

Rent Rules

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What are some of the highlights of the Residential Tenancies Act related to rent rules?

- ◆ A rent increase may only be taken if at least 12 months have passed since the tenant first rented the unit or since the tenant was last charged an increase.
- ◆ Landlords are required to give tenants 90 days' written notice of rent increase using the current version of the proper (Ministry-approved) form (N1) or N2 where appropriate.
- ◆ Bill 57, *Restoring Trust, Transparency and Accountability Act, 2018* came into force on December 6, 2018. Bill 57 amended the RTA creating an exemption from rent control for new units. Section 6.1 of the Act provides details of the amendment for rent control exemption which refers to two types of rental units: 1) A building, mobile home park or land leased community, no part of which was occupied for residential purposes on or before November 15, 2018; and 2) Rental units located in detached, semi-detached and row houses which meet and are subject to specific requirements. However, the requirements of waiting 12 months between increases and serving a written 90-day notice of increase still apply.
- ◆ Increases are limited to the guideline amount unless an application has been made for an increase above the guideline, the rental unit is exempt from the guideline increase or the landlord and tenant have entered into an agreement for new or additional services *or* capital improvements.
- ◆ Tenants have the right to apply to the Board to have their rent reduced due to a reduction in services or taxes, or for the return of money collected illegally.

What is meant by the term vacancy de-control?

The *Residential Tenancies Act* permits the landlord to set a new rent when a rental unit becomes vacant and a new tenant moves in. The new rent is linked to the history of the tenant rather than the rental unit.

Is it possible to charge a discounted rent and still protect the lawful rent for the unit?

A landlord can indeed offer a marketing discount to a tenant without affecting the lawful rent for the unit when the discount ends. The discount for a monthly rent can be applied as follows: Up to three months discount used in any 12 month period as long as it is provided in writing, and is given as a whole rent-free period rather than being spread out throughout the year, as follows:

-Where a discount is equal to rent for one month, it must be taken in one rental period;

-Where a discount is equal to rent for a period greater than one month but not more than two months, the discount equal to the rent for one month must be taken during one rental period and the balance within one other rental period;

-Where a discount is equal to the rent for a period greater than two months but not more than

three months, the discount equal to the rent for two months must be taken during two rental period and the balance within one other rental period

-For rents paid daily or weekly, the discount must be taken in periods that are at least one week in duration.

A landlord can offer a prompt payment discount of up to 2 per cent of the rent without effecting the lawful rent.

Note: Although the Act allows another method of discounting we do not recommend using it, due to its complexity and the strong possibility of the discount negatively affecting the lawful rent.

Can a landlord collect a deposit for a rental unit?

A landlord can collect a rent deposit if it is requested on or before the date that the tenancy agreement is entered into. The rent deposit cannot be greater than one month's rent or the rent for one rental period, whichever is less. The landlords are not allowed to collect any other deposit aside from a last month's rent deposit.

Does a landlord have to pay interest if a deposit is collected?

The landlord must pay interest to the tenant annually on the amount of the rent deposit at a rate equal to the guideline determined under s. 120 of the RTA. If the landlord does not pay the interest owed to the tenant, the tenant can make an application to the Board or deduct the interest from the rent. If a landlord has given a tenant a notice of rent increase in accordance with the RTA, the landlord is also allowed to ask the tenant to top-up the last month's rent deposit by an amount equal to the permitted rent increase in order to ensure the deposit reflects the increased rate of rent.

Does a deposit have to be returned to a tenant when they leave?

A rent deposit is to be applied to the rent payment for the last period (e.g. the last month of occupancy) before the end of the tenancy. If the rent has increased since the tenant paid the deposit, the landlord may require the tenant to pay the difference for the last month's rent deposit.

Can a landlord charge a fee if a tenant's rent cheque is returned NSF?

If a tenant's rent cheque is returned NSF, a landlord can require the tenant to pay the landlord for the charges that landlord paid to the bank, plus administrative charge of no more than \$20.00. This can be done by application to the board if the tenant refuses to pay voluntarily.

Does the landlord have to give a tenant a rent receipt?

The Residential Tenancies Act requires a landlord to provide rent receipts, free of charge, to a tenant upon request. This request can be made for any payment or deposit the tenant gives to the landlord, including any payment of rent arrears. It is an offence for a landlord to refuse to provide a receipt where it is requested.

How much can a landlord increase the rent for a current tenant?

The landlord may increase the rent by the guideline amount once every 12 months by giving the prescribed 90 day notice of rent increase. The annual rent increase guideline is based on the Ontario Consumer Price Index (CPI).

Can a landlord increase the rent above the annual guideline amount?

Landlords may apply to the Landlord and Tenant Board for an order to increase the rent above the guideline. These applications can be for:

- ◆ Eligible capital expenditures- these are more strictly defined than under previous legislations;
- ◆ Extraordinary increases in operating costs (municipal taxes and charges) ***does not include increase in costs for utilities;** or
- ◆ New or increased operating costs for security services provided in respect of the residential complex.

The applications can relate to any or all units in the complex and the maximum allowable amount is 3% for a maximum of three years until the total increase has been taken for capital expenditures or security services. Amounts for eligible capital expenditures will eventually be removed from the lawful rent, once they have been paid for. For increases in the cost of municipal taxes and charges, there is no limit on the amount of rent increase that can be charged. Since the passing of Bill 124- The Rental Fairness Act, increase in utilities will no longer be ground for an Above Guideline Increase Application. The filing fee for making such an application is \$233 for the first ten units plus \$10 for each additional unit to a maximum of \$1000. Landlords should also be aware of the strict requirements now in effect for making such an application, as well as the need to use up to date forms and schedules. We recommend landlords seek help from a knowledgeable rent control consultant.

What is the tenant required to pay when a rent increase above the guideline amount is sought?

The tenant has the option to **either** pay the amount of rent increase the landlord has applied for *or* the tenant may pay the guideline amount pending the outcome of the landlord's application.

Will the Board's order specify the amount of rent increase?

An order of the Board will **not** set out the rent increase as a dollar amount. Instead, it will set out the percentage increase above the guideline in effect at the time of the increase to the current tenant. **It is the landlord's responsibility to keep records and documentary proof of the rents actually charged to each tenant.**

What is the procedure for a landlord and tenant to "agree" on a rent increase?

The *Residential Tenancies Act* allows a tenant and a landlord to agree, in writing using the correct form, to increase the rent in exchange for a new or additional service **or** for a capital

improvement without the need for a written 90 day Notice of Rent Increase.

How does the provision work for increasing the rent for a new or additional service?

The *Residential Tenancies Act* allows the landlord to increase the rent any time the landlord and tenant agree to add a benefit such as an additional parking space or other prescribed service. In addition to parking spaces, the Act allows agreements for: hydro; heat; air conditioners; extra hydro for air conditioners; water/sewage (but not capital work); floor space; cable/internet service; car plug-ins; and/or lockers/storage.

Note: There is also a provision that permits the decrease of rent where both landlord and tenant agree that parking or other service will no longer be provided to the tenant.

What is the procedure for rent increase agreements for capital improvements?

The provision for capital improvement agreements allow a landlord to recover costs for such things as providing an air conditioner, dishwasher or other improvement to the tenant's unit. The Act provides tenants with the option of cancelling the agreement within **5 days** of signing by giving the landlord a written notice. The agreement may not come into effect sooner than **6 days** after signing. Any Notice of Rent Increase given to the tenant before the Agreement to Increase Rent was signed becomes void if it takes effect on or after the day the agreed increase is to take effect.

Note: This provision also allows a tenant to apply for relief within two years of the effective date of increase if:

- a) the landlord failed in whole or in part to carry out an undertaking under the agreement;
- b) the agreement was based on work the landlord claimed to have done but did not do; or
- c) the agreement was based on services the landlord claimed to provide but did not.

What can a tenant do if they believe they are paying an unlawful rent?

Section 135.1 deems an illegal rent increase lawful if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months and has not filed an application with the LTB with respect to this issue within a year from when the rent was first charged.

A tenant may apply for a rebate with a T1 Application, if they believe they have been charged an unlawful rent within a year from when the rent was first charged. The Landlord and Tenant Board can only order a rebate of illegal rents paid by the tenant in the 12 months prior to the application being made. The Board will consider the rent charged to the tenant 12 months earlier to be the lawful rent when an application is filed.

TIP: Rent Receipts

A rent receipt is a valuable tool for proving if and when the tenant paid the rent.

When applying for termination for arrears or persistent late payment, whether payment is

made by cash or personal cheque, you need to be able to show when the payment was actually received.

TIP: Work Done in lieu of Rent Paid

Agreeing that a tenant will be charged a reduced rent in exchange for doing work such as grounds keeping or snow removal is **not** a good idea. If the work is not done well or at all, there is no clear remedy for the landlord. It is far better to charge the full rent and contract to pay the tenant separately for the work actually done.

The **Residential Tenancies Act Fact Sheets** are intended to help landlords learn and understand their rights and responsibilities.
They provide general information not legal advice.

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