



ABOVE THE GUIDELINE RENT INCREASE (AGI)

THIS IS WHAT YOU NEED TO KNOW
TO PROTECT YOUR TENANT RIGHTS



Major Topics

- What is a guideline?
- Can the landlord increase rent above the guideline?
- How will I be informed about the AGI?
- What qualifies as capital expenditure to increase the rent above the guideline?
- What happens after I get a N1 notice?
- What happens at the hearing?
- What is the maximum increase amount allowed in an AGI application?
- What can I do as a tenant if I get an AGI?
- Can I enter into an agreement with my landlord?
- Need help?

Have you received a notice from your landlord saying that the rent will be increased **Above the Guideline?**

Known as **AGIs**, landlords have been using this tactic to have tenants pay much high rent.

What does this mean and what can you do in case you receive a notice from the landlord regarding this?

WHAT IS A GUIDELINE?

2020
PROVINCIAL
GUIDELINE

2.2%

- The guideline is the maximum a landlord can increase most tenants' rent during a year without the approval of the Landlord and Tenant Board (LTB).
- For 2020, the rent increase guideline in Ontario is 2.2% for increases between January 1 and December 31, 2020. In most cases, the rent for a unit can be increased 12 months after:the last rent increased a tenant first moves in.
- A tenant must be given written notice of a rent increase at least 90 days before it takes effect.

DOES THE GUIDELINE APPLY TO ALL RENTAL UNITS?

The guideline is not applicable to the following:

- new buildings, additions to existing buildings and most new basement apartments that are occupied for the first time for residential purposes after November 15, 2018 vacant residential units
- social housing units
- nursing homes
- commercial properties

NO limit to how much a landlord can increase the rent in these units. But the 12-month and 90-day rules still apply.

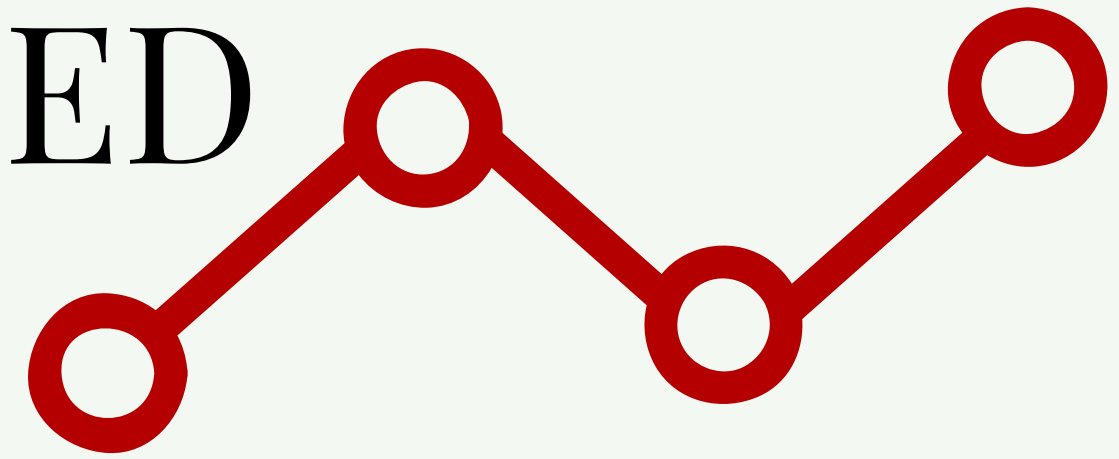


CAN THE RENT BE INCREASED ABOVE THE GUIDELINE?

Under certain circumstances, a landlord can apply for an increase in rent above the guideline. This is called the AGI. Those circumstances could be:

- The landlord's costs for municipal taxes and charges have increased by an "extraordinary" amount.
- The landlord did extraordinary or significant renovations, repairs, replacements or new additions to the building or to individual units. This type of work is called a "capital expenditure".
- The landlord's costs for security services increased, or the landlord began providing security services for the first time.
- If the landlord and the tenant agree that the landlord will add a new service or facility such as a parking space, air conditioner or storage locker.

HOW WILL I BE INFORMED ABOUT THE AGI?



- If you are covered by the guideline, and the landlord wants to increase your rent by more than the guideline, then the landlord must apply to the Landlord & Tenant Board using the **Form L5**.
 - Landlords must apply at least 90 days before the date they want the earliest increase to start. The application will not affect the rent for any tenants who move in on or after that deadline as landlords can charge whatever they want to new tenants.
 - The Notice of Rent Increase for the tenant should be on a **Form N1**. The form must tell you that: the landlord has applied for approval, or the Board has already approved the increase.
 - If the landlord has applied, you should receive a separate notice about this. This form is also used when the rent increase is less than or equal to the provincial guideline.
 - So, whenever the rent is to be raised, a notice has to be sent to the tenant.
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WHAT QUALIFIES AS CAPITAL EXPENDITURE TO INCREASE THE RENT ABOVE THE GUIDELINE?

- A capital expenditure is an amount that was spent for an extraordinary or significant renovation, repair, replacement or new addition that has an expected benefit of at least five years.
- A capital expenditure is eligible if it:
 - protects the physical integrity of the residential complex (roof, exterior walls, columns etc.)
 - maintains the provision of plumbing, heating, mechanical, electrical, ventilation or air conditioning
 - provides access to persons with disabilities
 - promotes energy or water conservation maintains or improves security



Capital expenditure is ineligible if it is:

- routine or ordinary work,
- regular maintenance work,
- work that is considered substantially cosmetic in nature, or
- work that is designed to enhance the level of prestige or luxury offered by the complex.

What is Ineligible Capital Expenditure?



WHEN SHOULD THE CAPITAL EXPENDITURE BE COMPLETED?

Capital expenditures must be completed and paid for within **an 18-month period that ends 90 days before the date of the first rent increase requested in the application.**

Example: If the first rent increase on an application is September 1, 2019, the landlord must have completed and paid for the work by June 3, 2019. Also, the landlord cannot claim a capital expenditure that was completed before December 3, 2017.

WHAT HAPPENS AFTER I GET THE N₁ NOTICE?

IF YOUR LANDLORD APPLIES FOR AN ABOVE-GUIDELINE INCREASE, THE BOARD WILL SCHEDULE A HEARING.

ORAL HEARING

If the application includes claims for capital expenditures, the Board is most likely to schedule a oral hearing.

At the hearing, the landlord and the tenants appear before a Member of the Board. The Notice of Hearing will set out the time and place for the hearing. The landlord must deliver the Notice of Hearing to all affected tenants at least 30 days before the hearing date.

WRITTEN HEARING

If the application seeking an AGI is due to an extraordinary increase in municipal taxes and charges or due to operating costs related to security services, the Board is more likely to schedule a Written Hearing.

In this case, the landlord must give the Notice of Hearing to all affected tenants within 20 days of the hearing date.

WHAT HAPPENS AT THE HEARING?

- If the LTB decides to hold an oral hearing, landlord and tenants need to first attend a Case Management Hearing (CMH) conducted by a Dispute Resolution Officer.
- All of the tenants in the building who are subject to the AGI will have a hearing together at the same time.
- Once the hearing has been scheduled, each of the tenants will receive a notice from the landlord and tenant board by mail with the details, at least 30 days before the date of the hearing.
- At the hearing the landlord's representatives (typically a paralegal, and a manager or two from the landlord) will present their case.
- A professional mediator will attempt to facilitate a negotiated agreement between the landlord and the tenants. In other words, the mediator will run offers and counter-offers back and forth between the two groups

- If mediation resolves the application, the parties agree to a Consent Order which binds all of the parties to the application.
- If the mediation fails (because either side does not want to try mediation, or if they cannot agree upon the rent increase amount), then another hearing will be scheduled at another time – called a “Merits Hearing”.
- At this second hearing, an “adjudicator” (who performs the role of “judge” in a court-room-like setting) will listen to both sides and render a decision following a strict interpretation of the law.
- The final decision will be written up by a representative of the landlord and tenant board, and once it is issued it is legally binding.
- The application is dismissed as abandoned if the landlord fails to attend the CMH. If the tenant fails to attend the CMH, they may be deemed to accept all of the facts and claims in the application.

HOW TO PREPARE FOR THE HEARING?

- Get a lawyer or paralegal to represent the tenants at the hearing, or one of the tenants can be chosen to speak for the tenants at the hearing.
- Organize your neighbours to get as many tenants as you can from your building to attend the hearing. If lots of people show up, you will intimidate the landlord's representatives and you will likely be offered a better deal.
- Obtain a copy of the landlord's "supporting documentation". You can request a copy of the supporting documentation either from your landlord (contact your property manager), from their paralegal (if you know who that is), or directly from the LTB. Legally, once you have received the notice informing you of the hearing date, the landlord has to make this documentation available to you,
- Form a Tenant Union to fight back! We can help you get organized. ACORN has fought back AGIs. For more, click here: <https://acorncanada.org/fighting-back-agis>
- Chat with your neighbours about the AGI. Pass copies of this document around. It is important to get as many of your neighbours as possible.

WHAT IS THE MAXIMUM ANNUAL INCREASE ALLOWED IN AN AGI APPLICATION?

- The maximum annual increase allowed in an application for the reason of capital expenditures or security services or both is **3% above the guideline for up to 3 years in a row.**
 - **The rent is increased by 3% in the first year and any remaining increase may be taken in subsequent years, to a maximum of two additional years at 3% each year.**
 - This limit of 3% does not apply if the reason for increase is the cost of municipal taxes. In these cases, the landlord may increase the entire amount in the first year.
 - After the hearing, the Member of the Board will write a decision called an order. The Board will mail a copy of the order to the landlord and all the tenants affected by the application.
 - The order will set out the percentage increase that the landlord has justified in the application and when the landlord can charge this increase.
 - The tenant does not have to pay the higher amount unless it is approved and the order is issued.
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SERIOUS BREACH

- The landlord is responsible for providing and maintaining a residential complex, including the units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
- LTB can only consider a maintenance breach during an AGI hearing if its a serious breach.
- and substantially, affected a tenant's enjoyment of the rental unit.
- If the LTB finds the landlord is in serious breach, the LTB will determine which rental units named in the AGI are experiencing a serious breach affecting the whole residential complex; and/or experiencing a serious breach affecting the interior of any specific rental units.

WHAT IS SERIOUS?

"Serious" means something substantial and ongoing and not merely minor, trivial or of passing concern or a breach that adversely, materially and substantially, affected a tenant's enjoyment of the rental unit

The LTB considers:

- the nature of the alleged breach
- how much time has passed since the landlord became aware of the need to repair or maintain; and
- the reasonable effect of the failure to do so, on the tenant.

REMEDY

- If the landlord knew or should have known about the serious breach, the AGI application might get dismissed.
- If the landlord did not know or could have not known about the serious breach, **the AGI increase may be delayed until the breach is fixed.**
- If some of the rental units named in the application are not affected by the breach, the order will say that the landlord may charge the above guideline rent increase that is justified for those rental units.
- For those rental units that are affected by the breach, the order will identify those units and set a deadline for fixing the breach.

What can you do if you get an AGI application?



- During a hearing, both parties have the opportunity to present. The landlord will first be given the opportunity to tell the Member why they should be granted an above guideline rent increase.
- Tenants are entitled to ask the landlord questions about the claims the landlord is making in the AGI application and present evidence why the claims should not be allowed.
- Parties can represent themselves at the hearing, or they may have someone represent them like an agent, lawyer, paralegal, friend or relative. Parties can also bring anyone they would like to use as witnesses to help support their claim.
- When the landlord and the tenants have finished giving evidence and making submissions, they will have a chance to make their final statements to sum up their story. They can also tell the Member what they believe the decision should be based on the evidence given at the hearing.
- To read more about **HOW TO REFUTE AN AGI APPLICATION:**
<https://www.akeliustenants.org/tenant-resources/above-guideline-increases-AGIs/how-to-refute-an-agi-application>

CAN I ENTER INTO AN AGREEMENT WITH MY LANDLORD?



- If your landlord asks you to agree to increase your rent by more than the guideline, you can always refuse, or try to work out a different amount.
- Try to get legal advice before you sign anything.
- The agreement is legal if you are getting improvements or new services. You can agree to a rent increase to get improvements to your apartment or building. For example, your landlord might want to put in a new security system or a washer and dryer.
- If you agree to a rent increase, your landlord does not have to give you written notice of the rent increase.

Items listed in the RTA

You can also agree to a rent increase in return for certain new services or things, parking space

- cable or satellite television,
- an air conditioner,
- extra electricity used by an air conditioner,
- washer, or dryer,
- lockers,
- storage space, or extra floor space.

These are only some of the items listed in the RTA. The government could change this list at any time. If you are not sure whether something is on the list, check with the LTB.

The Board's website address is www.ltb.gov.on.ca. You can call the Board at 1-888-332-3234 or 416-645-8080.

Agreement for improvements or new services

If the agreement is for improvements or new services:

- it must be in writing and on the correct Board form,
- can be cancelled if you tell your landlord in writing within 5 days after signing the agreement,
- cannot increase your rent sooner than the sixth day after you signed the agreement,
- cannot raise your rent by more than the guideline amount plus 3%, and
- cannot increase your rent before 12 months have passed since your last rent increase or since you first moved in.

Agreement is for the items listed in the RTA

- the agreement does not have to be in writing. But it is safer if you get it in writing.
- you do not have the right to change your mind after you have made the agreement.
- the increase is not limited to 3% above the guideline amount.
- The law says that the limit is a “reasonable” amount or the landlord’s actual cost.
- if you and your landlord later agree that your landlord will stop providing the service or item, your rent must go back down.
- the 12-month rule does not apply, which means that the increase can take effect on any date you agree to, even if you have had a rent increase less than 12 months ago. And after this kind of increase, your landlord does not have to wait 12 months before raising your rent again.



You should not agree to a rent increase to cover normal maintenance and repair costs. Your landlord is responsible for doing this without a rent increase.

What has changed POST BILL 184?

Bill 184 allows for an illegal rent increase to be considered legal if the tenant does not challenge it within 12 months of the increase. If the tenant learns that their rent increase was illegal after the 12 months of paying that rent amount, they are no longer able to dispute the increase.

- Tenants should carefully read their Notice of Rent Increase. The landlord must give tenants 90 days notice before the rent increase takes effect.
- Tenants in rent regulated units should look up the annual rent guideline and confirm the landlord calculated the rent increase correctly.
- If the notice is incorrect a tenant does not have to pay the rent increase. If a tenant discovers an error after starting to pay the new rent amount, they can bring an application to the LTB to have the funds returned.



DO AGIs EXPIRE?

- Starting in 2006, AGI's have a useful life and expire!
- Tenants are now owed millions of dollars in rent reductions but haven't been getting their money.
- Tenants are entitled to a rent reduction
- There's no streamlined process to make sure that tenants are paying unnecessary rent
- The information about the expiry date is provided in the LTB order but its hidden far back in the Schedule which makes it difficult for tenants to get any information about it. Plus the process of getting the rent reduction is often complicated.
- Many tenants might be able to claim reduction in their rents 10 years after the AGI order is issued to them.
- If your building is one of those where AGI is expiring, you can get your money back! FMTA is helping tenants in Toronto.

NEED HELP?

IF YOU ARE IN TORONTO

- Federation of Metro Tenants (FMTA) helps organize tenants who want to dispute the AGI (or demolition) and save money off their rent.
Hotline Number: 416-921-9494 or <https://www.torontotenants.org/contact>
- You can also apply for the Tenant Defense Fund grant. Applicant here: www.toronto.ca/housing.

IN ONTARIO? WANT LEGAL ADVISE?

Want to contact a legal clinic if you need legal advice:
<http://www.legalaid.on.ca/legal-clinics/> Or Call 416-979-1446 or toll-free 1-800-668-8258.

WANT TO ORGANIZE & FIGHT BACK?

JOIN ACORN

We are a community action group of low and moderate income people across the country.

**Join ACORN's
tenant UNION**

Organize with us in Hamilton, Ottawa, Toronto & London and elsewhere in Ontario

More resources

- AKELIUS TENANTS NETWORK. Available at https://www.akeliustenants.org/tenant-resources/above-guideline-increases-AGIs/so-you-just-received-your-first-agi#h.p_2tmLQeKimTyG
- ACTO Tip Sheet
- Applications for Rent Increases Above the Guideline, Interpretation Guideline 14. Available at <http://www.sjto.gov.on.ca/documents/ltb/Interpretation%20Guidelines/14%20-%20Applications%20for%20Rent%20Increases%20above%20the%20Guideline.html>
- CLEO. Rent Increases. Available at https://www.cleo.on.ca/sites/default/files/book_pdfs/rentincls.pdf SJTO.
- Tenant Defence Fund, more details here: <https://www.toronto.ca/wp-content/uploads/2018/02/955a-SSHA-TDF-fact-sheet-2018.pdf>



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