SECURING REDUCTIONS IN RENT ASSOCIATED WITH DECREASED ELECTRICITY COSTS
DRAFT (V3) – February 13, 2017

Issue

- Whether and how to secure rent reductions for tenants whose rent includes electricity and where landlords are in receipt of electricity cost reductions

Key Components

- This could be accomplished through an amendment to the Residential Tenancies Act (RTA), most likely through the creation of a new section in the Act.

- The specific aspects of the RTA amendment required would to some extent depend on the specifics of the initiative leading to electricity cost reductions. For example, is the reduction coming through a rebate or a rate cut, and for what period of time?

- Regardless of these details, there are some key components of the legislation anticipated, outlined below.

1. Trigger – on what basis would the reduction in rent be triggered?
    - Rent reductions would only be applied to tenants whose electricity is included in the rent. Tenants who have metered electricity would not be entitled to rent reductions as they would receive the reductions directly through their own bills. (Note: these tenants would also have access to energy support programs, including the Ontario Electricity Support Program)
    - The trigger for the reduction in rent would be tied to the program or initiative leading to electricity cost reductions.

2. Calculation – on what basis would the reduction be calculated?
    - The amendment would need to set out the basis for calculating each tenant's rent reduction.
    - In order to calculate a rent reduction, there would need to be a specific known electricity cost reduction for the landlord over a defined period of time.
    - The most equitable method for reducing rents would likely be to take the total reduction for the building in question over the defined time period and apportion the reduction amongst all tenants on the basis of their proportion of rent paid.
    - Tenants in a multi-residential building in similar units may pay very different levels of rent – for example, a tenant in a pre-1991 building who has been resident for a long period of time and subject to annual rent increase restrictions may pay a much

lower rent than a tenant who is in a similar unit and has recently occupied a unit and is subject to a higher starting rent level.

- We would likely recommend exempting tenants living in post-1991 buildings from rent reductions based on electricity cost reductions. As these buildings are exempt from the rent increase guideline, landlords could negate any savings to tenants through a higher subsequent rent increase.
    - The existing automatic rent reduction provisions for decreases in municipal taxes do not apply to post-1991 buildings
    - Many of these units, including individually-rented condos, are likely to be suite-metered.
- Alternative options for allocating savings amongst tenants considered include:
    - Allocating savings on the basis of square footage of units – which could be inequitable if tenants in units of the same square footage are paying disparate levels of rent.
    - Allocating savings on the basis of electricity usage is generally not possible in non-suite metered units, as there is no basis for differentiating usage amongst tenants.
- Passing along 100% of savings to tenants assumes that tenants are collectively responsible for paying the full utility bills through their collective rents. There may be arguments from some landlords that they have been underwriting some of the costs of electricity through reduced profits (particularly in rent controlled buildings) and that they should benefit from some of the reduction. That could be accomplished by requiring only a percentage of total savings to be passed on to tenants.
- The approach to calculating rent reductions would need to take into account whether it is being done on a prospective or retrospective basis and how it links to allowable rent levels in the future – i.e. is it a reduction to rent going forward for a period of time; is it a rebate of rent previously paid; at the end of the defined period of time, are rents re-set at the previous level or is there a need for some mechanism to “re-set” rents?

Other Considerations:

- Consideration would have to be given to treatment of cases where the tenant pays for their own electricity, but the rent covers electric heat in their unit, or where the rent includes electricity for common areas.
- Should the recent HST rebate for hydro of 8% that started January 1 be also included in any reductions offered to tenants? Landlords are also eligible for this rebate, but there is no current requirement to pass on the reduction/rebate to tenants whose electricity is included in their rent.

- It is not clear whether the rebate/reduction would be applied equally for all consumers. For example, landlords may be treated differently or the changes may impact landlords in a different way depending whether they have large or small rental complexes.
- When would the reduction take place? Immediately or after one year of reduced costs?

3. Notice – what would be the requirements for notifying tenants?
    - The amendment could include requirements for how and when landlords would notify tenants concerning their rental reduction and how their reduction was calculated.

Considerations:

- How will landlords be notified of this requirement or the reduction? The Province/LTB does not have addresses of all rental buildings in the province.
- Automatic rent reductions for municipal tax decreases require municipalities to inform tenants. Can utility providers be required to inform landlords (and maybe tenants; TBD)?

4. Enforcement/Remedy – how would the requirement be enforced and what remedies would be available to tenants who were dissatisfied?
    - There would need to be mechanism for tenants to seek a remedy if they do not feel their landlord has appropriately reduced their rent and/or appropriately re-set their rent at the end of a defined period of time.
    - It would be recommended to build on existing enforcement and remedy processes through the Landlord Tenant Board (LTB).
    - Further consultation would be required with MAG, which has lead responsibility for the LTB, concerning the specific mechanisms and potential implications for business process and workload.

5. Regulation making authority
    - While it is recommended that the primary mechanisms for the rent reduction would be set out in legislation, it would be prudent to include some regulation making authority for additional matters to be addressed or adjusted over time through regulation.

Other Policy, Legal and Implementation Considerations

- The specifics of the initiative – currently unknown – will have an impact on the appropriate approach to the RTA amendment and therefore what considerations are raised.

- In response to CCAP commitment to mitigate the impact of carbon costs on tenants and resulting increases in natural gas prices, the government is currently intending to remove the ability of landlords to pass on extraordinary increases in utility costs through above-guideline rent increases.
    - This may seem inconsistent with requiring landlords to pass on savings.
    - Further, both changes together could put an undue financial burden on landlords.

<u>Additional Note</u>

- The Ontario Electricity Support Program (OESP) is an income-tested program that provides fixed rebates to qualifying households who pay their own electricity bills. It is intended to offset some of these households' energy costs.

- One critique of the program is that it is not available to low-income households who do not pay their electricity bills directly. Ministry of Energy advises that they have consistently advised that the program cannot be made to work for this client group.

- If the question being asked is "can an RTA amendment be used to make the OESP program work for tenants who do not pay their own electricity bills?" the answer is most likely "no". If there was a mechanism, it would be extremely administratively burdensome as it would involve establishing if both a building and a household were eligible; providing a rebate to the landlord (bill payer) and ensuring the landlord passed along the same rebate to the household through an equivalent rent reduction. The policy objective could likely be more realistically achieved through a direct payment to a tenant who meets the income threshold who does not pay their own electricity bill.

<u>Other Potential Changes to RTA</u>

- The ministry is currently considering a number of amendments to the RTA , including the following related to utilities:
    - Amend regulations to remove carbon costs from the calculations for above-guideline rent increases for extraordinary increases in utility charges (to be in effect by late Spring 2017) – part of CCAP commitment
    - Amend legislation to remove above-guideline increases for extraordinary increases in utility charges
    - Above-guideline rent increases would still be available for extraordinary increases in operating costs (municipal taxes and charges) as well as capital expenditures and security services.

- The ministry does not have a scheduled committee date for its proposed amendments.