

GREATER TORONTO APARTMENT ASSOCIATION
action UPDATE

NOTICE TO GTAA MEMBERS

Pending Notices of Rent Reduction (NORRs) due to Property Tax Decreases

The City of Toronto advises that tenants of approximately 1100 buildings will receive NORRs later this year reducing their rents effective December 31, 2009. The RTA requires the municipality to calculate the change in “municipal property tax” between 2008 and 2009 and, where the decrease exceeds 2.49%, NORRs shall be issued. Landlords should get notice of proposed NORRs between now and September 15.

The problem for Landlords is that in calculating the 2009 property tax decrease, only the tax rate and value of the property are taken into account. The substantial increase to the municipal Waste Levy surcharge is not factored in, which means that your cumulative “municipal taxes and charges” will likely go up, yet tenants will get a rent reduction.

What can Landlords do about the NORRs?

1. When the municipality notifies you of a proposed NORR, first check the numbers used in the calculation to ensure they are accurate and if they are not, notify the City as directed on the NORR. The city numbers are based on a “default” formula and if your actual tax savings are much lower than what is generated by the default formula, you may apply to correct that by way of a Variation Application under the RTA.
2. If you are being billed for the Waste Levy on your utility bills, add the cost of the Levy in calendar year 2009 to your 2009 taxes. If the sum exceeds the 2008 taxes including any Waste Levy payment in 2008, then you should qualify to apply for a Variation Application to set aside the NORRs effective December 31, 2009 thereby restoring rents to pre-NORR levels.
3. If you receive a NORR and your building is exempt from most rent controls (e.g. was constructed and first occupied after November 1991) contact the City and point out their error and ask them to notify tenants that the NORRS are void.

We expect there will be a flood of Variation Applications in Toronto once the NORRs are issued so be prepared if you expect your base property taxes will decrease. On a Variation Application you will need to file copies of your tax bills; Waste Levy (Utility) bills; and proof of payment of same. Get that material ready now so that you can act quickly if you are advised to file an application. The longer the queue of Variation Applications, the longer it will take to set aside your NORRs. Tenants will reduce rent payments Dec. 31 so you want to be “first in line” if possible to set aside the NORRs.

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While a Variation Application can result in a set aside of the NORR's, such applications should not be brought without first consulting professionals with expertise in filing Variation Applications. This bulletin is not intended as legal advice: it is intended as a "heads up" so that you are aware of steps you may take if you receive a NORR in the next few months from the City of Toronto.

Advice provided by Joe Hoffer, LL.B., Barrister & Solicitor, Cohen Highley LLP for members of the Greater Toronto Apartment Association, June 25, 2009
