



So You Just Received your first Above Guideline Rent Increase...

This guide was created by members of the Akelius Tenants Network (the ATN is a group of concerned tenants living in buildings owned by Akelius Canada Ltd.), to address the initial questions that many people have when they receive their first Above Guideline Rent Increase.

This document applies to tenants living in Ontario, Canada.

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Part I - Getting Over the Initial Shock

All of us here at the ATN have received our own Above Guideline Rent Increases (AGRIs), and over the years we have spoken with many other tenants who have also faced their own AGRIs too. Time and time again we have seen that when people receive their first AGRI, their first response is typically one of shock, disbelief, and fear – so those questions will be addressed first...

Question #1: They can't legally jack my rent up like this, can they?

The sad news is that Above Guideline Rent Increases (AGRIs) are legal in Ontario, so if a landlord can adequately document the need and costs associated with a "capital project" (large renovation project) then they can pass the entire cost (and more) onto their tenants. They can also request an AGRI if their municipal taxes climb too high during a given year.

The good news is that there is a procedure that the Landlord and Tenant Board follows to resolve the landlord's AGRI application, which includes negotiation, and a court-room like hearing, and these hearings provide an opportunity for you and your neighbours to reduce the size of the AGRI.

Question #2: But my landlord hassles me and doesn't repair anything around here – when we explain the situation, surely the judge will toss this out of court, right?

Usually not. Unfortunately the hearing will focus on the landlord's expenses, and tenants are specifically prohibited from raising issues to do with building maintenance, or harassment by the landlord, etc., during this hearing. If you have faced or are facing issues such as these, then you should seek legal advice or contact the ATN to learn what you can do about these problems, but they will have to be addressed separately from the AGRI – you will not be allowed to raise these issues during the AGRI hearing.

(Note that we have said “usually not” above, because there is an exception for serious ongoing maintenance issues, or unresolved maintenance pertaining to an elevator (if your building has one). But when the Landlord and Tenant Board says “serious”, they mean serious! Contact a lawyer or paralegal or ask on the ATN mailing list, to find out whether your maintenance issues are serious enough to be helpful during your hearing. But this is an exception – regular maintenance issues will not be considered at the AGRI hearing.)

Question #3: But this isn't fair!?

It's not about fairness, or reasonableness, or logic – it's about the law. It's about the words on a page that were passed into law by a former Provincial Government of Ontario. There have always been and unfortunately probably always will be unfair laws on the books. AGRIs are just another unfair law that can only be fixed by changing the law.

It isn't helpful to think of this in terms of fairness or reasonableness. You and your neighbours are not going to succeed in rebutting your landlord's AGRI application by appealing to any of these notions. All the Landlord and Tenant Board can do is follow the law, and so your best chance of reducing your liability is to learn about and work within the applicable laws and regulations. And as a group, our best chance of stopping AGRIs for all tenants in this province is to put pressure on the Government of Ontario to **change the law**.

Question #4: What do I do about feeling attacked in my home?

This may be the most important question and answer in this entire document. Stress and psychological discomfort are real things that can make your life miserable and shorter. Your landlord knows this, and this is half of the reason why they applied for their AGRI. Yes they want more money from you. But they profit even more if they can chase you out, because then they can rent your apartment to somebody else for more than you currently pay, and even more than they'll get from this AGRI. They know that every time they impose an AGRI there will be a few tenants who leave in frustration, and the vacancies opened up by those frustrated tenants are very profitable for the landlord.

But there can be a positive side to all of this – you should aim to harness your anger, frustration, and other negative emotions to inspire you to push back against your landlord's AGRI. There are several things that you and your neighbours can do to reduce your liability, and there are groups of like-minded people (like us!) who can help, and there are even processes at the Landlord and Tenant Board that you can use to your advantage. But none of this can happen without you acting to help yourself. There are no heroes to swoop in and do it all for you, and save you. But there are many tenants (like us) who have successfully fought our AGRIs in the past, and we are willing to share what we have learned, so you can too! Use your frustration to motivate you to act!

Question #5: Has anybody ever beaten an above guideline rent increase?

Sometimes landlords have had their entire AGRIs tossed out, but this is not very likely with large well-financed landlords who have the means to hire paralegals that professionally specialise in AGRIs.

Question #6: So, then why put all this effort into fighting the AGRI if the landlord always wins?

Landlords almost never completely win - they typically get some of their expenses approved while some are denied, and every one of those expenses that are denied saves you money.

And remember that there have been cases where landlords have won everything – but this usually only happens when the tenants are not prepared.

Part II - What You and Your Neighbours Need to Know

In Part II we are going to discuss the basic things that every renter should know about Above Guideline Rent Increases (AGRIs).

Question #7: What is an “Above Guideline” Rent Increase?

In Ontario your landlord may increase your rent once a year, typically on the anniversary of the date that you moved into your apartment, by an amount called the “guideline” rent increase amount. The guideline is calculated by the Ministry of Housing every year, and it is basically equal to the Consumer Price Index (the inflation rate) in Ontario for the preceding year. So the guideline rent increase is the regular annual rent increase you receive each year, and it is usually between 1% and 3%.

However, landlords may apply to the Landlord and Tenant Board to impose an extra rent increase in addition to the annual guideline rent increase, and although the size of this additional amount is usually limited to 9% (spread over three years, at 3% per year), it can be higher.

The landlord does not automatically get the AGRI amount that they are asking for – they have to justify the above guideline portion of the rent increase by showing that they have incurred any or all of the following:

- 1 - An “extraordinary” increase in the cost of municipal taxes,
- 2 - Eligible capital expenditures (repair costs), or,
- 3 - Additional costs related to security, accessibility, or environmental conservation.

Question #8: What is the procedure for resolving an Above Guideline Rent Increase?

When the landlord wants an AGRI their first step is to file some documentation with the Landlord and Tenant Board. The documentation includes information about the landlord, the building, the tenants, and also includes details regarding the expenses that the landlord claims to have incurred – all of this documentation is called the Landlord’s “Supporting Documents”.

The landlord also has to inform the tenants of the AGRI application 90 days before each tenant has their next rent increase. (Typically your landlord will inform you of the AGRI by ticking the appropriate box on your annual “N1 – Notice of Rent Increase” form). Note that your neighbours may not have their annual rent increase in the same month that you do – so your neighbours may

not all learn about the AGRI at the same time – but each tenant must receive their notice 90 days before their rent increase takes effect.

Then everyone waits. Eventually the Landlord and Tenant Board will schedule a hearing called a “Case Management Hearing”. All of the tenants in your building who are subject to the AGRI 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, which basically means that they will talk for a bit about the expenses – why they were necessary, how much money they cost, and how “wonderfully” the landlord treated the tenants during the renovations. The tenants (or their representative, if they have one) will have an opportunity to refute the landlord’s statements.

And then 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 (who are often moved to separate rooms) hoping that the landlord and tenants can agree upon the size of the rent increase.

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. Usually both the landlord and the tenants are willing to attempt mediation, because nobody wants to have to return on another date to resolve the AGRI, and both sides are apprehensive about what might happen at the merits hearing. Both the landlord and tenants fear that the adjudicator might turn out to be unreasonable or biased, and favour the other side – things can get scary when someone else has complete control over the outcome, so there is an incentive to find a mediated agreement that is a compromise for both sides at the case management hearing.

Whichever approach is ultimately used, the decision will be written up by a representative of the landlord and tenant board, and once it is issued it is legally binding – the numbers in the decision will typically apply to all of the tenants listed in the AGRI, regardless of whether they participated in the hearings or not.

Question #9: What happens if we just ignore this and skip the hearing?

In this case the hearing will go on without you. The landlord will present their case, and there will be no-one to present a counter argument. The landlord will end up getting the maximum rent increase that their expenses justify.

Question #10: What happens if we go to the hearing, but are not prepared?

The landlord will present their case, and there will be no-one to present an effective counter argument. However, when the mediation starts, at least you will be there to try to negotiate the AGRI downwards – which can only help, right?

Question #11: Ok, so how could we prepare for the hearing?

1 - Contact the Akelius Tenants Network (ATN), and the Federation of Metro Tenants' Associations (FMTA), for advice. We are here to help!

2 - Figure out who will speak for the tenants at the hearing. There are several options here, you can obtain 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. If your building has a tenants' association, then maybe one or two of them will agree to speak for the tenants. Alternatively, your tenants' association can help in obtaining a lawyer or paralegal.

3 - Try to organise your neighbours to get as many tenants as you can from your building to attend the hearing. If only one or two people show up for your hearing, then it will appear that the tenants don't care, and it will be harder to get a good deal. On the other hand, if lots of people show up, then you will intimidate the landlord's representatives simply with your numbers, and the landlord and tenant board will know that you mean business – and you will likely be offered a better deal.

4 - Obtain a copy of the landlord's "supporting documentation". The landlord has to submit all of their documentation (receipts, quotes, reports, etc.) to the landlord and tenant board when they file their application for the AGRI, and they are required by law to make this documentation available to the tenants, and you have a right to see this documentation before the hearing. (This is just like what you have probably seen on TV, where the accused has the right to see the evidence against them before the trial.) You can learn a lot from the documentation, and you would be wise to take advantage of the opportunity to see this. Also, by getting someone with experience to have a look at the landlord's supporting documents, you will be able to identify the weaknesses in

the landlord's case, which will be exceedingly useful to whomever speaks for the tenants during the hearing.

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 landlord and tenant board. Legally, once you have received the notice informing you of the hearing date, the landlord has to make this documentation available to you, and they will often provide a copy to you for free, although they are allowed to charge a modest photocopying fee of a few dollars.

5 - If you don't have a tenants' association in your building already, then start one. You can get help from the ATN, or the Federation of Metro Tenants' Associations (use google to find their website, and call the "Tenant Questions" telephone number listed there). Both of these groups have experience in helping tenants to form a tenants' association. Having a tenants' association will not only help with organising the tenants' response to the AGRI, but in this day and age, having a tenants' association is a good idea anyway. You are stronger and safer together than as individuals, and a tenants' association is a great way to build a vibrant community in your building.

6 - Chat with your neighbours about the AGRI. Pass copies of this document around. It is important to get as many of your neighbours as possible thinking the right way about the AGRI – it is going to happen, it's not going to go away by itself, and the most likely outcome will be a rent increase. But with a modest amount of preparation by a few of you, things won't be so bad.

Question 12: What options are available for finding someone to speak for the tenants at the hearing?

You can always hire a professional paralegal or lawyer to represent you. But if you do, then please be choosy. Lawyers don't tend to be interested in taking cases at the landlord and tenant board because the pay is lousy, and so they may not have much experience with this sort of thing. Paralegals often have more experience with the landlord and tenant board, but not all paralegals are created equally! See the next question...

There are several ways to find a paralegal, not least of which is to ask around for a recommendation - friends, business associates, neighbours, and the Akelius Tenants Network (ATN) mailing list, are all good places to ask for a recommendation. There are also two "official" ways to find a paralegal or lawyer:

1 - There is a network of Community Legal Services (CLS) offices throughout the city that provide free access to a lawyer for people who live in their service

area, and these lawyers are generally quite experienced at representing tenants at the landlord and tenant board. You can find the CLS office that services your area by typing your address into the form at the top of this webpage:

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

If you cannot find your local community legal services office, then contact any of the nearby offices, and they should be able to direct you to the CLS office that can help you.

2 – The Law Society of Ontario has a Referral Service that you can use to obtain a paralegal or lawyer. This is their website:

<https://lsrs.lso.ca/lsrs/welcome>

Go to their website and click on “Request a Referral”, the website will give you information and instructions to follow to register with their service. After you have done this, a lawyer will call you back and give you a free 30 minute consultation, usually over the telephone. Following the consultation, if you like them, you can hire them.

Note also that although you can speak to a lawyer for free at any of the Landlord and Tenant Board offices (lawyers called “Tenant Duty Counsel” are available to answer questions and advise tenants), these duty counsel lawyers can only provide advice – they cannot represent tenants at a hearing. So while they are a useful resource for getting competent answers to any questions you may have, you are going to have to find someone else to represent you at the hearing.

Another approach is to handle the whole thing yourselves, and if you do, then you can save yourselves money and inconvenience, and often do as well as or better than a paralegal. All you need is someone who can comfortably do a small amount of public speaking (are there any actors, teachers, salespeople, or otherwise outspoken people in your building?), and someone who is willing to do a little reading and asking around to figure out what your counter-arguments should be. Many tenants have argued their AGRIs by themselves with success, and you can too.

The ATN has another document that contains all of the information you need to prepare someone (either a tenant or paralegal) to argue against a landlord’s AGRI application, it’s called *“How to Refute your Landlord’s Application for an Above Guideline Rent Increase”*, ask for a copy by contacting this e-mail address: akelius.tenants.network@gmail.com.

But again, if you are going to hire a professional to represent you, then it is definitely worth putting some effort into finding someone **good**. Mediocre legal representation costs you twice, because they will likely need to be paid, and they may not do as good a job as you could do yourself.

Question 13: How do we choose a good paralegal or lawyer?

Interview prospective paralegals in person, and go as a group so you have more than one person's opinion to consider. Be critical when you interview your paralegal – not all paralegals are created equal! Do your best to find someone who has done well at this sort of case before. Failing that, find someone who seems knowledgeable, and who has argued cases before the Landlord and Tenant Board (LTB) before.

Paralegals practice law over quite a wide range of areas – from small claims court, to traffic court, to educational tribunals, etc., so finding one with a lot of LTB experience is tricky – so be choosy but not picky. If you find yourself having to do too much explaining of the law pertaining to your case, then that is probably a bad sign. You want someone who seems like they are going to be able to stand up and present a cogent argument in a confident and convincing manner. Your paralegal should also be able to explain to you the arguments that the landlord's side is likely to present at the hearing, so you and the paralegal can prepare counter-arguments; if your paralegal doesn't seem to have any idea what the other side is going to argue at the hearing, then that is a bad sign.

Question 14: How do we pay for a lawyer or paralegal?

1 - Contact your local Community Legal Services office – they will provide free legal advice if you meet the geographic and income criteria. Instructions for finding your local CLS office appear under Question 12 above.

2 - The Tenant Support Grant Program provides various “Tenant Defence Fund” grants to help modest- or low-income renters. Contact the Federation of Metro Tenants' Associations (FMTA) for guidance (google them). The two most applicable grants for tenants to know about are:

- The *Basic Grant* of up to \$1,000 to help cover the costs of disputing a landlord's AGRI application (L5), or making a tenant application about maintenance (T6) to the Landlord and Tenant Board.

- An *Additional Grant* of up to \$5,000 - \$10,000 to cover extra costs relating to disputing certain complex AGRIs, or disputing a landlord's appeal of a Board Order, or applying for a judicial review to divisional court.

3 - If your building does not qualify for a grant, then you will have to fundraise in your building. The basic idea is to select a paralegal and get a quote from them so you know how much their services will cost, and then collect money from your neighbours to cover the cost. You should include a little flexibility in your calculations because not everyone will be able to afford to pay their fair share, but so long as most tenants cooperate everything will work out fine. Do not sign a contract with the paralegal until you have in hand all of the money necessary to pay them. This has been successfully done in the past in other buildings, but having an effective tenants' association definitely makes this much easier to accomplish. It is probably a good idea to contact the FMTA or the ATN for advice before doing this.

Question #15: How much of a rent increase do I have to pay, before the hearing?

Paying the full amount that the landlord is asking for is not legally required, and it basically amounts to giving them an interest-free loan until the date of your hearing.

According to the Residential Tenancies Act, section 126 (5), you only have to pay the annual "guideline" rent increase amount until the AGRI is resolved and the final decision document has been issued by the landlord and tenant board.

Note, however, that if you pay the minimum amount (the guideline amount) of rent, then you will have to pay the additional rent that you owe retroactively back to the date on your rent increase notice, once the size of the increase has been determined at the hearing. And if the hearing isn't scheduled right away then you could end up owing additional back-rent for several months. So if money is tight, then you should save some extra cash each month to cover the eventual back-rent that you will owe, and if you have a hard time saving money then it might just be safer to pay the full amount from the start, so you will not face any retroactive rent (no unpleasant surprise later). The choice is yours.

Question #16: Can I file a tenant complaint for loss of “reasonable enjoyment of the premises” during the renovations?

You may be able to file a complaint that your “enjoyment of the premises” was impaired during the renovation due to the construction, but this is not always an easy argument to win. O.Reg 516/06 provides a list of things that limit your ability to pursue the landlord for reasonable enjoyment, but one thing that does stick out is *Building Permits*. If your landlord did not obtain the necessary building permits, then you can file your own complaints: a “T2” for loss of reasonable enjoyment, and a “T3” asking for a reduction or abatement of rent, which may hopefully reduce the sting of the AGRI a bit.

Check out O.Reg 516/06, Section 8, subsection (4), point 7, here's a link:

<https://www.canlii.org/en/on/laws/regu/o-reg-516-06/latest/o-reg-516-06.html#sec8subsec4>

A Final Word

For more information regarding above guideline rent increases, and what you can do to protect yourself from them, please contact (Google them):

- The **Akelius Tenants Network**

The ATN has an e-mail list where you can ask questions. To join, contact this e-mail address: akelius.tenants.network@gmail.com

- The **Federation of Metro Tenants' Associations**

The FMTA runs a tenant hotline with experts who will answer questions (call the “Tenant Questions” phone number listed on their website), and they also have a dedicated team of outreach workers who specifically help buildings get organised to respond to AGRIs.

- Your local **Community Legal Services** office

You can find the CLS office that services your area by typing your address into the form at the top of this webpage:

<http://www.legalaids.on.ca/en/contact/contact.asp?type=cl>

Telephone, or visit during one of their “Drop In” times, if they have them. These are busy offices – it is usually faster to drop in, than to call.

Also, for those contemplating defending themselves at the hearing, there is a companion document by the ATN called *“How to Refute your Landlord's Application for an Above Guideline Rent Increase”* – ask for it by contacting this e-mail address: akelius.tenants.network@gmail.com.