



Information About Applications for a Rent Increase Above the Guideline

Rent increase above the guideline applications

Generally, a landlord can only increase the rent by the rent increase guideline. However, under certain circumstances a landlord can apply to the Landlord and Tenant Board, (the Board) for a rent increase that is above the guideline amount.

What is a rent increase guideline?

Each year the Ontario government announces the province's rent increase guideline for the following year. A rent increase guideline is the maximum amount by which a landlord can increase the rent for a current tenant without approval from the Board.

For more information about the guideline, you can refer to the **Rent Increase Guideline** brochure on the Board's website at www.LTB.gov.on.ca.

When can a landlord apply for a rent increase above the guideline?

A landlord can apply for a rent increase above the guideline for any of the following reasons:

- The landlord's costs for municipal taxes and/or utilities (heat, water and electricity combined) have increased by an "extraordinary" amount. (See "**When is an increase in costs for taxes or utilities extraordinary**" on page 2 for an explanation of what is "extraordinary").
- 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". (See "**Definition of a Capital Expenditure**" on page 2 for more information).
- The landlord's costs for security services increased, or the landlord began providing security services for the first time. (See "**Security services**" on page 3 for more information).

When is an increase in costs for taxes or utilities extraordinary?

An increase in costs for taxes or utilities is considered “extraordinary” if it is greater than the guideline plus 50% of the guideline. The guideline used to determine if the increase is extraordinary is the rent increase guideline for the calendar year in which the first rent increase requested in the application will take effect.

Example: If the first rent increase requested in the application takes effect on September 1, 2007, the 2007 guideline of 2.6% is used. The following calculation can be used to figure out how much the increase must be to be considered “extraordinary”:

$$2.6\% \times .50 (50\%) = 1.3\%,$$
$$2.6\% + 1.3\% = 3.9\%$$

If the increase in taxes or utilities is greater than 3.9%, it is considered “extraordinary.”

Capital expenditures

When deciding whether to allow a capital expenditure, the Board must consider:

- whether the work meets the definition of a capital expenditure in the regulations to the Act,
 - when the work was done,
 - whether the work is “eligible”, and
 - if an item was replaced, whether it needed replacing.
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Definition of a capital expenditure

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.

It does not however; include:

- 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.
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When was the work done?

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, 2007, the landlord must have completed and paid for the work by June 3, 2007. Also, the landlord cannot claim a capital expenditure that was completed before December 3, 2005.

Eligible capital expenditures

Under the *Residential Tenancies Act* (RTA), a capital expenditure must be “eligible”. A capital expenditure is eligible if it:

- is necessary to protect or restore the physical integrity of the complex,
- is necessary to maintain health, safety or housing standards,
- is necessary to maintain plumbing, heating, mechanical, electrical, ventilation or air conditioning systems,
- provides access to persons with disabilities,
- promotes energy or water conservation, or
- maintains or improves the security of the complex.

Exception: A capital expenditure item is not “eligible” if it replaces something that did not need replacing. See below for more information.

Did the item need replacing?

In general, a capital expenditure item is not “eligible” if it replaces something that did not need replacing.

However, even if the item did not need replacing, it could still be considered eligible if it promotes:

- access for persons with disabilities,
 - energy or water conservation, or
 - security at the residential complex.
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Security services

A landlord can make an application based on costs related to security services of the residential complex. This service cannot, however, be provided by an employee of the landlord and the service must still exist at the time of the hearing. Start-up costs and increases in the operating costs may both be allowed.

What information must the landlord provide in the application?

Landlords are required to provide detailed information on the application form about their costs. They must also file proof that they paid these costs. This may include invoices from a contractor to show the amount charged for a major repair, and cancelled cheques to prove the landlord paid the invoiced amounts.

If the landlord is applying for capital expenditures, the landlord must provide the Board with three copies of the application and supporting documents.

If the residential complex has more than six rental units, the landlord must also include a compact disc that contains the supporting documents in a portable document format (PDF).

If the residential complex has six or fewer units, the landlord must still provide compact disc unless the complex is located in a rural or remote area and the

What information must the landlord provide in the application?
(cont'd)

landlord cannot reasonably provide the compact disc.

Tenants can come to the Board office to look at the documents that the landlord filed with the application. Tenants should bring the file number of the application and some form of identification when they come to the Board office. In some situations, the landlord may also be required to make a copy of the file available to the tenants. (See “**Look at the application file**” on page 5 for more information).

What else can the Board look at when making decisions about the application?

The Board can consider issues such as whether:

- the amounts claimed include penalties for late payments,
 - the costs for the landlord’s own labour is reasonable,
 - the costs were already taken into account in a previous application, or
 - there are any serious maintenance problems at the residential complex
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What if a Member finds that serious maintenance problems exist?

If a Member finds that serious maintenance problems exist, the member may dismiss the application for the rental unit(s) affected by the maintenance problems.

The Member may also issue an order that does not allow the above guideline rent increase to take effect until the Board is satisfied that the work in the affected rental unit(s) is complete.

How Tenants Can Get Ready for the Hearing

What happens after the landlord files the application?

The Board will schedule a hearing. Once the Board has scheduled a hearing, the Board will generally order the landlord to give a copy of the application and the Notice of Hearing to the tenants whose units are affected by the application.

There are two types of hearings: oral hearings and written hearings.

The Board is more likely to schedule an **oral hearing** if the application includes claims for capital expenditures and/or security services. The Board will often schedule a **written hearing** if the landlord has only claimed increased costs for taxes or utilities.

In an **oral 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.

In a **written hearing**, the landlord and the tenants file evidence and make submissions about the application in writing. Then a Member of the Board makes a decision without the parties appearing in person before a Member of the Board. The deadlines for filing documents with the Board are set out in the Notice of Written Hearing.

How can tenants prepare for the hearing?

Tenants can prepare for the hearing by:

- looking at the documents on the application file submitted by the landlord,
- appointing a spokesperson to speak on all of the tenants' behalf or, if the tenants wish, they may hire a representative to act on their behalf (see **"Spokesperson/Representative"** on page 6 for more information), and/or
- preparing and bringing any evidence they may have to support their claim, and making sure to bring three copies of the evidence (e.g. receipts, pictures, etc.) they are relying on, to the hearing.

Look at the application file

Tenants can look at the documents in the landlord's application file in order to understand the application and verify what the landlord has claimed. For example, if the landlord claimed that the parking garage was renovated, the tenants would know whether or not this work was done.

If the application includes capital expenditures for a residential complex that has more than six rental units, the tenant can ask the landlord for a compact disc. The landlord cannot charge the tenant more than \$5.00 for this disc.

The landlord and tenant can also agree that the landlord will give the tenant photocopies of the documents included with the application. The landlord cannot charge more than the out-of-pocket photocopying charges.

If the landlord and tenant agree that the landlord will send the material to the tenant by email, the landlord cannot charge for this. Or, if the landlord has an office, the tenants can view the material there at no charge.

Spokesperson/ Representative

Tenants can hire a lawyer or agent to represent them. If they want to do this, they should make arrangements for a representative as soon as possible. If tenants in the building want to get together and appoint a spokesperson, they should organize this promptly. It is important that the tenants and/or their representative are prepared to proceed on the day of the hearing. A request to adjourn the hearing to a later date may not be granted.

Tenants who cannot attend the hearing should give their representative their written authorization to represent them. The Board can proceed to hear the application even if none of the tenants attend the hearing.

What else can tenants do at the hearing?

Tenants should come to the hearing prepared to present evidence to support their claim. Tenants will be able to ask the landlord questions at the hearing and present evidence to explain why the landlord's claim should not be allowed.

Interpreter services

The Board provides French Language Services to parties of an application if a party asks for it, or if the application is filed in French and the address of the rental unit or the address of the party is located in an area designated by the *French Language Services Act*.

The Board can also arrange for services of a Sign Language Interpreter for a party who may require one.

The Hearing

On the hearing day

The person who will hold the oral hearing is referred to as a **Member** of the Board. The person who files the application is called the **applicant** and the other persons named in the application are known as the **respondents**. For this type of application, the applicant is the landlord and the respondents are the tenants. The applicant and respondents are called **parties** to the application.

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.

At most hearing locations, a Board **Mediator** will also be present to help the parties make their own decisions and reach their own agreement, instead of having a Member make these decisions for them (see below).

Attempt to resolve the application by agreement

Generally, once the parties have arrived, they will meet with a Board Mediator to discuss the application and see if, with the assistance of the Mediator, the parties can resolve the application by agreement.

The Mediator will assist the parties in identifying and discussing any issues they may have, and help the parties try to come up with their own solutions and reach an agreement that resolves the application.

If the parties reach an agreement, they can present the terms of their agreement in writing to the Board Member, and ask the Member to issue a consent order based on the terms that they agreed to.

If the parties do not reach an agreement, they can stop the mediation process at any time and go to the hearing room and have the application decided by the Member.

(More information about mediation can be found in the brochure "*Mediation by the Board*", on the Board's website at www.ltb.gov.on.ca.)

What happens at the hearing?

At the hearing, the landlord will first be given the opportunity to tell the Member why they should be granted an above guideline rent increase. The landlord (or their representative) will explain what capital expenditure work they have done and/or what types of increased operating costs they have experienced. They will give evidence and call any witnesses they may have.

The tenants can then ask the landlord and the landlord's witnesses any questions they may have to clarify something, get more details, or to point out a possible problem. The purpose of questioning is not to argue with the landlord or their witnesses, it is to question something that the landlord or their agent said earlier on in the hearing.

The tenants will then have the opportunity to tell their side and give any evidence they have to back up what they have said, as well as call any witnesses they may have.

Once the tenants are finished, the landlord can question the tenant(s) and their witnesses.

The Member may also ask the parties or their witnesses questions during the hearing.

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.

About the Rent

What rent should the tenant pay before the order is issued?

In order for the landlord to collect the amount they are asking the Board to approve, they must have given the tenants notices of rent increase indicating this higher amount. The tenants, however, do not have to pay this higher amount unless it is approved and the order is issued.

Rent increases included in an order cannot be charged to a new tenant who moved into the unit after the landlord's deadline to file the application. The landlord's deadline to file is 90 days before the date of the first rent increase requested in the application.

Is there a limit on the rent increase a landlord will be allowed?

The part of the rent increase for capital expenditures and operating costs for security services cannot be more than 3% above the guideline in any one year. If the landlord justifies an increase for capital expenditures and operating costs that is more than 3% above the guideline, the order will set out that the remaining increase can be taken in the following two 12-month periods, at a rate of up to 3% above the guideline per year.

There is no limit on the percentage rent increase above the guideline allowed for an extraordinary increase in the cost for municipal taxes and charges or utilities.

If the rent is increased because of an extraordinary increase in their costs, the landlord may have to reduce the rent if utility costs later go down.

How will a tenant know how much to pay?

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.

Different rules for mobile home parks

If the residential complex is a mobile home park and the landlord does capital expenditures related to infrastructure work required by the government (work related to roads, systems for water, fuel, sewage disposal, and electricity are just some examples), the increase for these capital expenditures is not capped at 3%. It will be up to the Board to decide how much of an increase, if any, will be passed through in any given year.

For More Information

Contact the Landlord and Tenant Board

This brochure provides general information only. For more information about the law, or to obtain copies of the Board's forms and publications, you may:

- visit the Board's website at www.LTB.gov.on.ca,
 - call the Board at **416-645-8080** or toll-free at **1-888-332-3234**, or
 - visit your local Landlord and Tenant Board office. For a list of Board office locations visit the Board's website, or call the numbers listed above.
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