

## TENANT DEFENCE FUND PILOT PROGRAM

### Program Guidelines

#### 1. Background

The *Residential Tenancies Act, 2006* (RTA) came into effect on January 31, 2007, with the goals of protecting tenants, helping landlords and promoting investment in Ontario's rental housing market. It covers a number of issues faced by tenants and landlords including the ability for landlords to raise rents above the annual rent increase guideline (AGI) determined by the Province to recover some 'exceptional' expenses from tenants.

AGIs may be granted by the Landlord and Tenant Board (LTB) for eligible capital expenditures for extraordinary or significant renovations, repairs, replacements or new additions that have an expected benefit of at least five years. 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.

An AGI may not be granted for: routine or ordinary work, regular maintenance work, work that is considered substantially cosmetic in nature, work that is designed to enhance the level of prestige or luxury offered by the complex, or replacement of something that did not need replacing.

Tenants may oppose AGI applications to the LTB but are responsible for the costs of preparing for a hearing. The goal of the Tenant Defence Fund Pilot Program (TDFPP) is to help ensure that tenants have the resources and knowledge needed to review AGI applications by their landlords to ensure the claimed expenses meet the RTA criteria, and where they believe the AGI is not justified, prepare and put forward a case to the LTB. By enabling tenants to prepare their case, retain a legal agent to represent them, and/or defray expenses incurred during the LTB hearing, the TDFPP may help preserve affordability of rental housing.

It is not a goal of the TDFPP to stop landlords from obtaining fair AGIs that meet the criteria set out in the RTA, but to provide resources to vulnerable tenants who may not have the resources or abilities that are typically available to their landlords, so they can ensure that any AGI they are subject to meets the RTA.

## **The Above Guideline Increase Application Process**

Details of the AGI application and hearing process can be found in the AGI guide produced by the LTB, "Information about Applications for a Rent Increase Above the Guideline" on the LTB website at <http://www.sjto.gov.on.ca/lrb/brochures/>

### **2. Program Description**

The Tenant Defence Fund Pilot Program provides a grant of up to \$1,000 to groups of tenants to defray the costs of hiring a paralegal/lawyer licensed by the Law Society of Ontario and the costs of case preparation to defend AGI applications at the Landlord Tenant Board.

The goals of the TDFPP are to:

- Help tenants organize and ensure they have adequate representation before the LTB; and,
- Help preserve affordable rental stock in Hamilton.

### **3. Program Terms**

#### **3.1 Fund Availability**

There are limited funds available for the TDFPP. Approval is at the absolute and unfettered discretion of the City and subject to the availability of funds.

#### **3.2 Eligibility Criteria**

- A landlord must have filed an application for an above guideline rent increase (AGI).
- At least 20% of the units affected by the AGI application must oppose the application and sign a petition included in the grant application
- Only the first tenant group from any one residential complex to apply will be eligible.
- A 'group' of tenants consists of a minimum of four (4) households
- Monthly rents for each unit participating in the case must be at or below the following (current rent before the AGI application is submitted by the landlord):

Unit Size	Maximum Qualifying Pre-Application Rent
One-bedroom	\$972
Two-bedroom	\$1,181
Three-bedroom or larger	\$1,334

- At least 20% of the units affected by the AGI application must be currently rented at or below the applicable qualifying monthly rent of CMHC average market rent for the City + 15%.
- The tenant group must choose one tenant representative who will act as primary representative for the tenant group and who will be named on the grant application. An alternative tenant representative must also be appointed who will act for the tenant group if the primary representative on the application is no longer able to fulfill the role as primary representative.
- Signed acknowledgement by each affected tenant that the rent he or she currently pays to the landlord is at or below the eligible rent amount (no more than CMHC average market rent for the City + 15%)

### 3.3 Maximum Grant Amount

Grants may be up to a total maximum of \$1,000, as determined by the Manager, Investment in Affordable Housing, to hire a paralegal/lawyer, licensed by the Ontario Law Society, to prepare a response to the Landlord’s AGI application and represent the tenant group at the LTB.

**Tenant Relations Officer Support Services:** Additional services of up to a maximum value of \$250 may be provided to the tenant group by the City of Hamilton Housing Services Tenant Relations Officer (“TRO”), prior to the group retaining a legal agent or if the tenant group chooses to represent themselves at the LTB hearing. Eligible support services include:

- photocopying the AGI application
- printing, postage and translation services
- meeting space rental
- additional services as required, pre-approved by the TRO
- facilitation services: organizing a meeting of affected tenants to determine the interest in a collective application (tenants will be required to appoint a representative or lead).

### 3.4 Repayment Terms

Repayment of the grant is not required unless there is a violation of any program terms and conditions.

### 3.5 Tenant Defence Fund Process

The tenant/tenant group may contact the Housing Services Division to inquire about the TDFPP and grant process. Inquiries should be directed to the Tenant Relations Officer (TRO) (Housing Services Division) who may assist the tenant(s) by:

- Providing the tenants with information produced by the LTB about AGI applications.
- Directing the tenants to the Hamilton Community Legal Clinic who will provide summary advice explaining what to expect at the LTB and documentation the tenants will need to dispute the AGI application.
- Assisting the tenants to complete the grant application.

These initial services are not considered part of the additional services outlined in 3.3 Maximum Grant Amount, which may be required to support a tenant group prior to hiring a legal agent or for those groups who represent themselves at the LTB.

#### **TDFPP Application:**

An application for a TDFPP grant must be accompanied by the following documentation:

- A petition in favour of collectively disputing the landlord application. The petition must be signed by at least 20% of affected units and include:
  - the name and signature of each tenant who wishes to be party to the dispute
  - the size and unit type of each tenant's rental unit
  - declaration by each tenant for one tenant in the group to represent the group, with a second tenant identified as an alternate representative in case the primary representative is unable to represent or act on behalf of the group for any reason
  - acknowledgement by each signing tenant that the rent he or she currently pays to the landlord is at or below the eligible rent amount (no more than CMHC average market rent for the City + 15%)
- A copy of the landlord's AGI application (the application only)
- A brief description of the tenant group's justification for disputing the landlord's application
- An estimate of the amount of eligible expenditures that the tenant group expects to incur in disputing the landlord application
- Evidence of the rent for each rental unit affected by the landlord application
- If or when the tenant group chooses to hire a legal agent, documentation that the legal agent has been retained by the tenant group, represents all of the tenants listed on the petition, and is a paralegal or lawyer licensed by the Law Society of Ontario

#### **Grant Application Approval:**

A grant application made by the tenant group is reviewed by the TRO who will confirm or deny approval to the tenant group within two to a maximum of five business days. If the tenant group meets all requirements and is determined to be eligible for funding, their

grant application is approved, and the tenant group will receive a grant approval letter from the City of Hamilton. The tenant group must agree to the terms and conditions of the grant as set out in the approval letter by having its representative (identified in the application) sign the approval letter and return the signed original letter to the City of Hamilton.

Applications shall be approved, and grants shall be approved in the order in which complete applications are received and subject to funds being available for this purpose. Once grant applications in the amount of the program limit of \$50,000 are approved, no further grant applications will be approved.

**If the Tenants Wish to Hire a Legal Agent:**

If the tenant group chooses to hire a legal agent, it is the responsibility of the tenant group to select and retain the agent, who must be a paralegal or lawyer licensed by the Law Society of Ontario and represent all of the tenants listed on the petition. The legal services must be provided before payment can be issued by the City. An invoice from the legal agent, made out to the tenant group representative, must be submitted to the City (TRO) within 5 business days of receipt. A cheque will be sent to the tenant group representative, made to the order of the legal agent and the tenant group representative.

**Submission of the LTB Order by the Tenant Group:**

Within three months of the Board's issuance of a decision on the case, the tenant group must submit the order issued by the LTB disposing of the AGI application, in which the eligible group is not noted in default, to the Housing Services Division.

**4. Documentation Required for Records**

The Housing Services Division is responsible for retaining the following documents seven years beyond the life of the program:

- Signed TDFPP grant application form, including all required accompanying documentation
- Letter of grant approval from City of Hamilton
- All invoices and internal journals for all eligible expenditures
- A copy of a Notice of Hearing with respect to the landlord application
- If the tenant group has chosen to hire legal representation, a letter from the paralegal or lawyer stating that they will represent the tenant group for the hearing
- Records of all payments and defaults
- If the tenant group has chosen to hire legal representation, the Notice of Direction authorizing the tenant group to make payment to the paralegal or lawyer
- If the tenant group has chosen to hire legal representation, completed form signed by the tenant group representative confirming that the paralegal or lawyer has performed the services of representing the tenant group
- A copy of the LTB order issued disposing of the AGI application