

# Bad Review for new Residential Tenancies Act



By Harry Fine for Law Times

It's like something out of the movie *Borat...* "you know in my country, we have the court, and you show up in the court not knowing what other guy will say in defence to your wanting rent, and then if he want, he make own claim, he just bring it up, then and there, no warning". "Oh, and in our country they take person who not privy to contract, and government deems him to be party to contract, and we bound to relationship that was no intended or anticipate."



The sad part is that the new *Residential Tenancies Act* ("RTA") which replaces the 8 year old *Tenant Protection Act* allows those scenarios to occur. The "trial-by-ambush" provisions are contained in the draconian section 82 of the new RTA. There is no court in the land that I'm aware of, that not only permits intrusions on the principle of natural justice, but in fact mandates it through statute. Borat's second claim can find life in General Regulation 516/06 of

the RTA, that deems a non-tenant spouse to be a tenant after a tenant, a signatory to the tenancy agreement, vacates the unit, notwithstanding the fact that the spouse may have moved in weeks earlier, may have no income and was not subject to credit or tenancy approval.

In 2003 the Liberals promised to repeal the *Tenant Protection Act* within a year of taking office, and to reform the Ontario Rental Housing Tribunal. Promises included bringing back "real rent control" on vacant units. Fortunately, the promise to put an end to vacancy decontrol was broken. But tenants will still be protected with rent controls, now tied to the Consumer Price Index, as long as they live in the unit. One promise kept was a name change; the Tribunal is soon to be re-named the Landlord and Tenant Board.

Stakeholders and practitioners have concerns about the Board grinding to a halt, overwhelmed by the load the Act imposes, and constrained by the unfair

provisions resulting in landlords begging for adjournments at their rent arrears hearings so that they can prepare a full answer and response to the tenant's often dubious and last-minute claims. The adjournment requests which will certainly be granted will result in another month of unpaid rent which is the point of the delay from the tenant's perspective.

That wouldn't be so terrible if the Board would do what the Courts do and order rent arrears or at a minimum prospective rent be paid into the Board in order to secure the adjournment. But alas, the government rejected requests by stakeholders that this be a condition of adjournment when the tenant ambushes the landlord at a rent hearing.

The RTA comes into force January 31<sup>st</sup>, 2007. Among the changes is an end to the default order process, which had the Tribunal issuing orders evicting tenants if the tenant failed to dispute the application within 5 days of being served with the hearing notice. These represent almost 50% of the total applications received by the

Tribunal. This will have severe unintended consequences. There will be long backlogs created in the system, now that every matter has to go to a hearing whether the tenant intends to attend or not.

Another change will be Board orders preventing rent increases (an "OPRI"), a former provision from the NDP days, if there are alleged un-resolved property standards orders or serious maintenance breaches against a property containing a rental unit.

This will also lead to an increased load at the Tribunal, as parties argue about what is a deficiency of a "serious" nature, versus a minor maintenance issue.

Having the most impact will be the changes to the Above Guideline Application ("AGI") process, whereby a landlord may spend considerable sums to upgrade and revitalize a building, and then seeks an order allowing a rent increase to pass the costs through to the tenants by way of increased rents.

There will now be “costs no longer borne” provisions on “Above Guideline Rent Increase” orders. This will mean that if costs for capital expenditures are deemed to have been recovered over the amortization period from a previous rent increase based on such an application, then that component of the rent increase that resulted from the capital expense will be rolled back. In other words, rents will go “down” for tenants whose rent went up years earlier.

Most in the industry are convinced that these changes will hamper the ability of landlords to modernize and update their buildings.

In addition to rent increases being rolled back when the original costs are no longer borne, the finance rate has been reduced, there are new tests for reasonableness of expenditures, a narrower interpretation of “capital expenditure”, longer useful life factors (slower recovery), no 5% management and administration allowance permitted and the maximum annual increase is limited to 3% going forward a maximum of 3 years.

But the real disincentive to landlords who might otherwise file these AGI applications, is that the new Act will permit tenants to raise any other issues at a hearing, and the Board to dismiss the application entirely or defer implementation. In addition, the Board may issue an order preventing a rent increase (OPRI) for existing or new tenants, despite the fact that the landlord knew nothing about the alleged breaches prior to the hearing. Minor changes include:

- A fast track eviction process for small landlords saving perhaps 10 days when tenants cause damage or substantially interfere with reasonable enjoyment. How fast it will be remains to be seen.
- A fast track eviction process for all landlords if a tenant willfully causes undue damage, or uses the complex in a manner inconsistent with the normal use of a rental complex (read grow-ops).
- Rather than the 6% currently set out in the

Act, interest on the last month’s rent deposit will be tied to the Consumer Price Index, as will the annual rent guideline increase.

- A new mediation process that allows settlements to take place outside the Tribunal, but it is toothless, and if the tenant breaches, the only remedy for the landlord is a re-opening of the application.
- There are some new offences that can be prosecuted in provincial court.
- Increasing the time for evicted tenants to collect their property from 48 to 72 hours and finally a remedy by way of a new application for tenants who were not afforded the opportunity to recover their goods.
- Landlords will be required to give all new tenants a pamphlet from the Landlord and Tenant

Board when a new tenancy commences

- The inclusion of “heat” as a vital service from September 1<sup>st</sup> to June 15<sup>th</sup>, with 20 degrees Celsius being the minimum.

The history of landlord tenant legislation in Ontario since the 1970’s has seen a continual erosion of landlord’s rights with each new iteration, except arguably with the introduction of the *Tenant Protection Act* in 1998. The result in Ontario is that residential tenancy law is now more about poverty law than about property and contract law. Instead of dealing with housing and homelessness as societal issues, this government has taken the easy way out and put the burden on private and non-profit landlords.

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