

Advocacy Centre for Tenants Ontario acknowledges the contributions made by the Canadian Centre for Housing Rights (CCHR) to this guide.

Above Guideline Increase (AGI) Tip Sheet

**This guide does not cover mobile home parks or land lease communities.*

***Applicable law: Residential Tenancies Act (sections 30, 116, 126, 127, 128, 129)
and O. Reg 516/06: General (parts III and IV)***

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WHAT IS AN ABOVE GUIDELINE INCREASE?

In cases where the *Residential Tenancies Act* (“RTA”) applies, the rent for a residential unit can be increased if at least 12 months have passed since the last rent increase or the date the tenancy began. Each year, the Ontario government sets a [rent increase guideline](#) – a percentage that your landlord is allowed to increase the rent in rent controlled units.

The guideline does **not** apply to new buildings, additions to existing buildings and most new basement apartments that are occupied for the first time for residential purposes after November 15, 2018.

There are circumstances in which your landlord can apply to the Landlord Tenant Board (“LTB”) to raise the rent above the guideline amount. This guide is intended to provide you with a detailed overview of what to expect if you have received an *N1 – Notice of Rent Increase for an above guideline increase* or an *L5 Application for a Rent Increase above the Guideline*.

WHEN CAN A LANDLORD APPLY FOR AN AGI?

A landlord can apply for a rent increase above the guideline for any of the following reasons:

1. **Capital expenditures:** The landlord did extraordinary or significant renovations, repairs, replacements or new additions to the building or to individual units.
2. **Municipal taxes and charges:** The landlord’s costs for municipal taxes and/or charges have increased by an “extraordinary” amount.
3. **Operating costs for security services:** The landlord’s costs for security services increased, or the landlord began providing security services for the first time.

1. Capital expenditures

The *RTA* sets out the circumstances in which a landlord can apply for an above guideline increase for capital expenditures in [section 126](#). A capital expenditure is an expense that was spent for an extraordinary or significant renovation, repair, replacement or new addition that has an expected benefit of at least five years.

It may include work that:

- Is necessary to protect or restore the physical integrity of the residential complex or part of it,
- Is necessary to comply with repair and maintenance standards under the RTA (LTB or municipal work order),
- Is necessary to maintain the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system,
- Provides access for persons with disabilities,
- Promotes energy or water conservation, or
- Maintains or improves the security of the residential complex.

Note: A repair is ineligible as a capital expenditure if it is unnecessary unless it promotes access for persons with disabilities, energy or water conservation, or security.

Capital expenditures do not include:

- Cosmetic work
- Regular or routine maintenance work, or
- Work that is designed to enhance the level of prestige or luxury offered by the complex.

New tenancy agreements

If a new tenancy agreement took effect after the capital expenditure was completed, the capital expenditure rent increase does not apply for that tenant's rental unit. Likewise, if the landlord is successful and the LTB orders a rental increase, the increase cannot be charged to a tenant who moved into the unit after the landlord's deadline to file their AGI application. The landlord's deadline to file the L5 application is no later than 90 days before the effective date of the first intended rent increase noted in the application.

Useful life

Useful life is the estimated number of years that the capital expenditure is expected to last or benefit the complex. Ontario Regulation 516/06 ([O. Reg 516/06](#)) sets out the [test](#) to determine the useful life of a capital expenditure and provides a [Schedule](#) listing the useful life of items and work. If the useful life of work done or an item purchased cannot be determined by these rules, the generally accepted useful life of the work or item will be accepted as useful life.

Regardless of whether the LTB must make a determination or whether it is listed in the rules, useful life is always greater than 10 years. Where an AGI order includes multiple eligible capital expenditures with different useful lives, an overall blended useful life must be calculated for all the capital expenditures.

Elevators

If your landlord has been ordered to work on, make repairs to, or replace elevators in the residential complex, their AGI application may have to include specific information related to this work.

All AGI applications filed on or after January 1, 2018 must include a summary of items in work orders or orders issued under section 21 of *Technical Standards and Safety Act, 2000*. The summary must include:

- 1) a description of the ordered work;
- 2) the person or entity who ordered the work;
- 3) the specified compliance date; and
- 4) who made the order and the date the order was made.

Your landlord must include the summary with the application even if the compliance date set out in the order for doing the work has not yet expired.

If the work was ordered by the LTB and remains incomplete, a list of incomplete work must also be included.

2. Municipal taxes and charges

[O. Reg 516/06](#) says the landlord can apply for an AGI if the municipal taxes have increased by an extraordinary amount. 'Extraordinary' is calculated by multiplying the provincial guideline increase for the year in which the application will take effect, by 50% of the guideline amount, and adding the two together.

Example: In 2023, the provincial guideline increase is 2.5%.

$$2.5\% \times 0.50 (50\%) = 1.25\%$$

$$2.5\% + 1.25\% = 3.75\%$$

An extraordinary increase for 2023 would be greater than 3.75%.

3. Operating costs for security services

The landlord can apply for an AGI if their security services costs increased or they began providing security services. [O. Reg 516/06](#) sets out the calculation to determine the percentage increase allowed for security services.

To be eligible for an AGI, security services cannot be provided by an employee of the landlord and the service described in the L5 must still exist at the time of the hearing. Start-up costs and increases in the operating costs may both be allowed.

Cap on AGIs

Increases based on eligible capital expenditures, or operating costs related to security services, cannot be more than 3% per year, but may be spread out for up to three years. However, there is no limit on the amount that your landlord can request to increase the rent above the guideline amount for an extraordinary increase in the cost for municipal taxes and charges.

Costs No Longer Borne

Once the expected useful life of a capital expenditure is over, the rent of any tenant affected by an AGI order that continues to occupy their unit is reduced by the percentage allowed for that expenditure. This will also be explained in the LTB's order.

PROCEDURAL REQUIREMENTS

i) N1: Notice of Rent Increase Form

If a landlord wants to increase the rent above the Ontario [rent increase guideline](#), they must first give you at least 90 days' notice. The landlord must serve you a form [N1: Notice of Rent Increase](#), with the box that says "This rent increase is more than the rent increase guideline" checked off.

Although you do not have to pay the full rent increase requested by the landlord unless the LTB approves the amount and an order is issued, you must pay your

regular rent plus the allowed guideline increase for the calendar year. You can review [this website](#) for information on how to calculate this amount.

If the landlord is successful and the LTB issues an order, you could owe all or a portion of the above guideline increase specified in the N1. For this reason, setting aside the difference between the two amounts until the LTB issues an order may help. If the AGI is approved, the order will explain the percentage increase that the landlord is entitled to and when the landlord can begin to charge this increase.

ii) L5 Application

A *L5: Application for an Above Guideline Increase* is the LTB application that your landlord must submit to receive approval for the above guideline increase. After your landlord serves you with the N1, they will serve this application and file it at the LTB.

Some points to consider:

- Do you have the L5 application and Notice of Hearing?
 - Did the landlord give you a copy of the L5 application and Notice of Hearing at least 30 days before the hearing date?
 - Is your unit listed in the L5?
 - Did the landlord file the L5 90 days prior to the first intended rent increase claimed in the application?
 - Was the capital expenditure work completed in the 18 months prior to the application being filed?

PREPARING FOR AN AGI HEARING

What information must the landlord provide in the application?

Upon receiving a L5 application you should carefully review the application and ask the landlord for a copy of their evidence. The landlord must provide instructions to tenants on how they can get access to documents, materials, and evidence. This may include:

- Providing the tenant with a compact disc with copies of the documents,
- Emailing a PDF copy to the tenant upon request,
- Making copies of the documents available in the landlord's office, or
- The tenant and landlord may agree that the landlord will provide a photocopied version of the documents and charge no more than the reasonable out-of-pocket cost for photocopying the documents.

If the application is for capital expenditures, the landlord must provide evidence about the capital expenditure, such as evidence of costs, invoices, grants, and other details. Work must have been completed within the 18 months prior to the L5 application being filed.

Capital expenditures checklist:

- ☐ Is the claimed item an eligible capital expenditure?
- ☐ Did the claimed capital expenditures involve “repairs” or “renovations” which were unnecessary or merely cosmetic in nature?
- ☐ Were the repairs carried out through an arm’s-length transaction?
 - ☐ Where the expenditures were made to someone who is not at arm’s length from the landlord, the LTB will only consider that part of the landlord’s cost that is less than or equal to the cost of a similar market transaction.
 - ☐ Where the landlord claims for the landlord’s own labour, The LTB will only consider that part of the cost less than or equal to the amount a person in the business of doing such work would charge.
 - ☐ Tenants can require that the landlord prove the cost was fair, for example by providing estimates for comparable work by other contractors.
- ☐ Was the work a major capital repair and not related to minor maintenance issues (for example new garbage bins, ashtrays, Christmas lights, etc.)?
- ☐ Does the file contain final invoices for the work done (not just estimates)?
- ☐ Do all invoices appear legitimate and is the work fully itemized on the invoices?
- ☐ Has the work been paid for (stamped invoices or other proof of payment)?
- ☐ Did the landlord indicate whether there was any government grant or assistance?
- ☐ Were there any salvage or resale proceeds received by the landlord?

Extraordinary operating costs checklist:

- ☐ Does the file contain invoices covering all relevant periods in the reference and base years?
- ☐ Have all invoices been paid?
- ☐ Does the quantum claimed by the landlord include late payment charges?

- ☐ Calculations must exclude any penalties, interest or other similar charges for late payment.
- ☐ Can the reference year total be raised and/or the base year total lowered in order to reduce the allowable rent increase?

Review Schedule 1 and or Schedule 2 in the L5 Application

Schedule 1 – Details of Operating Costs

(examples: gas, hydro, water, municipal taxes, security services) (3 pages)

- ☐ Are all appropriate boxes on the form checked off?
- ☐ Did the landlord include information for both reference and base years for any increases sought?
 - When determining rent increases due to an extraordinary increase in cost for municipal taxes and charges, base year means the last completed year immediately preceding the day that is 90 days before the effective date of the first intended rent increase;
 - When determining rent increases due to extraordinary increase in cost for charges or operating cost for security services, base year means the annual accounting period of 1 year most recently completed on or before the day that is 90 days before the effective date of the first intended rent increase.
 - Reference year means the 12-month period immediately preceding the base year.
- ☐ Did the landlord provide correct totals for all expenditures on the form?
- ☐ Did the landlord attach evidence of costs and payment of all costs (invoices, receipts, cashed cheques)?
- ☐ Did the landlord disclose any financial assistance, rebates or refunds?

Schedule 2 - Details of Capital Expenditures

- ☐ Are all appropriate boxes on the form checked off?
- ☐ Did the landlord include detailed information for the capital expenditures?
- ☐ Was all of the work completed in the 18 month period ending 90 days before the effective date of the first increase?
- ☐ If the expenditures claimed include new fridges/stoves/appliances, did the landlord provide a list of the apartments which actually received new appliances?
- ☐ Did the landlord attach evidence of costs and payments (invoices, receipts, cashed cheques)?

- ☐ Did the landlord disclose any financial assistance, rebates or refunds?

Gather evidence

Are there any serious or outstanding maintenance issues/work orders? If so, make a list of any ongoing and serious maintenance problems in unit(s) and complex.

Regular or routine maintenance issues do **not** qualify. Gather evidence such as work orders, maintenance requests or copies of letters given to the landlord requesting repairs or maintenance, any written communications with the landlord about maintenance requests, pictures and or videos of the maintenance problems.

Talk with other tenants in the building – are other tenants aware of serious, ongoing maintenance issues or outstanding work orders?

Check if there are any outstanding work orders from Municipal Property Standards, Fire Department, Public Health, or any order issued by the LTB regarding repairs and maintenance.

Make a checklist

Below are some examples of different checklists. They are not exhaustive.

General checklist to prepare for hearing:

- Get a copy of the landlord's evidence.
 - Is there an itemized list of the costs of renovations and details of payments for each capital expense?
 - Search the landlord's vendors: are the companies reputable? Are they at arm's length from the landlord?
 - Are there any disqualifying expenditures or items completed outside of the 18 month window?
- Review the N1 notice and the L5 application to make sure procedural requirements are met.
- Talk with other tenants in the building. Make a list of any ongoing and serious maintenance problems in unit(s) and complex.
 - How long have people lived there? Does anyone know the history of the building, especially the maintenance history? Does anyone have pictures of the building or work done prior to work being completed by the landlord - compare before and after pictures.

- Gather evidence to prove that the landlord has not completed serious requested repairs or maintenance.
- Contact your local legal clinic for summary legal advice.
- Identify a couple of tenants who may want to speak on behalf of the group. Is there a long-term tenant who can speak to the condition of the building before the work was completed?
- Make a summary of the issues and the questions you want to ask the landlord at the hearing (applicable for video conference hearing).

Capital expenditures sample questions:

Has the landlord brought information in support of the application to the hearing?

- Did the landlord bring a detailed list of rents in the building to the hearing?
- If the landlord is claiming expenditures on new fridges and stoves or other appliances, does the application contain a list of the apartments which received new fridges/stoves/etc.?
 - If not, why not?
 - If not, did the landlord bring such a list to the hearing?

Is the work a major capital repair or just minor maintenance?

- Was the work purely cosmetic in nature?
- Was the work structural in nature?
- Was the work strictly necessary?
- Was the work intended solely for improving the sale value of the building?

Are the repairs or improvements necessary?

- Was the work really necessary for the physical integrity of the building?
 - Does the landlord have any evidence of that? (i.e. reports from contractor, engineering reports)
- Was the work really necessary to maintain health, maintenance or other safety standards?
 - Can the landlord provide copies of any municipal work orders or LTB orders concerning the repairs?
- Can the landlord provide other objective evidence that the work was necessary?
- Was the work really necessary to maintain plumbing, heating, mechanical, electrical, ventilation or air-conditioning systems?
 - Can the landlord provide objective evidence of this (i.e. municipal work orders, LTB orders, assessments)?
- Was the work really necessary to promote access for people with disabilities?
- Was the work really necessary to promote water or energy conservation?
 - Can the landlord provide objective evidence of this?

- Was the work really necessary to maintain or improve the security of the apartment building?
- When was the last time that this kind of work had been done in the building?
- If appliances are claimed, how many and which units were the appliances replaced in?
 - When was the last time the appliances were replaced?

Was the work completed at arm's length or non-arm's length?

- Who did the improvements / renovations OR which company did the work?
- Are any of the people who did the work related to the landlord?
- Is the company that did the work owned by the landlord?
- Is the company that did the work owned by a relative or friend of the landlord?

When was the work done and paid for?

- When was the work started?
- When was the work completed?
- Has all the work been paid for?
- If all the work has not been paid for, how much is still owing on the work?
- Was the work completed more than 90 days before the first date that the landlord wishes to increase the rent?
- Was the work paid for more than 90 days before the first date that the landlord wishes to increase the rent?

Should the cost be reduced?

- Did the landlord receive any government grants or assistance?
- Was it properly accounted for?
- Were there any salvage or resale proceeds?

Should a rent increase be ordered?

- Does the landlord have any outstanding fines owing to the LTB?
- Does the landlord have any outstanding work orders?

Extraordinary operating costs sample questions:

- Do the invoices the landlord provided include any charges whatsoever for late payment fees or other penalties?
- Did the landlord receive any rebates after the base year for expenditures made during the base year?
- Did the landlord receive any government grants or assistance?
- Was it properly accounted for?
- Were there any salvage or resale proceeds?

SERIOUS BREACHES

Serious breaches are current, ongoing and unresolved maintenance issues – regular or routine maintenance issues do not qualify as serious.

The LTB will look at a number of factors to determine a serious breach, such as:

- The seriousness of the maintenance problems;
- Whether or not the problems are existing at the time of the AGI application;
- Whether the landlord is aware of the issues and has made adequate efforts to repair them; and,
- Whether there is an accumulation of many maintenance problems.

[Sections 126\(12\), \(12.1\), \(13\)](#) of the *RTA* says if the LTB finds that the landlord committed a serious breach then it shall either dismiss the AGI application with respect to that rental unit or order that the rent not increase until the landlord has demonstrated the problems are resolved and files a motion with the LTB.

WHAT HAPPENS AT A CASE MANAGEMENT HEARING

A case management hearing (CMH) may be the first step to see if parties can come to a resolution. If this is scheduled, your notice of hearing will say it is a “Case Management Hearing”. A Notice of Hearing will give you an evidence deadline, and instructions on how to file evidence. Review your Notice of Hearing to ensure all deadlines are met.

At a CMH, the landlord and tenants will meet with a Dispute Resolution Officer (DRO), or Board Mediator, to discuss the application and see if the parties can narrow or resolve the application by agreement. The DRO will assist the parties in identifying and discussing any issues they may have, and help the parties try to come up with their own solutions and reach an agreement that resolves the application. For example, parties may agree to lower the amount of the landlord’s requested above guideline increase. Tenants may be more likely to get the landlord to agree to lower the amount at a CMH than they would at a merits hearing.

Non-attendance

While the landlord's application may be dismissed as abandoned if the landlord fails to attend the CMH, a tenant who fails to attend the CMH may be deemed to accept all of the facts and claims in an application. Tenants who do not attend a CMH may not be provided with further notice about the application. Finally, if an order is issued at the CMH, it binds all tenants listed in the application. This means that tenants who do not attend the CMH are bound to the terms agreed upon by those who did attend the CMH.

Consent and Case Management Orders

If the CMH does resolve the application, the LTB will issue a consent order based on the terms that the parties agreed to. A consent order for an increase cannot be greater than the amount that the landlord originally applied for.

If the CMH does not resolve the application, the DRO may issue an interim order (Case Management Order) to help the parties and the LTB hold a more efficient and expeditious hearing. A Case Management Order may, among other things:

- a. identify and simplify the issues in dispute,
- b. identify agreed facts or evidence, and
- c. set dates for any further steps in the proceeding

If the CMH does not resolve the application, a Merits Hearing will be scheduled next.

WHAT HAPPENS AT A MERITS HEARING

A merits hearing may be either a written hearing or a video-conference hearing (held on the Zoom platform). The Notice of Hearing will outline deadlines to submit evidence or a response submission.

Non-participating tenants are bound by the decision that the LTB makes. The LTB will impose a decision after hearing from the landlord and the tenants who did attend the hearing or submit evidence on time.

At a written hearing, the Member will review all the evidence and responses from the landlord and tenants who submitted documents. Parties will receive the final decision in writing.

At a video conference hearing, the landlord will first be given the opportunity to tell the Member why they should be granted an above guideline rent increase. The landlord (or their representative) will explain what capital expenditure work they have done and/or what types of increased operating costs they have experienced. They will give evidence and call any witnesses they may have. The tenants can then ask the landlord and the landlord's witnesses any questions they may have to clarify something, get more details, or to point out a possible problem.

The tenants will then have the opportunity to present their side and give any evidence they have to back up what they have said, as well as call any witnesses they may have. Once the tenants are finished, the landlord can question the tenant(s) and their witnesses. The Member may also ask the parties or their witnesses questions during the hearing.

When the landlord and the tenants have finished giving evidence and making submissions, they will have a chance to make their final statements to summarize their positions. They can also tell the Member what they believe the decision should be based on the evidence given at the hearing. Parties will receive the final decision in writing.

WHAT HAPPENS AFTER THE HEARING?

Wait to receive a copy of the order. If the AGI is approved, the order will explain the amount of approval and when the landlord can start collecting the payments.

WHERE CAN I GO FOR HELP?

- [Community Legal Clinics](#) - find your local legal clinic based on your postal code
- [Canadian Centre for Housing Rights](#)
 - Ask about: [Toronto Tenant Support Program](#)
- [Federation of Metro Tenants' Associations](#)
- Contact your [local MPP](#)
- [ACORN Canada](#)
 - Specifically, seek out your regional branch, such as [Toronto ACORN](#)
- [Property Standards – City of Toronto](#)
- Landlord Tenant Board AGI guideline: [Applications for Rent Increases above the Guideline](#)

LTB File No. NOL-04923 (29 January 2009; Cormier) [CRO No. HOU-D-09499]

- Decision where Member followed RTA s. 126(13) [an AGI serious breach provision], prevented the landlord from raising the rent for tenants who had maintenance problems until all repairs specific to their units had been completed.

LTB File No. TSL-49263-14 (17 November 2014; Savoie), [CRO No. HOU-D-09970]

- Capital improvement had an inherent cosmetic component, the test was whether the work was "substantially cosmetic" in nature. Replacing the balconies ensured the integrity of the concrete slabs and addressed the rusting railings.

Helberg Properties Limited v. Caldwell, 2015 ONSC 7863, [2015] O.J. No. 6931 (QL), 2015 ONSC 7863 (CanLII), Court File No. 579/14 (Div. Ct.) (Sachs, Wilton-Siegel and Mulligan JJ. [CRO No. HOU-D-09971])

Houston v. 530675 Ontario, 2017 ONSC 6419, [2017] O.J. No. 6386 (QL), 2017 ONSC 6419 (CanLII), Court File No. DC-17-828 (Div. Ct.) (Spies, Quigley and Ellies JJ.) (sub nom. *Houston v. 530675 Ontario Ltd. (c.o.b. Mayfield Estates LP)* [CRO No. HOU-D-10888])

- LTB held that fees paid to the municipality for a Rental Housing Licence and to the Electrical Standards Authority (ESA) for an inspection certificate, a requirement for the licence, were deemed part of an extraordinary increase in municipal taxes and charges. Divisional Court ruled that the definition for municipal taxes were broad enough to encompass charges paid to third parties, in this case the ESA. It found that municipal taxes and charges were defined by the authority under which they were imposed.

IMH Pool VI LP v. [Tenants] (24 February 2017; Rodrigues), File No. TSL-67904-15 (LTB) [CRO No. HOU-D-10577]

- LL sole witness was its capital expenditure manager, a recently-hired employee. Under cross-examination, he was unable to explain what interior renovation work had been done to the invoices at issue. He did not know what state the common areas had been in prior to the renovations and replacement work.
- Reasons: Generally if a capital expenditure was for the replacement of a thing that did not need to be replaced, it was not "eligible", though the LTB could allow capital expenditures that promoted access for disabled persons, energy or water conservation, or security. The regulatory definition of "capital expenditure" also excluded routine work undertaken on a regular basis or substantially cosmetic work.
- LL must provide some evidence as to why it was more cost-effective to replace an item instead of maintaining it as part of a routine maintenance program and not a capital expenditure.

Northview Apartment Reit v. [Tenants] (17 April 2018; Whittick), File No. TEL-72869-16 (LTB) [CRO No. HOU-D-10990]