



Don't hold your breath waiting for an apology

By David Gargaro

Even when you follow both the letter and spirit of the law, there will always be people who oppose what you're doing... especially when it comes to rental properties in Ontario. And while this topic involves rental property owners in Ontario, the real issue is how the media portrays all landlords across Canada.

Recently, several news outlets published very one-sided stories on the "loophole" created by Ontario's post-1991 rent control exemption. To be frank, they completely missed the boat on what is really happening in rental housing. Instead of explaining the exemption and that landlords are following the law, the news outlets chose to misinform and misdirect the public --- presumably as part of their goal to boost ratings rather than tell the entire truth.

Let's set the record straight: the post-1991 rent control exemption was deliberately written into legislation. It is an intentional policy decision, NOT a loophole. A loophole is a gap in legislation that accidentally provides a means of escaping or evading the law.

For example, in Ontario, the law allows tenants one opportunity during their tenancy to "pay and stay" even after an eviction order for non-payment has become enforceable and has been filed with the Sheriff. That is deliberate policy, not a loophole. However, the process requires the tenant to file a motion. If they decide to pay rather than file a motion, the Landlord and Tenant Board expects the landlord to cancel the eviction. Here comes the loophole: if the tenant exercises the right to pay and stay once without making the motion, they could save their tenancy a second time by making the motion.

The post-1991 rent control exemption did not drop out of thin air. Since 1975, Ontario's landlord-tenant legislation has provided newly

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constructed rental homes with an exemption from rent control. The current legislative provision that exempts post-1991 rental units from price regulation was put into effect in 1998. It was intentionally included in the *Residential Tenancies Act, 2006* after more than two years of public consultation and legislative debate. The exemption is not new by any stretch of the imagination.

Why did the provincial government create the exemption? Because they understood that there was a real need to encourage the construction of new purpose-built rental housing. Most of Ontario's rental properties were constructed prior to 1975, which was when the government introduced stricter rental controls. As a result, most renters live in buildings that are at least 40 years old. It's just common sense that older buildings have higher maintenance and repair costs than newer buildings.

The post-1991 rent control exemption created a clear dividing line in the rate at which new rental properties have been built in Ontario. According to PostMedia News, before 1991, there were approximately 45 new rental buildings being constructed each year, with an average of 82 units per building. Since 1991, there have been about 62 new apartment buildings constructed per year, with an average of 115 units per building. The result is a 38 per cent increase in the average number of new buildings, and an 85 per cent increase in the average number of units built each year. Over a decade, that amounts to 34,400 new rental units, which is huge for rental housing supply.

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as on the economy in general. From 2007 to 2012, more than 56,000 new rental units have been constructed in Ontario (counting those induced by the exemption and those that may well have been built anyway). This has led to the creation of more than 42,000 full-time rental housing construction and repair jobs. In 2014, the rental housing industry is spending \$4.5 billion on infrastructure, which includes \$1.8 billion per year for new rental homes and rental housing construction.

So why do people still oppose the post-1991 rent control exemption? The common rallying cry is that it allows landlords to increase rents far above the cost of inflation, as well as above and beyond what the typical renter can afford. Some landlords raise rents more than others, but they are the exception rather than the rule.

In fact, the post-1991 rent control exemption has not led to drastic increases in rents for newer rental properties. In fact, according to the Canada Mortgage and Housing Corporation (CMHC), rental units in older buildings have higher rent increases than rental units in newer properties.

In the Greater Toronto Area, pre-1990 buildings had average annual rent increases of 3.6 per cent between 2011 and 2013, whereas post-1990 apartment buildings had an average annual rental decrease of 2.5 per cent. Across major cities in Ontario, the average rent increase was 2.6 per cent in pre-1990 buildings and 1.7 per cent in post-1990 buildings. The rent control exemption for post-1990 rental units did not result in undue increases in rents for newer properties. In fact, post-1990 buildings were moderating the average rent increase.

Of course, journalists will publish stories of retired couples and lower income families being forced to find new accommodations due to rent increases. Does this happen? Of course it does. But what these people will not tell the public – or perhaps they just don't know – is that property owners have to deal with the increasing costs of operating their buildings, such as property taxes, employee training, building repair and maintenance, tenant and building safety, and more.

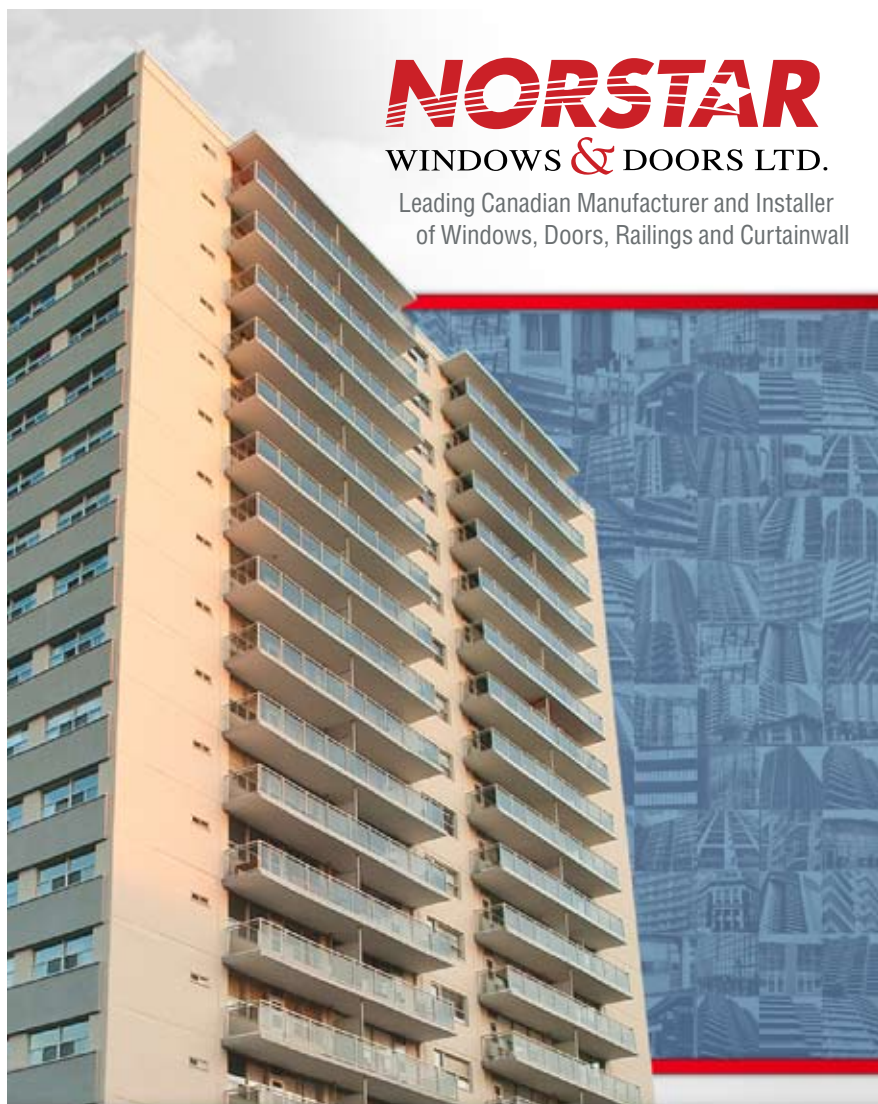
Consider the impact of rising energy costs on rental properties. According to the Ontario Energy Board, from 2011 to 2014, electricity and natural gas prices increased by 27 and 67 per cent, respectively. These cost increases have to be passed onto tenants, or landlords will end up losing money year after year.

The rental housing market is like most other markets, in that the law of supply and demand determines pricing. When there is too much rental stock or rental demand decreases, rents tend to decline. Conversely, when rental stock declines or rental demand increases, rents tend to rise. However, this does not account for the fact that landlords want to keep their rental units consistently filled with quality tenants, who pay their rent on time and treat their rental properties like home. It costs significantly less to keep current tenants than it does to consistently search for new tenants who will pay higher rents.

Landlords and property managers can do themselves and tenants a favour by following the rules that apply to exempt rental properties. For example, landlords can only increase the rent after at least 12 months have passed since the tenant moved in, or since the last rent increase. Landlords also need to give at least 90 days written notice of any rent increase, and use the approved Landlord and Tenant Board notice (for exempt units) to implement rent increases. Ideally, they should notify new tenants that the unit is exempt from rent control. Making sure tenants are informed helps to protect everyone involved, and it just makes good business sense.

Loopholes that unfairly favour one group over another should be closed. For example, the Landlord and Tenant Board could begin refusing motions for last-minute pay and stay relief where that relief has been previously obtained, whether or not the tenant went through the motion process to get it. But

don't hold your breath expecting that to happen. And don't hold your breath expecting the media to correct the impression left by misidentifying the post-1991 exemption as a loophole when it is nothing of the kind. **RHB**



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