



# KEEPING CURRENT

June 17, 2014 [www.gardiner-roberts.com](http://www.gardiner-roberts.com)

## RENT CONTROL & RETIREMENT HOMES: WHY NEWER IS BETTER

By **Lad Kucis**

In Ontario, the *Residential Tenancies Act, 2006* (the “**Act**”) sets out the legal framework that must be followed by landlords, including retirement home operators, in order to increase the amount charged for “**rent**”<sup>1</sup>.

The Act provides that rent can be increased no more than once every 12 months. This period is measured from the date of occupancy or the date of the last rent increase, whichever is later. Prior to any rent increase, the retirement home operator must also provide the resident with at least 90 days’ notice, which must be communicated in the prescribed form.

In considering a rent increase, it is also imperative that retirement home operators are fully aware of the “rent control” provisions in the Act. These provisions provide that a rent increase cannot exceed the amount set out in the Rent Increase Guideline (the “**Guideline**”), which is revised annually (0.8% for 2014).

There are certain exemptions to the rent control provisions, the most notable of which are set out in sections 6(2)(a) to (c) of the Act. Essentially, these provisions operate to exclude newer buildings and those converted for residential occupancy.

If a retirement home falls within one of the categories below, it is exempt from the rent control provisions and the operator may increase rent by more than the Guideline amount:

### 1. **June 17, 1998**

If a unit was not occupied for any purpose before June 17, 1998. As such, all retirement homes built **after** this date would be caught by this exemption.

### 2. **November 1, 1991**

If no part of the building was used for residential purposes before November 1, 1991. As such, if a building was historically used only for commercial purposes and then converted for residential purposes after November 1, 1991, this exemption would apply.

### 3. **July 29, 1975**

If a unit was not rented for residential purposes between July 29, 1975 and June 17, 1998. For example, this exemption would include a scenario where a unit was rented at some point prior to July 29, 1975, but was owner occupied between July 29, 1975 and June 17, 1998.

<sup>1</sup> Under the Act, “rent” is defined very broadly and includes “services and facilities” such as parking, common recreational facilities, storage facilities, security services, etc.

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes two of Canada’s largest banks, several medium to large-sized municipalities, agencies, boards and commissions and other government entities, high tech and software companies, real estate developers, lenders and investors.

A number of our lawyers have enjoyed in-house corporate positions and been appointed as board members of tribunals or as judges.

#### **Lad Kucis**

T 416.864.3114

[lkucis@gardiner-roberts.com](mailto:lkucis@gardiner-roberts.com)



**GARDINER ROBERTS**

#### **GARDINER ROBERTS LLP**

40 King Street West, Suite 3100, Scotia Plaza, Toronto, ON M5H 3Y2

Tel: 416 865 6600 Fax: 416 865 6636 [www.gardiner-roberts.com](http://www.gardiner-roberts.com)

If a retirement home does not qualify for any of the above exemptions, it may still be able to increase rent above the Guideline amount. In order to do so, the retirement home operator must (a) perform capital work in the unit; or (b) provide a new or additional service. In each of these cases, which are also subject to certain limitations, the operator and the resident would also have to enter into an Agreement to Increase Rent Above the Guideline (Form N10).

It is also very important to recognize that the rent control provisions only apply to “rent” and do not apply to the amounts charged for “care services or meals”, which can be increased above the Guideline amount. Notwithstanding, retirement home operators must still provide 90 days’ notice of any increase to the amounts charged for “**care services or meals**”, which must be communicated on the prescribed form (N3).

### **Proposal to Remove Rent Control Exemptions**

In 2013, a private member’s bill (Bill 82) was introduced to eliminate the rent control exemptions in their entirety, which would result in rent control applying to all residential units, including those in retirement homes. However, the bill did not pass before the recent provincial election and would therefore need to be re-introduced. Therefore, at the present time, the rent control exemptions outlined above are still in effect.

**Lad Kucis is the Co-Chair of the Health Law Group at Gardiner Roberts LLP and provides advice and representation to retirement home operators with respect to regulatory compliance, complaints and risk management. He can be reached by telephone at 416.864.3114 or by email at [lkucis@gardiner-roberts.com](mailto:lkucis@gardiner-roberts.com).**

---

\* Please note that this Legal Bulletin is being provided for information purposes only and is not intended to be construed as legal advice.

