

# Rent Control in Ontario – A Boom or Bust for Landlords and Tenants?

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As the 2018 calendar year gets underway, it's a good opportunity for a refresher on the significant legislative changes introduced in 2017, which impact tenants and landlords in Ontario.

The expansion of rent control legislation in Ontario, announced in Ontario's Fair Housing Plan, and passed in May 2017 under The Rental Fairness Act (collectively known as the "**Rent Control Changes**"), implements measures aimed at providing tenants with more price security, and stabilizing the province's long-term rental market.

Regardless of which side of a lease you fall on, you will likely be affected by the Rent Control Changes implemented in Ontario.

Here is a summary of the rental landscape before and after the Rent Control Changes, as well as the implications of the changes for both tenants and landlords.

#### **RENTAL LANDSCAPE PRE-RENT CONTROL CHANGES:**

1. Rental units (including private apartments, condo units and part or all of a house) built or first rented to tenants on or after November 1, 1991 were exempt from rent control.
2. Tenants of rental units that were not subject to rent control, could face unpredictable and arbitrary rent increases every year, as the

increases in rent were not limited by the guidelines published by the Government of Ontario.

3. Landlords of rental units that were subject to rent control, could apply to the Landlord and Tenant Board for rental increases above the guidelines. Rental increases that exceeded the guidelines were generally granted to landlords to account for extraordinary increases in municipal taxes, utilities, capital expenditures or operating costs.
4. Landlords were able to evict tenants, without monetary consequence to the landlord, under active leases if the landlord desired to utilize the rental unit for their own, an immediate family member's, or a specified person's, personal use.

#### **KEY CHANGES POST-RENT CONTROL CHANGES:**

Rent control guidelines are expanded to apply to most private rental units in Ontario, including those built or first rented to tenants on or after November 1, 1991. Under the Rent Control Changes, landlords cannot increase rent by more than the amount set by the Government of Ontario's rent increase guidelines.

1. These guidelines do not apply to nursing homes or commercial rental properties, but they do apply to retirement residences.
2. The Government of Ontario publishes the rent increase guideline by August 31st of each year, which outlines the maximum percentage rent increase applicable for the following year.

- The maximum annual rent increase is 1.5% for 2017, and 1.8% for 2018.

- The maximum annual rent increase is capped at 2.5% for any given year. The maximum annual rent increase of 2.5% does not include exemptions, which can be provided by the Landlord and Tenant Board, to increase rent beyond the annual cap and are addressed throughout the article.

3. If a landlord evicts a tenant because they wish to use a rental unit for personal use, the landlord is required to provide compensation to the evicted tenant, equal to one month's rent, or offer another rental unit acceptable to the tenant.

4. Landlords can no longer apply to the Landlord and Tenant Boards to increase rent above the stated guidelines, due to increases in utility costs. This measure is intended to encourage landlords to make their units more energy efficient.

5. Ontario's Ministry of Housing is developing a "standard lease agreement", which aims to help tenants and landlords know, and have documented, their rights and responsibilities, while also seeking to reduce disputes between tenants and landlords.

6. The Rent Control Changes are effective for notices of rent increase, lease renewals, or newly signed leases on or after April 20, 2017.

#### IMPLICATIONS FOR LANDLORDS:

1. Landlords can continue to set rent prices for new tenants or units at their sole discretion.

2. Because annual rent increases may not be sufficient to cover rising operating costs, the Rent Control Changes may result in a reduction in net rental income for landlords who own currently rented units.

3. There may be a reduction in the construction of new rental buildings, as landlords could have less incentive to do so, given that their future revenue, and hence return on investment, would be limited by the Rent Control Changes.

4. Landlords can only increase a tenant's rent after the tenant has occupied a unit for a period of not less than 12 months, or 12 months have passed since the last rent increase.

5. Written notice of an intended rent increase must be provided to a tenant at least 90 days before any such increase becomes effective. The notice must indicate

the amount of the increase, and the date on which the increase is effective.

- The Landlord and Tenant Board has indicated that only approved formats for these notices may be used and, as such, it is advisable to use the form N1 – **Notice of Rent Increase** provided by the Landlord and Tenant Board.

6. Landlords and tenants may agree that the landlord will provide certain services or make improvements to a unit. If such an agreement is made in writing, the landlord and tenant may also agree (in writing), to a rent increase of up to 3% above the published guidelines. If the preceding agreements are made, the landlord is not required to provide 90 day written notice of the rent increase.

- An increase in rent that is due to the above agreements, is limited to a list of prescribed services or facilities, such as - providing cable or satellite television, an air conditioner, locker or storage space.

7. With respect to rental units where care or meal services are provided to tenants (ex: a retirement residence), and the care or meal services are billed to tenants independently of rent, these charges are not subject to the Rent Control Changes.

## IMPLICATIONS FOR TENANTS:

1. Tenants renting a unit that was not subject to rent control prior to the Rent Control Changes, and who received a notice of rent increase prior to April 20, 2017, may have their rent increased by any arbitrary amount. Any tenant who received a notice of rent increase after April 20, 2017, is protected by the rent increase limits (1.5% increase for 2017, and 1.8% increase for 2018).

2. Tenants should carefully review any notices of rent increase to ensure the proposed rent increases do not exceed the allowable percentages. If rent increases exceed the allowable percentages, the amounts paid in excess of the allowable percentages must be refunded by the landlord.

- Tenants should request that their landlord refund any excess amount paid.
- If the landlord does not refund the excess amount paid, a tenant can file a T1 – *Tenant Application for Rebate of Money the Landlord Owes* to the Landlord and Tenant Board.

3. Tenants will now have rent control protections when renting a unit in a newer building (i.e. buildings built after November 1, 1991).

4. Tenants who continue to rent the same property will benefit from the protection the Rent Control Changes provide. Tenants entering the rental market as new/prospective tenants, or tenants who move to a different rental unit, would not benefit from the Rent Control Changes. In high demand rental markets (ex: Toronto, where vacancy rates are below 3%), bidding wars for rental units may continue, and the Rent Control Changes offer no protection from these bidding wars;

5. Tenants may have a smaller supply of rental units to choose from, or be subject to higher initial rents, as landlords try to protect their revenue streams and investments.

Although the Rent Control Changes offer protection to existing tenants, these changes may have adverse, and far-reaching, effects on the rental market in Ontario. Some of the adverse effects may include, but are not limited to:

- A decrease in the supply of rental units in the market, as landlords choose not to construct new buildings, given the limitations put on generating rental revenue;
- Landlords not renewing leases with existing tenants, so that units can be rented to new tenants, thereby

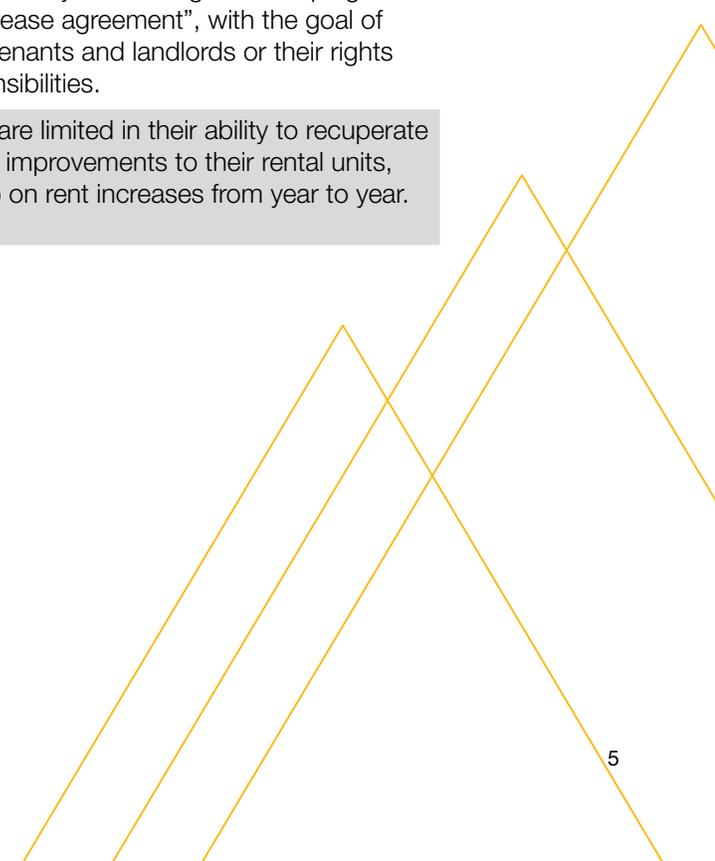
increasing their rental revenues as these new tenants would not be subject to the Rent Control Changes;

- Landlords choosing not to invest in making improvements or repairs to their units, due to their limitation on recuperating these costs via increased rents;
- Landlords choosing not to offer units that they, or their immediate family members may require for personal use in the future to the market, due to having to compensate tenants for evicting them for these reasons.

The Rent Control Changes also offer some planning opportunities for developers and landlords. Landlords offering a multitude of services to tenants (retirement residences offering lodging, meals, transportation, recreational services) may choose to unbundle some of the services from the rent charge. To the extent that the fees for these additional services are not included in the tenant's rent, any increases to such fees will not be subject to the Rent Control Changes. Having said this, the unbundling of services would likely have sales tax implications to both the landlord and the tenant, and may end up increasing tenants' out of pocket expenses even further.

If you wish to receive additional information to assist in navigating these new regulations, and the related implications, for tenants and landlords, please don't hesitate to contact your Crowe Soberman advisor.

OLD RULES	NEW RULES
Rent control was applicable to rental units in Ontario built or first rented to tenants prior to November 1, 1991.	Rent control is applicable to all rental units in Ontario, regardless of when the units were built or first rented to tenants.
Landlords, whose units were subject to rent control, could apply for rent increases above the stated guidelines due to the cost of municipal taxes, utilities, capital expenditures or operating costs.	Landlords can no longer apply for rent increases above the stated guidelines, related to utility costs.
Landlords, whose units were not subject to rent control, could increase rents by arbitrary amounts year to year.	Landlords are now generally subject to a cap on rent increases for any year (the maximum rent increase is set at 1.5% for 2017, and 1.8% for 2018). Exemptions, for rent increases up to 3% over the cap, may be obtained when the landlord provides additional services/improvements to a rental unit.
Landlords were able to evict tenants from units, so that the landlord could use the unit for personal use, without compensation to the evicted tenant	Landlords who evict tenants from units, so that the landlord may use the unit for personal use, must provide the tenant either i) compensation equal to 1 month's rent or, ii) offer an alternate unit to the tenant, which is acceptable to the tenant.
Landlords and tenants had no standard wording or clauses to be included in lease agreements.	Ontario's Ministry of Housing is developing a "standard lease agreement", with the goal of informing tenants and landlords of their rights and responsibilities.
Landlords, whose units were not subject to rent control, were able to recuperate the cost of improvements to their rental units via increased rents.	Landlords are limited in their ability to recuperate the cost of improvements to their rental units, via the cap on rent increases from year to year.



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