

EXEMPTION FROM RENT RULES RELATING TO NEW RESIDENTIAL RENTAL UNITS:

The *Residential Tenancies Act* (the “RTA”) provides an exemption for certain units from certain provisions of the Act that deal with rent. These units are not exempt from the rest of the provisions of the Act, but they are exempt from certain provisions relating to rent increases. The units that are exempt from these rent rules are described in subparagraph 6(b) of the RTA:

A rental unit that was not occupied for any purpose before June 17, 1998;
A rental unit no part of which has been previously rented since July 29, 1975;
A rental unit for which no part of the building, mobile home park or land lease community was occupied for residential purposes before November 1, 1991.

This exemption covers new condominiums that were first occupied on or after June 17, 1998 would be entitled to claim this exemption. What is this exemption?

The sections of the Act that these new condominium units do not have to comply with are: sections 104, 111, 112, 120, 121, 122, 126 to 133, 165 & 167. What do these sections say?

s. 104 is a provision that requires a landlord to apply to the Board to evict an unauthorized occupant in a rental unit and deems an unauthorized occupant a tenant if the landlord knows about the unauthorized occupant for 60 days or more and does nothing about it. It also allows a landlord to negotiate a new tenancy agreement with a person occupying a rental unit without consent of the landlord or an overholding assignee or subtenant. That this section doesn't apply to new rental units (including those occupied for the first time on or after June 17, 1998) means that an unauthorized occupant is not deemed to be a tenant if you know about them for more than 60 days. Therefore, because they are not a tenant, they do not have the benefit of the tenant's lease provisions, including the amount of rent. You would still be able to negotiate a new lease with them.

s. 111 is a provision about discounting rent whereby if you discount the rent and then raise it later, there is a formula for figuring out the rent. Since this section doesn't apply, errors in discounting in accordance with the Act shouldn't result in a decrease in the rent you can charge.

s. 112 is a provision setting out the lawful rent for a unit is the rent charged the day before this Act came into effect (which was January 31, 2006). This section doesn't apply to post June 17, 1998 units, simply because they were not occupied the day before the Act came into force.

s. 120 is a provision that allows you to increase the rent annually only in accordance with the guideline increase. This provision doesn't apply to new post June 17, 1998 units. Therefore, since there is not prohibition against raising the rent more than the guideline and no prohibition against raising it more than once per year, you can increase the rent on these units whether or not it has been 12 months since the last increase and whether or not it's the guideline amount or some higher amount. In other words, you can raise the rent more than the statutory guideline increases. However, you must still serve a

valid notice of rent increase in form N2 (which can be obtained from the Landlord and Tenant Board website.)

s. 121 & 122 are provisions that allow the parties to make agreements to increase the rent if new services or capital expenditures have been done and allows a tenant to apply to the Board if the landlord breaches the agreement. Since you can raise the rent without worrying about guideline increases in any event, you also don't need to worry about meeting the requirements for agreeing to increase the rent. You can agree to increase the rent in any event, whether or not you have done capital improvements.

s. 126 to 129 are the provisions allowing a landlord to apply to the Board for an increase above the guideline amount. Since the landlord can increase the rent in amounts above the guideline for these new units in any event, it is not necessary to apply to the Board by way of an above-guideline increase application for such an increase.

s. 130 allows a tenant to apply to the Board for a decrease in rent if a service or facility has been discontinued. Tenants of these new post June 17, 1998 units lose this right.

s. 131, 132 & 133 set out a rule that if municipal taxes decrease by more than a certain amount, the rent for the unit for which the taxes are paid also goes down automatically and either the landlord or the tenant can apply to the Board to determine the amount if they don't agree with it. This reduction and the right to apply to the Board about it do not apply to these new post-June 17, 1998 units.

s. 165 & 167 are with respect to mobile home park sites. S. 165 limits the amount of an increase in rent to an assignee of a mobile home site and s. 167 is with respect to applications to the Board to raise the rent as the result of capital expenditures. These sections don't apply to mobile home parks or land lease communities that were not occupied for residential purposes before November 1, 1991.

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