109 is not what tenants were hoping for from the Liberal government. This is most apparent in the two key areas of vacancy decontrol and default evictions.

With regard to vacancy decontrol, the government failed to deliver on its promise of real rent controls developed in the context of vacancy rates and affordable rents. On average, units become vacant every five years at which point the rent charged will be whatever the landlord wants. In this context, a reduction in rent for "costs no longer borne" is almost meaningless.

With regard to default evictions, Bill 109 would eliminate the requirement for a written dispute but gives no opportunity for tenants who are unable to attend the hearing for legitimate reasons to request a quick rehearing.

Backgrounder: The Need for Reform to the Tenant Protection Act

On May 3, 2006, the government tabled a new residential tenancies law.

What promises did the government make to Ontario tenants? Has the government delivered on those promises? Does the proposed law balance the interests of tenants and landlords? Does it create a fair process for resolving disputes and regulating rent increases?

Tenants across the province have been waiting since October 2003 for the provincial government to deliver. The government promised changes to the law that deals with landlord and tenant disputes and rent regulation and changes to the administrative tribunal that decides disputes between landlords and tenants.

Government Promises

The Liberal party promised that, if elected, within the first year of their mandate they would: "repeal the "misnamed" *Tenant Protection Act* and replace it with an effective tenant protection law"; "restore real rent controls", "protect tenants with real rent control" and replace the existing law with an "effective rent regulatory law" "restructure the regulations guiding the Ontario Rental Housing Tribunal so that the process to file grievances and respond to eviction notices is more fair and equitable to tenants".¹

At a meeting with Eastern Region legal clinic staff on January 28, 2005 John Gerretson (Minister of Municipal Affairs and Housing) made the following commitments to tenants:

A new system of rent controls will be developed in the context of affordable rents because increasing vacancy rates do not mean that renters at the low end have more choice or that rents will become affordable.

2. Tenants will not face rent increases where there is an outstanding maintenance order against the property. The government will reinstate the Orders Prohibiting Rent Increases (OPRI) where there is an outstanding maintenance order against properties.
3. The selection process for the Chair and the adjudicators of the Ontario Rental Housing Tribunal will change because the government is committed to a transparent and fair selection process for members.
4. There will be a fairer test for motions to set aside default judgments. The new law will require an adjudicator to always consider the merit of the case when deciding whether to grant a motion to set aside a default judgment.
5. There will be new, user-friendly forms. The current forms are not fair. They are often confusing and misleading. Tenants who receive eviction notices are often misled into thinking that they have already been evicted. The issue for the government is: What does the individual who receives them think? With this in mind, new forms will be developed.

The Ontario Rental Housing Tribunal (ORHT)

92% of all applications heard at the Tribunal are from landlords. In 2005, the Tribunal processed 64,864 applications to evict tenants from their homes. 53% of the orders to evict were issued by "default order", i.e. without the tenant having a hearing. In contrast, only 1,370 tenant applications for maintenance were received. The Tribunal has been the subject of much criticism. The Ontario Ombudsman wrote "eviction should not be allowed to become a mechanical exercise devoid of human consideration." One of the Tribunal's own adjudicators wrote in a decision in January 2006 "default eviction orders are mass produced in such a way as to permit the description of the Tribunal as an eviction factory."

Vacancy Rates/Rents

The theory is that with an increased supply of units, 'the market' will drive rents down. The reality is that rents have been increasing across Ontario whether the vacancy rate is high or low. According to the 2005 Canada Mortgage and Housing Corporation (CMHC) rental market survey, two-bedroom rents increased in 9 out of the 11 Ontario metropolitan areas. CMHC's Rental Market Outlook for 2006 predicted "tightening market conditions".

The Housing Situation

According to CMHC's last rental market survey, there were a total of 23,337 vacant units across the province of Ontario. At the same time, there were 124,785 low-income households across Ontario on the active waiting lists for social housing at year-end 2004.

CMHC's housing market forecast data predicted a need for 16,000 housing starts annually between 1996 - 2001 and over 20,000 after 2001. Here in Ontario, we are facing an affordable housing deficit of over 80,000 units.

According to Statistics Canada's 2001 Census, the median income of Ontario's renter households was less than half that of homeowner households (\$66,382 versus \$32,194). This means that 50% of renter households in Ontario have an income of less than \$32,194 per year.

'Growing Strong Communities: the Ontario Liberal Plan for Clean, Safe Communities that Work November 25, 2002

Ontario Liberal media release September 30, 2003

November 20, 2003 Throne Speech

April 16, 2004 letter from Premier Dalton McGuinty to ACTO

With files from the Peterborough Legal Centre and the Advocacy Centre for Tenants Ontario (ACTO)