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NIAGARA REGION

Above guideline hikes forcing tenants to pay ever-increasing rents

Landlord and Tenant Board-approved increases are stripping tenants of the ability to afford housing, namely in apartment buildings, and commodifying housing for real estate investment trusts

By **Matthew P. Barker** Standard Reporter
Wed., Dec. 28, 2022 | ⌚ 8 min. read

🕒 Article was updated 22 mins ago

As rents soar to levels never before seen, tenants are being hit with costs leveraged by corporate landlords in the form of above guideline rent increases.

Tenants of 165 Ontario St., a 156-unit building in St. Catharines, have had to pay above guideline increases (AGI) on four occasions, ranging from two per cent to 7.4 per cent each, to pay for more than \$2.7 million in capital expenses at the building over the past 14 years, according to approved AGI from Landlord and Tenant Board tribunals.

As stated in tenant files from previous Landlord and Tenant Board (LTB) tribunal hearings for AGIs at the building, tenants saw rent increases double over the last decade.

Some tenants have run into financial difficulties as a result, said L.D. Blake, a longtime tenant and tenant advocate who has published his LTB papers online.

“Rents have increased 34 per cent due to AGIs, during the time when the province allowed about a 17 per cent increase through yearly rent increases,” he said.

AGIs, also known as L5 applications, are applied to rents after a tribunal hearing focusing on the necessity or need for construction by corporate landlords or real estate investment trusts (REIT), resulting in an assessment for which a further rent increase is added to the provincial rent increase guideline, regulated by the province based on inflation.

REITs buy real estate to extract profits, according to the federal government. One way to do that is by using AGIs to raise rents to cover costs of renovations.

For instance, if a tenant was paying \$1,000 a month in 2012, by 2022 rent could be about \$1,340 per month with both AGIs and provincial rent increases, opposed to just more than \$1,170 with only provincially approved rent increases.

Jessica Bell, MPP for University-Rosedale Toronto and Ontario NDP housing critic, said affordable rent should not be more than 30 per cent of a household’s monthly income, and for many people on fixed incomes it can mean the difference between being housed or homeless.

“They’re making impossible and difficult choices,” she said. “Which is why there is a real need for the Ontario government to make sure the above guideline rent increase process is not abused by corporate landlords.”

Bell said this process makes it more difficult for tenants to find affordable and safe housing within their budget.

“The reason why there has been such a sharp increase in rents is because (the) Ontario (government) does not do enough to protect renters from rent hikes,” she said.

Victoria Podbielski, press secretary for Steve Clark, minister of municipal affairs and housing, said the government has enacted many measures supporting and strengthening protections for tenants.

“This year, our government provided stability and predictability to the vast majority of tenants by capping the rent increase guideline below inflation at 2.5 per cent,” said Podbielski.

“Above guideline rent increases allow landlords to make capital-intensive upgrades to their units — this is a critical process to ensure Ontario’s housing stock remains safe and well-maintained.”

Use of AGIs jeopardizes a tenant’s tenure forcing them to choose between paying rent, bills or buying food, said Ottawa lawyer Leilani Farha, a former United Nations special rapporteur on the right to adequate housing.

“The biggest threats are to the affordability of the unit and to the security of tenants,” she said. “Landlords shouldn’t do anything that threatens the affordability of a unit or the security of tenure of the tenants and above guideline increases potentially jeopardize both.”

Under the LTB, corporate landlords are allowed to use AGIs to recoup costs of critical structural improvements, such as repair of foundations, water infrastructure or roofing. However, AGIs are not meant to cover cosmetic or unnecessary renovations, said Blake.

“Over the last 15 years, there has been four different owners, balconies reconstructed three times, the building’s lobby redecorated four times, multiple reworkings of many aspects, such as elevator landing areas and hallway redecorating,” he said of the Ontario Street building.

The Residential Tenancy Act (RTA) sections 126.1 and 126.7 allow corporate landlords to use AGIs to increase rent to cover eligible expenses if it maintains physical integrity of the building, including plumbing, heating, mechanical, electrical, ventilation or air conditioning systems, or providing people with disabilities access, conserving energy or water, or adding security to the building.

Between 2000 and 2012 balconies were refurbished at 165 Ontario St. three times by three REITs, for which the last balcony reconstruction cost Starlight Investments more than \$662,000, according to LTB files for which an AGI was approved.

Blake said over the same period, corporate landlords were adding cosmetic improvements including building signage and repainting the exterior and hallways.

Said Bell, “We are very concerned because we are seeing landlords get the above guideline rent increase for cosmetic renovations that should be exempt from the above guideline rent increase process.”

The LTB notes AGIs can add up to three per cent per year, up to three consecutive years, and the resulting nine per cent will ride on top of the annual provincial rent increase guideline for the lifespan of the AGI.

In most cases, as per the LTB, AGI lifespans are between five and 25 years depending on the cost of necessary repairs completed, but REITs must first go to the LTB to get approval to increase rents.

Apartment buildings bought by REITs are developed and managed as income-producing real estate, using AGIs to amortize costs to recoup capital expenses over time, said Fayez Elayan, professor of accounting and finance and chair of accounting at Goodman School of Business at Brock University.

“These expenditure renovation costs need to be amortized, meaning (the capital expenditure) needs to go on the income statement as an amortization or depreciation expense,” he said.

“This depreciation is a non-cash expense and will allow REITs to give money back to shareholders. That money is called a return on capital.”

Amortization is when the costs of a capital expenditure, such as a renovation, are divided over a longer period, sometimes a decade or more, resulting in it not being counted as a lump sum expense, said Elayan.

“Meaning it’s not included in their income statement, which is revenue minus expenses. Rather, it goes to the balance sheet, they capitalize it, and they amortize it over a long period of time,” he said.

Elayan said this motivates owners to increase expenditures — the bigger the project, the greater the return on capital for shareholders as it artificially inflates the business's worth.

According to Canadian investment and income tax laws, REITs are not taxed if a REIT gives at least 90 per cent of its profits to shareholders.

What's happening is a housing landscape controlled not by smaller landlords who need to use AGI's to afford renovations but corporate entities such as REITs that use the rules for financial gain, said Farha.

"When you have an AGI scheme in place for corporate landlords who can use it as a vehicle to make themselves more money, in the grand scheme ... (it's) to increase their valuation, which increases access to loans, so AGIs are so ripe for abuse in a financialized housing landscape," she said.

"They may have been appropriate in the pre-financial rise period, but since 2000 ... we have had a much more financialized housing sector and AGIs just feed into the financialization of housing."

The LTB recently announced it would prioritize landlord applications to deal with those specific backlogs until the end of the year.

The Landlord and Tenant Board stated between November 2020 and November 2022, it received 33 AGI applications for buildings and apartments in the Niagara region. Provincewide during the same time period, the LTB received more than 1,700 AGI applications and the board has a backlog of applications with some dating back to 2018.

"We are seeing a sharp uptick in mostly corporate landlords using the above guideline rent increase process to raise rents and it's having a significantly negative effect on renters across Ontario," said Bell.

She said based on the LTB prioritizing corporate landlord AGI applications it is pushing tenants and smaller landlords to the back of the line, which will cause further delays for people who need help.

"That means corporate landlords who are using and abusing the above guideline rent increase process go to the front of the queue and get their approval, pushing back renters who just want basic maintenance requests done, or even small landlords that have their own issues needing to be addressed."

Farha said corporate landlords are using methods to determine how they are going about targeting renovations to extract the most value from a building through AGIs.

"As part of their business plan, in order to secure necessary loans to purchase or to upgrade buildings there is a plan to apply for AGIs regardless of need, necessity, etc.," she said.

"For the biggest actors, they have formulas worked out that if they apply for a certain number of AGIs across their portfolio, a certain percentage will stick."

Farha said if REITs apply for AGIs on properties where construction and upgrades are completed, about 20 per cent of applications will stick allowing landlords to recoup costs over the lifetime of the AGI application.

Blake compared the process of exploiting AGIs at the expense of the tenants to the goose that laid the golden egg, as REITs will stop at nothing to extract available wealth, if they go unchecked.

"They can come in here, they can rip our balconies up, and we can't stop them," he said.

"They (landlords) also know that under the RTA, they really need a very shallow level of proof that the work they did was necessary."

Blake said a solution to keep landlords onside and prevent abuse of AGIs would be to move hearings for construction up, before it begins, giving tenants the ability to weigh in so unnecessary work is not done, resulting in a rent hike.

"A small correction in the Residential Tenancy Act is moving the hearing to the beginning of the process instead of the end, correcting the legal imbalance, but that's not the way landlords are using this law," he said.

Blake said there is no doubt the process is heavily biased to favour the landlord.

Farha agreed, stating the burden of proof should lay with the landlords to prove AGIs are necessary and they cannot afford the capital upkeep without raising rents.

"The onus and burden should be on the landlord, not to prove the capital improvements were necessary, but rather, to prove they can't afford to pay for them without raising rents," she said.

"Landlords should be considering a moratorium on rent increases period," she said.

Unlike other businesses, corporate landlords are passing improvement costs onto the people in their buildings, and reaping the benefits, Farha said.

“Like an employer, they should have to provide a good environment and I’m not sure why landlords get to pass on the full cost of upgrades to tenants.”

For more information on Blake’s LTB papers go to “The 165 Ontario Story” at <https://the165.ca>.

mbarker@niagaradailies.com

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