

TENANT DEFENCE FUND OUTREACH - ORGANIZING TEAM

*Services provided by the Federation of Metro
Tenants' Associations and funded by the City of Toronto*

A Step by Step Guide to Challenging an Above Guideline Rent Increase

Other materials available from the Outreach and Organizing Team and the Federation of Metro Tenants' Associations:

- Tenant Organizing Manual
- The Tenant's Survival Manual

Plus many brochures about different aspects of tenants' rights.

Visit our website:

www.torontotenants.org

You can also call the Tenants' Hotline about any individual tenant concerns:

(416) 921-9494

**For more information, or to set up a meeting
for your building, contact the Outreach
Team:**

Phone: (416) 413-9442

Fax: (416) 921-4177

Address: 27 Carlton St., Suite 500, Toronto
Ontario, M5B 1L2

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What is an Above Guideline Rent Increase?

The provincial government's Tenant Protection Act (TPA) has changed the rules that allow landlords to obtain an Above Guideline Rent Increase (AGI).

Your landlord can apply for a rent increase to cover:

- Capital items (repairs or renovations other than normal ongoing maintenance -- this is limited to 4% per year with any extra carried over to the next year),
- Higher than average increases in property taxes, heating, water or hydro costs, or
- Increased costs of security services, or the cost of the addition of new security services.

Before a rent increase above the guideline becomes legal, it must be approved by the Ontario Rental Housing Tribunal.

A hearing must be scheduled, and tenants have the right (and the ability) to challenge the rent increase.

What is the Tenant Defence Fund?

The City of Toronto has created the Tenant Defence Fund to assist tenants who are disputing AGI applications. The fund has two main parts: an Outreach and Organizing Team and a Tenant Support Grant to provide financial assistance to tenant groups.

The Outreach Team

The Federation of Metro Tenants' Associations (FMTA) has been hired to carry out outreach and organizing related to the Tenant Defence Fund. Our job is to help the tenants in your building mount an effective challenge to your landlord's application for a rent increase.

The grant application has three parts:

- General information about your group, your building and the reasons for your dispute
- Your estimate of the expenses your group will incur in your dispute
- A petition of tenants supporting the dispute.

In order to qualify for the grant, a minimum number of tenants must sign the petition. If your complex has fewer than 100 units, at least one half (50%) of the tenants must sign. If your building has more than 100 units, then at least one third (33%) must sign.

There is also a qualifying rent, per unit type. Again, if there are fewer than 100 units, at least half (50%) must rent *at or below* the qualifying rent for their unit type. If there are more than 100 units, at least one third (33%) must rent *at or below* the qualifying rent. You will need to provide evidence that your building qualifies.

The application form also asks you to state your group's reasons for disputing the rent increase. The Outreach Team will help you fill out the application.

City staff will inform your group if your application has been approved or not. If approved, you must submit a "grant report" which includes a copy of the Tribunal's order, a list of eligible expenditures and supporting invoices or receipts. Any money

The services of the Outreach Team include:

- Expertise on the Tenant Protection Act,
- Professional advice on your case,
- Help organizing a Tenants' Association,
- Links to service agencies and other expertise,
- Analysis of trends, test cases and results,
- Assistance applying for a Tenant Support Grant (if applicable).

Generally, the Outreach Team begins their work with you by attending a meeting. This can be either a general meeting to which all tenants have been invited, or a meeting with your Steering or Executive Committee, if one has already been formed. We will help you understand what the landlord's application is all about, and layout for you what needs to be accomplished before the hearing. If there is no Tenants' Association, we can help you get one started.

From start to finish, we provide support and assistance. We can not, however, directly represent your group at the hearing.

One of the major services of the Outreach Team is helping your group analyze the landlord's application. We will do an initial estimate of what percentage increase the application is worth (it may not be a full 4%, but it could also be more). We also help identify weak points in your landlord's file. This provides you with information you will need when discussing your case with an agent, or if you choose to try and negotiate a settlement with your landlord.

The Tenant Support Grant

The Tenant Support Grant is a fund of up to \$ 1,000 which the City of Toronto has made available to tenant groups who are challenging AGIs. The grant can be used to cover expenses such as hiring an agent to represent your group, covering the cost of copying the landlord's file, renting rooms for meetings etc.

which you spend in the time leading up to the hearing will have to be paid by your group first, but is reimbursed when your group receives the grant. You can apply for an advance to retain your lawyer or agent.

If your group does not meet the criteria for a Tenant Support Grant, you can make a special appeal to the Tenant Defence Sub-Committee. Speak to the Outreach Team about how to do this.

Forming a Tenant Association

It is not necessary to form a Tenant Association in order to challenge an AGI, but it helps! At the very least, you should try to form a committee of tenants, in order to make sure that all of the basic work necessary to prepare for the hearing gets done.

A Tenant Association works on the basic principal that people are stronger when they are working together.

Usually a Tenants' Association begins at a public meeting, where tenants decide that they want to organize, and some people volunteer to be on a committee. The members of the committee will organize to prepare for the hearing. The Outreach Team will work with you.

A Tenant Association does not need to be incorporated, does not need a certain percentage of tenants involved, and does not need to have any particular structure. You will however, probably want a committee of 5-7 people, a bank account in the association's name, and some structure. This is useful for fund raising, keeping track of your expenses, and the grant application process.

For more information and/or for assistance in forming a Tenants' Association, contact the Outreach and Organizing Team. Ask for the Federation of Metro Tenants' Associations' Tenant Organizing Manual.

Hiring an Agent or Lawyer

One of the allowable items for the Tenant Support Grant is the cost of hiring an agent to represent your group. In many cases, having an agent is an important benefit to tenants. However, having an agent represent your group is not always necessary. Many tenants have done well on their own.

When considering whether or not to hire an agent, speak to a member of the Outreach Team. We can give you an opinion on the strengths and weaknesses of the landlord's application, and help you decide whether the types of arguments you need to make at the Tribunal are ones the tenants can make themselves, or ones that require legal expertise.

Before hiring anyone to represent your group, you should consider your options carefully. Consult several prospective agents before you decide, and be sure to ask for references from anyone you consider hiring. Call each reference and ask the tenants if they were satisfied with the service they received. You can also call your local community legal clinic or the Law Society of Upper Canada (947-3315) for information or advice.

Getting the File

When you receive your Notice of Hearing, you will also receive a copy of the landlord's application. This application contains a summary of what work was done and how much money was spent for each item. This information is helpful—but is not enough to prepare a proper challenge.

What your group will need to do is look at the file which the landlord is required to submit to the Tribunal with the application. The file contains all of the invoices, proofs of payment and other supporting documentation for the work that was done. Your group can make copies of anything in the file. This is the evidence your landlord is relying on. If there are weaknesses, you can find them.

In order to view the file, you will have to go to the Tribunal office where your hearing is scheduled to be heard. You will need the file number (found in the top right hand corner of the Notice of Hearing), and you may be asked to show a piece of identification (only parties to the application may view the file).

You may only view the file within the Tribunal offices. Anything that you want to take with you must be photocopied. Your group may want to make a copy of the entire file, and then go over it on your own time. You may find it is better to spend some time at the Tribunal deciding what you need copies of. The Tribunal charges \$1.00 per page for photocopying, and most files are 50-100 pages long, so make sure you budget accordingly! (Making copies of the file is something your group can submit as an expense if you are applying for a Tenant Support Grant).

What to Look for in the File

Were the Repairs Done?

It is important to check to make sure that the work claimed was actually done. While some repairs, such as repairs to the boilers, may be difficult for tenants to check, others such as the installation of new hallway carpets are easier to check.

Tenants can also phone the contractors who did the repair or renovation work to confirm whether the work was completed, what the exact nature of the work was, and when the work was completed. While some contractors are reluctant to speak to tenants, others are reasonably open to discussing the work that was done.

Another type of capital expenditure that is important to check is the installation of new fridges and stoves. If the landlord has claimed for new appliances, the application should have a list of apartments that received new appliances.

When Was the Work Done?

The TPA only allows a landlord to claim repair or renovation work completed in the 18 month period ending 90 days before the first date the rents in your building are to begin to increase. This is called the First Effective Date of the rent increase, and is indicated in the landlord's application.

For example, if a landlord is applying to increase rents in your building beginning July 1, 2000, the capital expenditure work must have been completed, and paid for, by April 2, 2000 (90 days before July 1, 2000). Hence, your landlord can not apply for a rent increase in 2000 based on repairs done in 1997.

Tenants should look at the landlord's invoices to make sure that the work was completed in the "eligible" time period.

Are the Repairs Unreasonable?

The repair or renovation work may be disallowed by the Tribunal if it is "unreasonable". The law doesn't state what reasonable or unreasonable is, although it does state that repairs/renovations are *not unreasonable* if they:

- Are necessary for the physical integrity of the building;
- Are necessary to maintain health, maintenance or other safety standards;
- Are necessary to maintain plumbing, heating, mechanical, electrical, ventilation or air conditioning systems;
- Provide access for persons with disabilities;
- Promote energy or water conservation;
- Maintain or improve the security of the residential complex.

Therefore, if the roof is leaking and damaged and the landlord puts on a new roof, it's likely that the Tribunal will approve a rent increase based on the cost of the new roof.

If, however, the landlord installs expensive marble tile in the front lobby even though the existing lobby is in fine shape, then

Extraordinary Operating Costs:

Each year when the Rent Guideline is published, there is a chart that sets out a three-year provincial average of the increases in the costs of property taxes, heat, hydro and water. This chart is available from any local Tribunal office.

“Extraordinary” is anything above the average. If the average Ontario heating costs increased by 2%, landlord with an increase in heating costs of 2.1% or greater could apply for an above-guideline increase.

If tenants are trying to challenge a landlord's rent increase based on extraordinary operation costs increases, they should review the landlord's application to make sure that the landlord's invoices do not include any late payment penalties.

Despite excellent arguments made by tenants under s. 188 of the TPA, the Tribunal and Divisional Court have so far rejected the argument that other information outside of invoices provided by the landlord should be considered. The Tribunal continues to adhere strictly to the TPA, which makes it even more difficult for tenants to challenge rent increases in this area.

The Hearing

The Tribunal is not a court, but the proceedings will be somewhat similar to a courtroom hearing. The people chosen to represent the tenants—either a hired agent or tenant representatives—should dress neatly and professionally.

the tenants could challenge the rent increase as being “unreasonable”.

It will be up to the Tribunal to decide whether the renovations are “unreasonable”.

Is the Repair an Arm's Length Transaction?

If a renovation was done by a relative of your landlord or by a company owned by your landlord, make sure the costs are comparable with the rate for that type of repair. Point out to the Tribunal that the repair work is a “non-arm's length transaction” and demand that the landlord prove that the cost was fair.

Is the Work a Major Capital Repair or Just Minor Maintenance?

Subsection 15(1) of Ont. Regulation 194/98 defines a capital expenditure as “an expenditure on a major renovation, repair, replacement or new addition, the expected benefit of which extends for at least one year...”

“Major” is not defined in the law. Each decision of the Tribunal on this issue is independent and made by the particular adjudicator.

Useful Life of Repairs:

Ontario Regulation 194/98 sets out a Useful Life table which indicates how long the repair is supposed to last and therefore how many years the cost should be spread over. If the cost of a repair is spread over twenty years instead of ten, it will mean less of a rent increase.

The tenants who attend the hearing should remain quiet and respectful of the proceedings. While it is important to have a good turn out, it is detrimental to your case if people are rowdy or disrespectful.

There will be a large desk at the front of the hearing room where the adjudicator will sit, as well as two smaller tables—one for the landlord's side and one for the tenants'. There are rows of chairs for the tenants to watch the proceedings. As you enter the hearing room, you will be asked to sign in. This is for the Tribunal to keep track of who attended the hearing.

The hearing will be presided over by one member of the Tribunal, also referred to as the adjudicator. At the beginning of the hearing, he or she will make a brief opening statement, explaining how the hearing will proceed. Also, the adjudicator will likely state that you are there to discuss the landlord's application for a rent increase only. If the tenants have other concerns, such as poor maintenance, you must make your own application in order to have your concerns raised. You can speak to the Outreach Team about how to do this.

The usual procedure for a hearing is as follows:

1. *The landlord's side presents evidence:*
The landlord will be given the opportunity to explain what work was done, how it was done, and why. Often the landlord will be allowed to go through all of the items before the tenants can ask any questions, so make sure you are taking notes as the landlord speaks.
2. *The tenants cross-examine:*
This is your group's chance to ask question about the work. You can ask the landlord to answer questions about what units were affected, which contractor did the work, etc.
3. *The tenants present evidence:*
This is your group's chance to bring up issues such as work not being done, not being necessary, or not being reasonable. For

example, if the painting the landlord did last year is already peeling and cracking, you could submit pictures as evidence.

4. *The landlord's side cross-examines:*

The landlord's representative can ask you about anything you've just said or submitted.

5. *The landlord's side makes submissions:*

The landlord will summarize what they're asking for and why it is justified.

6. *The tenants' side makes submissions:*

This is your group's chance to go through all of the items that you don't think you should have to pay for and why. You can also submit any other related legal arguments. You may also want to ask the adjudicator to put a clause in the order allowing the tenants a certain period of time (for example, 60 days) to pay off any retroactive rent increase they owe. Of course, this clause will also apply to the landlord, if they owe money to the tenants.

Having an agent or spokesperson for the tenants' side helps the hearing run much smoother. However, if you have neither, the adjudicator will allow any tenant to participate. Make sure you pay close attention to what other tenants are saying, because if you repeat them, or ask the same questions, the adjudicator may not let you continue. Every tenant who participates will be asked to give his or her name, for the Tribunal's record.

It is a good idea to try to sit in on a hearing prior to your own, especially if you have not hired an agent to represent you. All Tribunal hearings are open to the public.

The Order

Usually you will not know at the end of the hearing how much of a rent increase you are going to receive. Once the adjudicator

has come to a decision, he or she will write up an order, a copy of which will be mailed by the Tribunal to every tenant affected by the application. Unless the adjudicator has written into the order a specific date by which the tenants (and the landlord) must pay any money owing, you will owe any retroactive rent increase immediately.

Follow Up

If your group applied for a Tenant Support Grant and was approved, you will have to submit a "Grant Report" within 90 days of your Tribunal hearing. Your Grant Report should include:

- A copy of the Tribunal's Order,
- A list of all eligible expenditures (the ones listed in the grant application),
- Invoices or receipts for your eligible expenditures.

Your group will then get a grant for your actual expenses up to the maximum amount for each eligible expense or professional service. If individual tenants have contributed to a fund to pay the group's expenses, they can now be reimbursed. You can also keep some money in the group's bank account for future expenses such as a tenant application to the Tribunal for maintenance, or another AGI challenge at some point in the future.

Tenants who are having difficulty understanding the Tribunal Order, or figuring how much money they owe (or are owed) may call the FMTA Tenant's Hotline ((416) 921-9494), and a hotline counselor will help them figure this out. The Outreach Team will also help your Association in analyzing the Order and follow up procedure.

You may want to have a follow up meeting with the Outreach Team, to explain to all of the tenants the outcome of the hearing.

The unfortunate reality is that a victory for the tenants rarely means defeating the landlord's application entirely. In most cases, your landlord will receive a rent increase above the guideline, and the goal is to ensure that this increase is as small as possible. The good news is that tenants save more than \$100 a year for each percentage point that the landlord's application is reduced. This is why disputing an application is worthwhile.

In going through the process of challenging an AGI, the tenants in your building will have hopefully also experienced the benefits of working together, and laid the foundations for building an increased sense of community in your building. You will also better understand the law of Ontario and the democratic and legal process.

Good Luck!