

RENT CONTROL LOOPHOLES

The Case of Above Guideline Rent Increases

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Ontario ACORN

ontario@acorncanada.org

www.acorncanada.org



Table of Contents

01	<i>Introduction</i>	p 03
02	<i>Methodology</i>	p 03
03	<i>Context</i>	p 05
04	<i>Rent Control Loopholes: The Case of AGIs in Ontario</i>	p 06
05	<i>Testimonies</i>	p 14
06	<i>Ontario ACORN's Demands</i>	p 17

Introduction

ACORN (Association of Community Organizations for Reform Now) Canada is an independent national organization of low- and moderate-income people with 177,000+ members organized into 30 neighbourhood chapters in 10 regions across 6 provinces.

ACORN members are low- and moderate income tenants who are bearing the brunt of the housing crisis. In addition to skyrocketing and increasing rents, several factors such as lack of adequate tenant protections, greedy landlords, lack of full rent control, and financialization of housing are fueling the housing crisis. As years of groundwork by ACORN has shown, on top of fighting landlords directly, targeting the government to adopt policy tools to strengthen tenants' rights and protect affordable housing has proven effective.

This summary report focuses on some of the key trends that emerge through data relating to one of the Province's loopholes in its current rent control laws: Above the Guideline Rent Increases, popularly known as AGIs. This data was accessed by ACORN from the Ontario Landlord & Tenant Board (LTB) through a Freedom of Information (FOI) request.

The last section of the report lists ACORN's provincial demands to stop rent gouging through AGIs.

Methodology

The analysis contained in this report draws from the data accessed by ACORN from the LTB through a FOI request. The FOI was filed to access AGI applications filed by landlords.

- The data pertains to the time period between 2017 and 2022. Given some technical changes underway at the LTB, the data for 2022 was only provided until August.
- In order to identify the type of landlord who filed the AGI application at the LTB, a google search was done using the landlord's name and building address. For those cases where the landlord type could not be identified or only the property management company can be identified, we confirmed if the landlord was a corporation through the Ontario Business Registry.





- For analysis, landlords were classified as the following: (a) Big Corporate; (b) Small/Medium Corporate; (c) Likely Big Corporate; (d) Individual; (e) Numbered company; and (f) Non-profit.
- Landlord identification was only possible for 404 AGI applications out of a total of 470 applications in the first eight months of 2022, as the name of the landlord was only provided for these applications.
- Cross referencing was done with the previous years' data to identify any trends such as repeat AGIs, the landlords doing repeat AGIs etc.

Operational Definitions

Big corporate: Landlords that own multiple properties across multiple locations. These landlords typically have billions of dollars worth of assets under ownership and management. (see footnote 1)

Small/Medium Corporate: Corporate landlords who own one or a few properties but the number of properties and locations where such properties are owned and managed are limited.

Likely Big Corporate: landlords with key terms often associated with large corporate landlords in their names like 'holdings', 'development Ltd,' and 'investments'. (see footnote 2)

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1. Nine landlords were included in this category because their names included "GF" for growth fund
 2. Landlords with individuals' names in their titles were excluded from this category and placed in small/medium corporate instead

Context

Canada's housing crisis is getting worse and as data shows, renters are bearing the brunt of the crisis. A report by ACTO paints a grim picture with respect to the housing situation in Ontario.

- Ontario is home to 1.7 million renters or 31.4% of people rent their homes in the province, which is up by 10% between 2016 and 2021.
- 38% of renters are paying more than 30% of their income on rent while 15% are paying more than 50% of their income on rent.
- Rents are on the rise across the entire province with faster increases noticeable in recent years. Toronto saw average rents go up by 84% between 2001 and 2021. Similarly, Ottawa saw average rents jump by 81% in the same time period.

Moreover, Ontario is losing affordable housing faster than what can be built and what's currently being built isn't affordable.

- Between 2006 and 2016, Ontario saw a 26% decline in units that rent for less than \$1000.
- This further decreased by 36% between 2016 and 2021.
- Units with monthly rents of more than \$1,500 increased by 360%.
- The highest increase has been in luxury rentals, renting for over \$3000, which have increased by 87% between 2016 and 2021.



AGIs are one of the contributors to Ontario's loss of affordable housing.

Rent Control Loopholes: The Case of AGIs in Ontario



Currently, Ontario has partial rent control. One, lack of vacancy control allows landlords to raise rents substantially and without limits between tenancies; second, there is no rent control whatsoever in buildings occupied after November 15, 2018; and third, landlords are allowed to raise the rents above the annual allowable provincial guideline by doing AGIs.

AGIs are becoming commonplace as corporate landlords across the province resort to this tactic to extract more money from tenants. Even during the pandemic when the Province implemented a rent freeze, many landlords filed AGIs because the Ontario government allowed these types of rent increases to continue. The rationale for AGIs when they were introduced back in the 1980s was that they incentivize landlords to keep the units in good condition. However, this is far from reality; they have become a tool to exploit tenants as demonstrated by the data obtained from the LTB as well as testimonies from ACORN members.

When can landlords apply for an AGI?

As per the Residential Tenancies Act, 2006 (RTA), a landlord can apply to the LTB for a rent increase that is above the annual guideline amount for any of the following reasons:

- The costs for municipal taxes and charges have increased by an “extraordinary” amount.
- The landlord undertakes extraordinary or significant renovations, repairs, replacements or new additions to the building or to individual units - capital expenditure.
- The landlord’s costs for security services increased, or the landlord began providing security services for the first time.

The most common reason for landlords applying for AGIs is capital expenditure.

As per the LTB, a capital expenditure is an expense that was spent for an extraordinary or significant renovation, repair, replacement or new addition. It may include work that:

- Is necessary to protect or restore the physical integrity of the residential complex or part of it
- Is necessary to comply with repair and maintenance standards under the RTA (LTB or municipal work order)
- Is necessary to maintain the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system,
- Provides access for persons with disabilities,
- Promotes energy or water conservation
- Maintains or improves the security of the residential complex.

A repair is ineligible as a capital expenditure if it is unnecessary, unless it promotes access for persons with disabilities, energy or water conservation, or security. Cosmetic upgrades are disallowed.

How much can the rent be increased through AGIs?

A rent increase for capital expenditures and operating costs for security services cannot be more than 3% above the guideline in any one year. The maximum amount for an AGI is 9% which needs to be spread over a period of 3 years. There is no limit however in case of increase due to municipal taxes.

Therefore, if the AGI is approved, a tenant paying a monthly rent of \$1,300 will be forced to pay the current rent + the provincial guideline (currently at 2.5%) + the AGI increase (assuming the approved AGI is 3%). For example, a tenant's rent of \$1,300 becomes \$1,371.5 for the first year of the AGI. This equation then continues for the next two years, resulting in hundreds of dollars added to a household's monthly rent. This is a huge increase for working class tenants and those on fixed incomes.

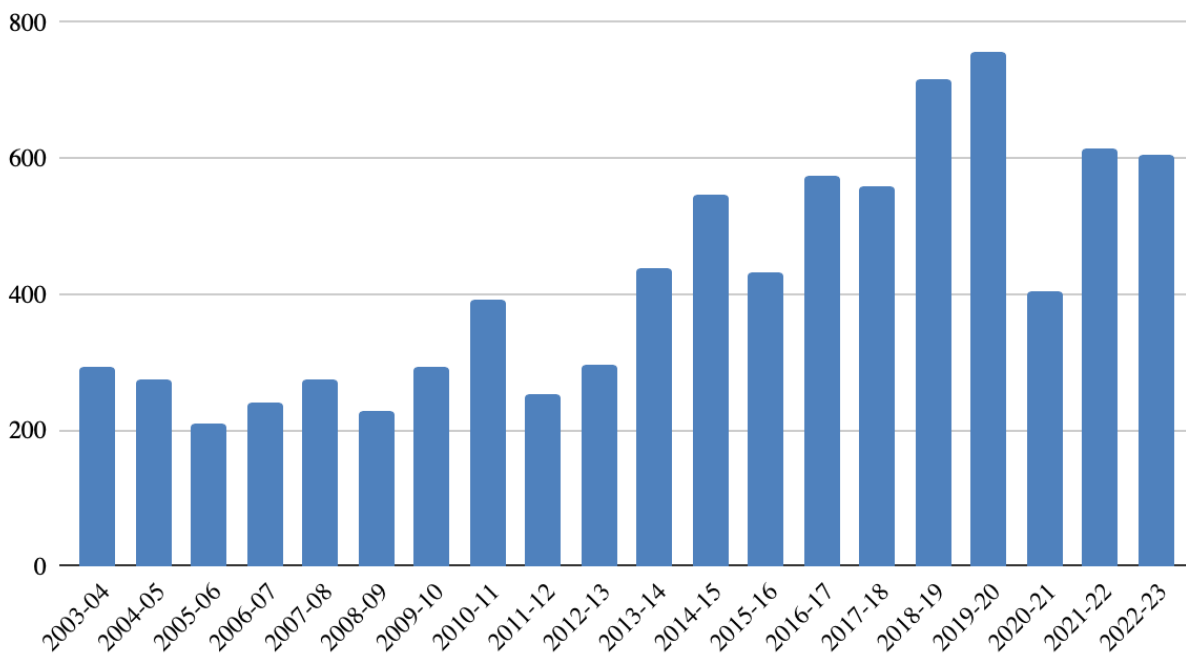
Moreover, given the backlog of cases at the LTB, the AGIs filed 2-3 years ago, when approved, get implemented retroactively. This puts immense additional burden as tenants are required to pay a lump sum amount varying between \$3,000-\$4,000.

Analysis Of AGI Data Obtained From The LTB

Number of AGIs filed in Ontario

To assess the overall trend related to AGIs in the province, we referred to the annual reports of Tribunals Ontario dating back to 2003-04. Based on these reports, from 2003-2023 there were 8,402 AGIs filed at the LTB. Data shows that over the past two decades, the number of AGIs have gone up by 107%. While there have been a few years that the numbers have gone down slightly, overall it has been on an upward trend.

AGIs in Ontario: 2003-04 to 2022-23



Number of AGIs filed: Major Cities

We looked at AGIs filed between 2017 and August 2022 across Ontario cities to establish a list of the top 10 cities with the most AGIs.

Among these cities, Toronto topped the charts with the highest number of AGI applications followed by Ottawa and Mississauga coming in the 2nd and 3rd positions respectively.

ACORN has chapters in 6 out of the top 10 cities: Toronto, Ottawa, Mississauga, London, Kitchener, and Hamilton.



Top cities with AGI applications in Ontario: 2017- Aug 2022

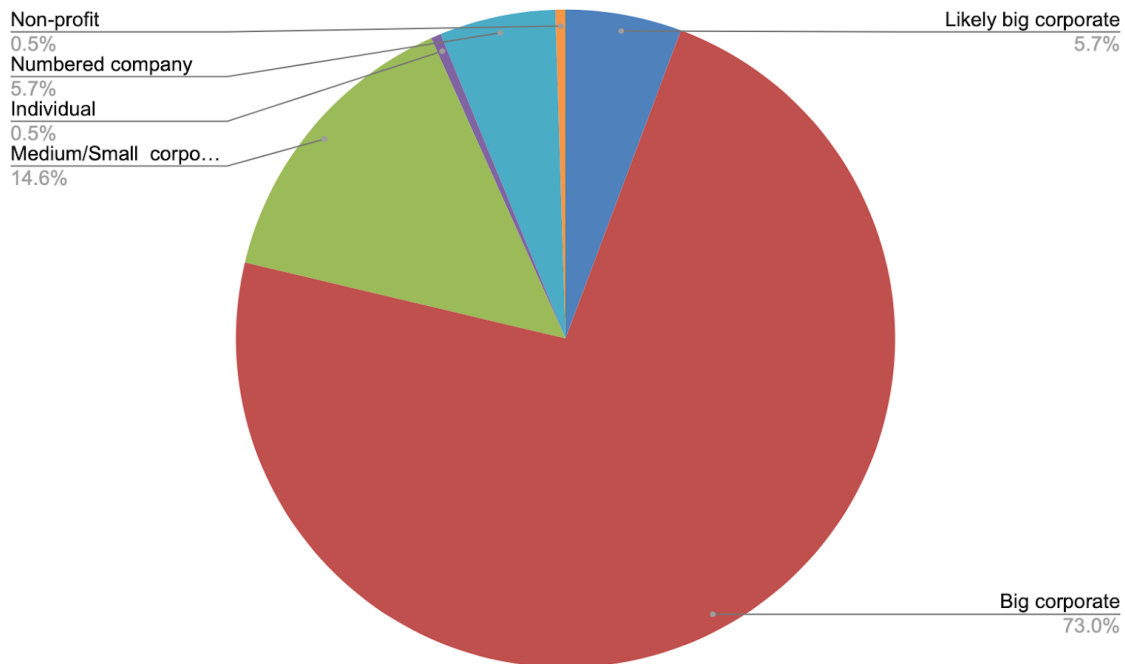
1	Toronto	1498
2	Ottawa	365
3	Mississauga	204
4	London	177
5	Kitchener	119
6	Hamilton	116
7	Kingston	98
8	Windsor	84
9	Burlington	67
10	Guelph	62

Scale of units impacted by AGIs

In Mississauga, as per the City of Mississauga, there are 337 buildings that have two or more stories. Hence, rough estimates using data from the City's corporate report on its MARC program show that landlords in 15% of total apartment buildings in the city are filing AGIs impacting 4,500 units.

AGIs by type of landlord

- The AGI data for 2022 (until August) shows that 78% of applications filed are by big corporate landlords or those identified as likely big corporate landlords.
- Some landlords are listed as numbered companies which is a serious issue as not knowing who the owners are acts as a serious bottleneck for tenants to fight back for their rights.
- Only 2 out of 404 landlords were individuals renting out a property and were not a registered corporation. These same numbers apply for non-profit housing providers.



This clearly demonstrates that large for-profit corporations are the primary culprits taking advantage of this rent control loophole to dramatically raise rents and pass on the costs of basic repair and maintenance on to tenants.

In addition to the number of AGIs filed at the LTB and the type of landlord who filed the AGI, we also looked at the number of times an AGI was filed for a particular address/location as many tenants report receiving AGI notices year after year. Since the name of the landlord was available only for 2022 data, this was cross referenced with the previous data to understand the trends.

- 592 buildings across the province faced two or more AGIs between 2017 and Aug 2022.
- There are a few addresses that stood out with respect to the number of AGIs filed between 2017 and Aug 2022. For example, 9 Old Pine St. in Mississauga got 8 AGIs followed by many others in the province that got 5 AGIs.

Table: Most AGIs at single address

Rank	Address	Landlord Name	City	# of AGIs
1	9 Old Pine St.	Andrew Stancel Riverside Apartments	Mississauga	8
2	5700 Blackwell St.	Parkbridge Lifestyle Communities INC.	Sarnia	5
3	1 Circle Dr.	Parkbridge Lifestyle Communities INC.	Lindsay	5
4	485 Huron St.	Salford Investments LTD.	Toronto	5
5	908 Lockhart Rd.	Parkbridge Lifestyle Communities INC.	Innisfill	5
6	255 Main St.	Victoria Wood Main (Square) Inc. Care of Realstar Management Partnership	Toronto	5
7	1545 Bathurst St.	Montclair Ventures Inc.	Toronto	5
8	1470 Bloor St.	No Information	Mississauga	5
9	486 Hillcrest Cres.	No Information	Sudbury	5
10	3033 Townline Rd.	No Information	Stevensville	5

With respect to the type of landlord filing repeated AGIs in a single building, the analysis shows that out of the 152 addresses where the landlord could be identified:

- 82-87% are big corporate landlords. The remaining are nearly evenly split between small/medium corporate landlords (11) and numbered companies (9). None were individual landlords.
- 19 landlords filed an AGI application two or more times in multiple buildings between 2017 and Aug 2022. All these are big corporate landlords.
- The three big corporate landlords who top the charts for filing repeated AGI applications at a singular address include Realstar Management Partnerships (17 locations) followed by Parkbridge Lifestyle Communities Inc (14 locations) and Terra Corp (11 locations).

Table: Addresses with repeat AGIs by Landlord Type

Landlord Type	# of addresses with repeat AGIs
Big corporate	125
Likely big corporate	7
Small/medium corporate	11
Numbered company	9



Table: Big corporate landlords doing repeat AGIs across multiple addresses

Rank	Landlord	# of addresses with repeat AGIs
1	Realstar Management Partnerships	17
2	Parkbridge Lifestyle Communities Inc	14
3	Terra Corp	11
4	Minto	6
5	Hazelview Properties and Timbercreek Asset Management	6

Expiration of AGIs

AGIs expire. The capital expenditure is considered to have an expected useful life which in no case can be less than 10 years. Once the expected useful life of a capital expenditure is over, the rent of any tenant affected by an AGI order that continues to occupy their unit is reduced by the percentage allowed for that expenditure.

While the information about the date when the rent decrease can take place is contained in the LTB order, there is no means to enforce this. The rent reduction does not happen automatically once the AGI expires. The onus is on the tenants to know when it's expiring and claim it which is almost impossible!

Data obtained from the Federation of Metro Tenants Association (FMTA) shows that around 1,000 AGIs filed across Ontario since 2006 would have expired by now or are expiring in 2024 and 2025. This means that tenants living in these buildings should have gotten a rent reduction already or are entitled to one soon. However, given that there is no tool to enforce rent reductions, this isn't going to happen unless tenants are aware and demand what's rightfully theirs.



Testimonials

Landlords will claim that AGIs are necessary in order to keep buildings in a good state of repair. Over the years through daily doorknocking, phone conversations and at tenant meetings, ACORN has heard countless stories of tenants who struggle to get repairs and make ends meet while being forced to pay an AGI.

Margaret, Toronto

I have been living in this unit since 2007. When I moved in, my monthly rent was around \$700 but then it gradually went up and now it's \$1,059. The building is owned by Westberry Rentals. The owner wants to do an AGI of 5.3% but we haven't been notified about any hearing or information about the decision. They sent me a notice with a calculation of rent based on 5.3% and not 2.5% despite the fact that at the time it wasn't even approved. If I hadn't checked, I would have ended up paying much more money.

Lots of tenants in the building are dealing with a range of repair issues and have been waiting for years to get them fixed.

I am on fixed income and a lot of people here are on disability. Last year, the rent of a one bedroom was \$1,700 and now it's \$2,200 plus hydro.

I waited for a while for the kitchen floor to get repaired, the tiles were broken. I waited for 3-4 months. Regarding security, there are just cameras, not sure if they work. There is no physical security. Elevators are almost dysfunctional, they said they fixed it, in fact we have a new elevator, but it never works properly. I got stuck in the elevator twice. A few years ago they did the balcony but that's just the facelift. No major repairs have been done, and elevators are a disaster.

Ocean, Hamilton

A new, larger company took over our building around 2017 and started issuing yearly AGIs. Now, they're asking for 5.5% above the guideline for unnecessary balcony renovations after annual AGIs for any and everything under the sun. We were issued one for fixing the roof, but tenants on the 12th floor are still experiencing leaks and doubt whether the roof has actually been fixed. Even if tenants know the increases are illegal, they don't have the resources to fight them.

My landlord is also neglecting a lot of maintenance. I think they're just trying to drive out old tenants so they can fix up our units and increase the rent. My disabled daughter spends a lot of time in the bathtub to help with pain management for her spinal condition. I've been trying for years to get them to replace the bathtub because it's in really bad shape. It doesn't come clean anymore, the caulking around the bathtub was black with mildew or mould, and the floor started crumbling and coming up. I asked the landlord to fix it but they ignored me. After waiting for years, I fixed it myself because I have a toddler and I was worried about him crawling on the broken floor and eating broken off pieces.

Afterwards, I was throwing up, had a migraine, and couldn't get out of bed for 3 days. Right now, if I go to them, they just ignore it and I can't do anything about it. **They have millions to replace our balconies but look at the conditions my children are living in.** Where someone lives is the most important thing. These kinds of issues are the last things you want to be worried about.

Karen, Mississauga

I turned 70 in January. I have lived in this building since 1985, and have been through several landlords since my stay here. I get puzzled how landlords get away with not doing things. The original owner took reasonable care, but then their son in law took it over and wanted to sell the building. There was one year after Starlight bought the building that it was bought and sold three times in 1 year.

The repair work has been neglected for many years. The building has leaks all the time. If there's a leak in the unit, they might fix it but for other things, they won't care. My original unit had become inhabitable, multiple flooding, big holes in the ceiling, the kitchen rotting etc. I was asked to pay \$42,000 for repairs but then I hired a paralegal. If you don't have legal wherewithal, they know how to not do anything. Many tenants are facing issues. The flooding in my unit destroyed other units and Starlight hasn't fixed those. It's appalling. The RTA says maintenance issues are not eligible for AGIs but the AGI was all about basic maintenance and repair.



There is a new AGI now again relating to plumbing repairs which have plagued the building on a daily basis. Starlight bought the building in 2013, they did wallpapers and in 2 years they painted them. Why should tenants pay for all this? Starlight is unbelievably greedy. They believe in crushing and squeezing as much from tenants as possible. Tenants should get a rent reduction in 2 years from now because the first AGI was approved in 2015. Starlight-like landlords treat tenants as cash cows. I make out my cheque to Blackstar/Starlight/OPCO2ULC - I have no idea who this is? This isolates tenants from who the owner is. I knew who my landlord was before Starlight took over. I knew who I was dealing with. Starlight is enormous, they are huge. You can't get face to face with the owner except for the resident manager. Things need to change!

Norma, Ottawa

I live in Accora Village in Ottawa which is Canada's largest private-owned rental community. The building was sold by Minto without telling tenants - the CEO now lives in Italy. I received an AGI in the fall of 2023 despite no changes in my unit (no painting, no window improvements - nothing but minor repairs here and there like repairing my broken dishwasher). The unit still has drafty windows, we have problems with our floor - nothing that would justify an AGI.

I have had at least 3 AGIs since I moved in here. Everyone in the neighbourhood gets the AGI despite not receiving any benefit.

The rationale for the most recent AGI from the landlord is replacing doors and windows, improvements to foundation and improving the integrity of the building.

Because of these unaffordable rent increases I can't afford certain activities for my kids or we'll have to reach out for subsidies. It makes it more difficult for families like mine to survive in this city and that's what ACORN is fighting against. I have lived here since 2015 - my rent is currently \$1,580 for a garden home. The AGI will result in a \$80/month increase for my family.

My neighbour has 5 kids in school (her and her fiance work minimum wage jobs) - her rent is higher because she moved in 2019 and the AGI is going to be an extra \$200/month which is impossible for her.

We've searched for other places before but there's no way I could afford the new rents if we left. I have two young daughters.

Ontario ACORN's Demands

It is clear from the analysis that AGIs have become an increasingly popular tool to raise rents above the annual provincial guideline - particularly by large corporate landlords. Tenants pay tens of thousands of dollars in rent each year and on top of it pay for repairs through AGIs, yet never build equity or get any return for their investment. This system is unjust and favours corporate landlords by supporting their goal of making maximum profits.

This section provides ACORN's calls to action for the Ontario government to stop excessive rent gouging through AGIs:



- **Ban AGIs**

AGIs do not serve the purpose of maintaining units and buildings in good repair; rather they are a vehicle for corporate landlords to extract more money from tenants. Hence, such increases should not be allowed.

- **Expenses done to fix something because of chronic neglect should be considered an ineligible expenditure**

Currently, in Ontario, the LTB can only consider existing serious breaches of the landlord's maintenance obligations at the AGI hearing. This does not specify clearly if chronic neglect by the landlord led to the landlord applying for the AGI. As opposed to this, in BC, for additional rent increases due to property upgrades, the Act clearly states that some of the reasons why a cost may not be eligible for an additional rent increase is

- because the landlord did not fix or properly maintain the rental unit
- the landlord has or will be paid for the costs by another source (e.g., rebate, insurance)
- the costs are for regular maintenance (e.g., cleaning gutters)

Ontario ACORN's Demands

Having this clearly laid out in the Act will go a long way in ensuring that corporate landlords do not use AGIs as a tool to pass on the cost of basic repair and maintenance on to their tenants.

- **The onus of enforcing rent reductions after the AGIs expire should be on the LTB and landlord, not the tenants**

There needs to be strict enforcement so that when AGIs expire, tenants are able to get a rent reduction. Currently, there is no tracking system and it fully depends on the benevolence of the landlord to give tenants a rent reduction once the AGI expires.

- Firstly, the LTB and the landlord should notify the tenant about the expiry of the AGI so that tenants can get a rent reduction once the AGI expires.
- Secondly, once the AGI expires, the rent reduction should apply to all the tenants and not just for those who paid the increased rent.
- **Energy conservation related expenditures such as retrofits aimed at energy efficiency should not be covered under AGIs**

Any expenditure that aims to increase the energy efficiency of the building should not be included in the AGI application as we can't solve one crisis (climate change) by worsening another (housing). Given the urgent need to retrofit older apartment buildings to reduce emissions, these expenses should be borne by the federal or the provincial government, not low and moderate income tenants.

For More Information

Ontario ACORN

ontario@acorncanada.org

@OntarioACORN on social media

Visit www.acorncanada.org to find your local office's contact.

