

Above Guideline Rent Increases in the Age of Financialization

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February 2021



RenovictionsTO

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Acknowledgements

Thank you to all the tenants who took the time to speak with us about their experiences with above guideline rent increases and provided insightful comments and feedback. This project would not have been possible without your participation and support.

Thank you Cole Webber, William Soukoreff, and Geordie Dent, for your encouragement and generous feedback throughout the project.

And a big thanks to Robyn Asquini, for designing this report.

Executive Summary

Introduction

Toronto is in the midst of a housing crisis, and around half of the city's renters are paying unaffordable rents. For tenants living in rent-controlled buildings, annual rent increases are limited to the provincial rent increase guideline. However, landlords can apply for an above guideline increase (AGI) if they incurred costs related to eligible capital expenditures or security services, or if they experienced an extraordinary increase in property taxes. AGIs allow landlords to transfer these costs on to tenants, increasing rents up to an additional 3% for three successive years. This report examines the increase of AGIs in Toronto over the past several years, the impacts of AGIs on tenants, the role of financialized and corporate landlords in pursuing AGIs, and the rationales lawmakers have offered for the policy.

1. The Rising Incidence of AGIs

The number of AGI applications has increased over the past several years. There were 296 AGI applications in Ontario in fiscal year 2012-13 and 758 applications in 2019-20. In Toronto, there were 117 AGI applications in fiscal year 2012-13 and 294 AGI applications in 2019-20. In each case, the number of applications in 2019-20 was two and a half times that seen in 2012-13.

2. The Impact of AGIs on Tenants

An AGI can result in a tenant paying tens of thousands of dollars more in rent over the course of their tenancy. AGIs create financial strain for tenants and often follow disruptive repairs and a daunting administrative process, contributing to displacement and the loss of affordable rental housing in Toronto. Landlords frequently conduct renovations to justify AGIs while simultaneously failing to maintain buildings and being slow to respond to tenants' maintenance requests. Despite rules restricting the expenses that may be included in AGI applications, whether a cost is eventually transferred on to tenants has more to do with whether tenants challenge it than its eligibility. Tenants can organize to fight AGIs outside of the Landlord and Tenant Board (LTB) process, and tenants in Toronto have had success fighting AGIs in this way.

3. Landlords and AGIs

Since the 1990s, large corporate and financialized landlords have been consolidating ownership of apartments. Financialized landlords view AGIs as a revenue-generating tool to help increase profits. For financialized and corporate landlords, AGIs may be part of an investment strategy and the decision to apply for one can be a political calculation. Financialized and corporate landlords accounted for 64% of all AGI applications in Toronto from 2012-2019. When considered as a percentage of units impacted by AGIs, these landlords were responsible for an estimated 84% of AGIs during this period. These landlords are also incredibly profitable, delivering large annual returns for investors and making millions in profits each year, based on publicly available information.

4. Examining the Rationale for AGIs

The stated rationales for AGIs do not justify transferring these costs on to tenants. According to lawmakers, the rationale for AGIs is to incentivize landlords to maintain their buildings—either because they will not be bothered to (the “lazy landlord”) or cannot afford to (the “cash-strapped landlord”). Against the lazy landlord rationale, we argue that there are ways to incentivize proper maintenance that do not harm tenants. Against the cash-strapped landlord rationale, we reiterate our evidence that landlords can afford to pay for these repairs themselves. Under current regulations, landlords are able to transfer major costs on to tenants without demonstrating a financial need to do so.

Conclusion

AGIs continue to exacerbate the affordability crisis. By allowing landlords to transfer these costs to tenants, we are prioritizing a landlord's ability to maximize their profits over the affordability of housing. Tenants are asked to pay for repairs they were not consulted about and often do not want, and which their landlord can afford to pay for. The move to written hearings during the COVID-19 pandemic means that tenants' ability to challenge AGIs through the LTB process is further restricted, which could encourage more tenants to apply pressure directly on their landlords when fighting an AGI.

Introduction

LIKE MANY cities in Ontario and around the world, Toronto is in the midst of a housing crisis. In a city where around half of households are renters, average rents have risen sharply the past decade and asking rent for a one-bedroom apartment was around \$2,300 in 2019.¹ Even prior to this high point, nearly half of Toronto renter households were spending more than 30% of their income on housing, a widely accepted threshold for affordability.²

Rent control offers tenants some respite, though the lack of true rent control creates its own problems. Rental units built before November 15, 2018 are subject to rent control, which in Ontario means that a landlord can only raise rent on a tenant once per year and that increase cannot exceed the guideline set by the province. The provincial rent increase guideline is pegged to the rate of inflation, up to maximum of 2.5%.³ Because rent control is tied to a tenancy, a landlord can raise rent as much as they want in between tenants. This is called “vacancy decontrol.” Vacancy decontrol is the reason many renters face elevated market rents and also why landlords use renovictions, own use evictions, and other tactics to push tenants out.

However, even when tenants are protected by rent control, landlords may apply for an above guideline increase, or “AGI.” The *Residential Tenancies Act*, the provincial legislation regulating residential rental arrangements, states that a landlord can apply for an AGI if they undertook eligible capital expenditures, incurred costs related to security services, or faced an extraordinary increase in their building’s property taxes. AGIs allow landlords to transfer these costs on to tenants and can result in up to an additional 3% rent increase for three successive years.

This report takes a close look at AGIs and the impact they have on tenants and landlords in Toronto. To do this we used a range of methods. We prepared a database of AGI applications filed in Toronto, drawing on data from 2011-2020, obtained from the Landlord and Tenant Board (LTB), and updated with details on ownership, types of landlords, and the

number of units in each building.⁴ We interviewed tenants with firsthand experience to understand how they were impacted by AGIs and how tenants have organized to fight AGIs. In order to understand landlord perspectives on AGIs, we drew on financial reports and other publicly available information, and comments made at industry events. Finally, in order to understand the policy rationale for AGIs, we analyzed records of legislative debates regarding AGIs in the Legislative Assembly of Ontario.

This report is organized into four sections. In Section 1, we introduce AGIs and point to the rising incidence of AGI applications. In Section 2, we look at how AGIs impact tenants, and how tenants resist these rent increases. In Section 3, we discuss the rise of financialized landlords and explore the role of large corporate and financial firms in applying for AGIs in Toronto. In Section 4, we critically examine the rationales given by government for this transfer of costs from landlords on to tenants.

Landlords have continued to apply for AGIs during the COVID-19 pandemic and the 2021 rent freeze put in place by the Government of Ontario exempts AGIs. During the pandemic, asking rents in Toronto have dropped slightly from their previous highs, but these asking rents have long been unaffordable for many and they remain so today. The gap between average rents and asking rents in the city remains substantial, while large landlords continue to acquire existing rental buildings, leaving unchanged the dynamics discussed below. If anything, tenants are now more vulnerable to the financial stress brought on by AGIs because of the pandemic’s economic impacts.

One notable impact of the crisis is that as renters have lost work during the pandemic, been unable to pay rent in full, and been subject to an eviction blitz, tenant organizing has increased across the city.⁵ How this impacts the way that tenants respond to AGIs remains to be seen.

¹ Advocacy Centre for Tenants Ontario, *We Can't Wait: Preserving our Affordable Rental Housing in Ontario*, 2019. “Average rent” is the average price sitting tenants are paying. “Asking rent” is the average price of an apartment available on the market. Asking rents are currently significantly higher than average rents in Toronto.

² Canadian Rental Housing Index, based on Statistics Canada data from 2016; City of Toronto, *2018 Rental Housing Market Conditions in Toronto*. In 2016, 47% of Toronto renters were spending more than 30% of their income on rent and 23% were spending more than 50% of their income on rent.

³ More precisely, the guideline is based on the increase in the Consumer Price Index. This provides tenants some stability year-to-year if their landlord chooses to raise rent, so long as they remain in their apartment. However, even a guideline increase may be significant for those on fixed incomes or whose wages do not increase at the same rate.

⁴ Our data set included partial data for 2011 and 2020. See Appendix for more information.

⁵ Julia Mastroianni, *As Ontario's Eviction Blitz Continues, Toronto Tenants Fight for a Ban*, 2020.

1. The Rising Incidence of AGIs

THE RULES regarding AGIs are outlined in Section 126 of the Province of Ontario's *Residential Tenancies Act*.⁶ A landlord may apply for an AGI if: (1) there were eligible capital repairs made to the building or particular units; (2) there were costs incurred relating to new security services for the building; or, (3) the cost of municipal taxes and charges increased at a rate at least 1.5 times that of the rent increase guideline.

This report focuses on cases involving (1) capital expenditures and (2) security-related costs, which make up the vast majority of AGI applications in Toronto (although any statistics regarding AGIs include all applications). Both are situations where a landlord incurs costs related to repairs or other work, then passes these costs on to tenants. Because a single application can include both types of claims, these different types of costs will be grouped together for the purposes of our discussion.

A landlord applies for an AGI by submitting an L5 form to the LTB and paying an application fee ranging from \$233 to \$1000, depending on the number of units included in the application.⁷ The application must be filed at least 90 days before the first proposed rent increase and must include information about the work that was done, the cost of the work, and proof that the work was paid for, together with information about the units impacted by the work and thus included in the application. AGIs can only apply to tenants who began occupying their units prior to the work being completed, and only to units that were impacted by the work.

Only eligible capital expenditures may be claimed by the landlord in their application. Primarily, this covers things necessary to the physical integrity of the building or to maintain the plumbing, heating, electrical, and ventilation systems, when such repairs or replacement *are necessary*. Repairs or replacement are deemed necessary when there is damage, a qualified expert deems it necessary, or an item has exceeded its weighted useful life, which refers to the estimated lifespan for the major components of a building. The regulations included in the *Residential Tenancies Act* list the weighted useful life of different things, which typically range from 10-20 years. Eligible capital expenditures also include repairs to provide accessibility to

those with disabilities, to promote energy or water conservation, or related to security. Notably, ordinary maintenance work and cosmetic renovations are not eligible capital expenditures.

In ordinary times (i.e. pre-COVID), the administrative process for AGIs is as follows. After a landlord files an L5 form, a Case Management Hearing is scheduled. A mediator is present at the Case Management Hearing and the landlord and tenants—often through lawyers or paralegals—are encouraged to agree to an amount for the AGI via negotiation. If the landlord doesn't show up, the application may be dismissed; tenants who don't show up may be taken to accept the landlord's claims and the proposed AGI. When no agreement is reached at this first hearing, a Merits Hearing is scheduled, where an LTB adjudicator considers the case of each party and delivers an order. The maximum increase the LTB can approve is 3% above the guideline for three successive years, up to 9% in total.⁸

Landlords must notify tenants at least 90 days in advance of any rent increase, via an N1 form, and landlords often start giving tenants N1 forms upon filing an L5 application. The N1 forms notifying tenants of the proposed rent increase will include the percentage the landlord is proposing to raise their rent above the guideline in the first year and the guideline increase for that year. However, an AGI must be authorized through an order issued by the LTB. In practice, tenants may have to wait months for a hearing and up to a couple of years for the entire process to run its course. Moreover, it is often not until the Case Management Hearing that tenants may learn of the full rent increase being sought by their landlord.

Although a landlord can apply for an AGI any time the costs discussed above are incurred, the vast majority of AGI applications are for purpose-built multi-family rental buildings. In some cases, a single AGI application will include multiple buildings, and large landlords sometimes include neighbouring buildings on a single application when work was done around the same time or involved something shared by multiple buildings, like a parking garage. A single AGI application, then, can impact hundreds of apartments.

AGI applications have risen dramatically over the past several years. The number of L5 applications in Ontario

⁶ For more information, see *Residential Tenancies Act (2006)*, additional regulations to the act, and *Interpretation Guideline 14*. As indicated in the *Interpretation Guideline*, accessibility improvements and work that promotes energy or water conservation may be eligible capital expenditures.

⁷ This report focuses only on AGIs involving L5 applications and "AGI" is used to refer only to these cases. Landlords and tenants can also mutually agree to an increase that exceeds the guideline via an N10 form. And landlords in Toronto also sometimes raise rent illegally and try to burden tenants with an increase that exceeds the guideline, without an N10 or L5.

⁸ This is the typical AGI process and the process the tenants interviewed for this report navigated. During the COVID-19 pandemic, the LTB has used written hearings for AGIs.

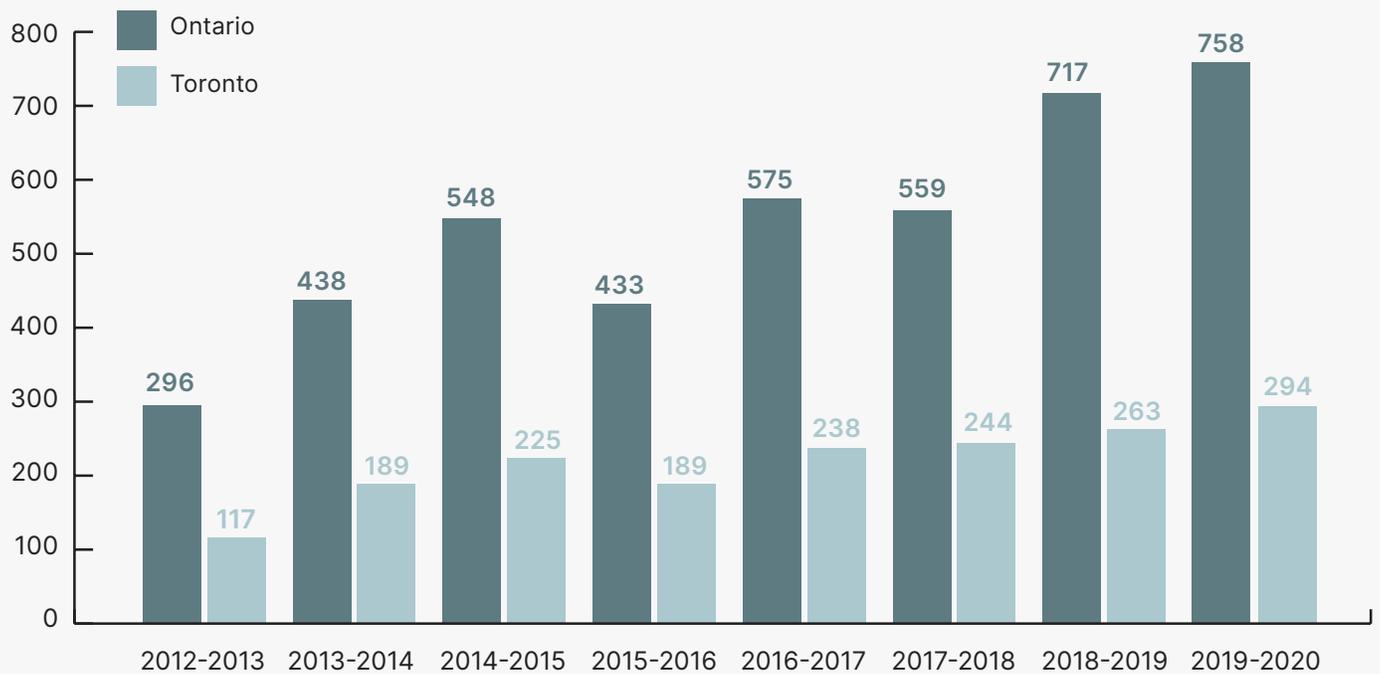
increased from 296 in fiscal year 2012-13 to 758 in fiscal year 2019-20, meaning there were just over *two and a half times* as many applications in 2019-20 as in 2012-13. Toronto has seen the same increase. The 294 applications in fiscal year 2019-20 was *two and a half times* the number of L5 applications in the city in 2012-13. A large number of buildings have even seen multiple AGIs in this time, with some Toronto buildings being the subject of as many as 5 separate L5 applications.⁹

This is not simply the result of there being more buildings either. When we looked at the estimated units affected by AGIs compared to the total stock of purpose-built rental

housing in Toronto each year, we saw that the proportion of affected units doubled, from 6% in 2012, to 12% in 2019.¹⁰

According to our analysis of AGI data, the number of units affected by AGIs in Toronto has been profound. We estimate the number of purpose-built units impacted by AGI applications from 2012-2019 to be 210,000. Given that Toronto had just over 260,000 purpose-built apartments in 2019, this means that the equivalent of approximately 80% of the city's apartments were targeted by AGI application over these eight years.

Figure 1: AGI applications by fiscal year



⁹ Social Justice Tribunals Ontario Annual Reports and LTB data. Time frames are from April 1 to March 31. See Appendix for more information about the data discussed in this report.

¹⁰ We estimated the number of units impacted by each AGI. See Appendix for more information. In 2012, there were an estimated 14,900 units impacted by AGI applications and 256,500 purpose-built units; in 2019, there were an estimated 31,200 units affected by AGIs and 262,400 purpose-built units, according to CMHC.

2. The Impact of AGIs on Tenants

AGI APPLICATIONS not only normally result in significant rent increases for tenants, but also typically follow lengthy and disruptive renovations and an unpleasant and confusing administrative process. This section examines the impact AGIs have on tenants, beginning with an explanation of how they raise rents over time. We then discuss the financial strain AGIs cause, how they lead to displacement, how the renovations may impact tenants, and what it is like for tenants to navigate the LTB process around AGIs. We follow this with a discussion of how tenants may challenge AGIs outside of the LTB. This section draws on extensive interviews with Toronto tenants who have experienced AGIs firsthand, conducted by one of the authors.

How Much AGIs Increase Rent Over Time

Because AGIs involve an additional increase of up to only a few percent per year, their financial significance may be underestimated. In addition, since AGIs are described as only lasting for up to three years, many tenants mistakenly believe—or are misled to believe—that the AGI portion will come off their legal rent after the one-to-three years over which the AGI is ordered. However, these rent increases add up to considerable amounts of money over time.

Below are tables showing sample rents over time with and without different AGIs. For these calculations, we used sample rents of \$1,150 and \$2,000 per month and a guideline increase of 1.8% each year.¹¹ The tables not only illustrate just how AGIs work but help us appreciate that an AGI can represent a significant increase in monthly rent that over time results in a substantial transfer of income from a tenant to their landlord.

The amount an AGI will increase a tenant's monthly rent by will depend on their rent prior to the AGI. But Tables 1-3 give a sense of the impact AGIs have on the amount of rent tenants must pay over time. Consider a longstanding tenant who's currently paying \$1,150 (illustrated in Table 1, on the left panel). A 3% increase for three successive years would mean a monthly difference in rent of \$110 after three years and a total of \$2,595 paid to their landlord *above and beyond* what they would have had to pay simply with guideline increases. The difference in monthly rent between what the tenant has to pay and what their rent would have been without the AGI only continues to increase after the three years have passed, since the rent the tenant must pay after the duration of the AGI is their legal rent. That is, after the three years, the guideline increase is applied to their new rent, not to what their rent would

Table 1: Above guideline increase of 3% per year for three years

AGI of 3% per year for 3 years, starting rent \$1,150				AGI of 3% per year for 3 years, starting rent \$2,000			
	Rent without AGI	Rent with AGI	Yearly Difference		Rent without AGI	Rent with AGI	Yearly Difference
Year 1	\$1,170.70	\$1,205.20	\$414.00	Year 1	\$2,036.00	\$2,096.00	\$720.00
Year 2	\$1,191.77	\$1,263.05	\$855.36	Year 2	\$2,072.65	\$2,196.61	\$1,487.52
Year 3	\$1,213.22	\$1,323.68	\$1,325.52	Year 3	\$2,109.96	\$2,302.05	\$2,305.08
Year 4	\$1,235.06	\$1,347.50	\$1,349.28	Year 4	\$2,147.93	\$2,343.48	\$2,346.60
Year 5	\$1,257.29	\$1,371.76	\$1,373.64	Year 5	\$2,186.60	\$2,385.66	\$2,388.72
Total Difference Paid Due to AGI After				Total Difference Paid Due to AGI After			
5 years				5 years			
	\$5,317.80				\$9,247.92		
10 years				10 years			
	\$12,565.44				\$21,852.72		
15 years				15 years			
	\$20,489.28				\$35,633.28		

¹¹ This represents the average rent increase guideline since 2013, when the maximum guideline was set at 2.5%. It is also close to the average guideline since 2001, which is just over 2%. Note that while we assume here that landlords will increase rent by the guideline amount, landlords do not have to increase rent each year.

have been without the AGI. Importantly, the tenant will continue paying significantly elevated rent for many years. After 10 years, the AGI will result in the tenant paying an *extra* \$12,565 in rent, compared to what they would have paid if there was no AGI; after 15 years, the total additional rent paid will be \$20,489.¹²

The impacts are more pronounced for a tenant whose starting rent is higher. For a tenant currently paying \$1,150, an AGI of 2.25% for two years would result in their rent being \$53 more per month after the two years (Table 2, left panel).

After five years, such a tenant will have given their landlord \$2,937 more than they would have without the AGI. For a tenant currently paying \$2,000, a 2.25% increase on top of the guideline for two years means a \$93 increase in monthly rent after the two years and an additional \$5,108 paid in rent after only five years, compared to what they would have paid in rent had they not had the AGI (Table 2, right panel). After 15 years, this tenant will have paid their landlord an extra \$18,061 because of the AGI—and this AGI is only half of the maximum allowable increase under the current rules.

Table 2: Above guideline increase of 2.25% per year for two years

AGI of 2.25% per year for 2 years, starting rent \$1,150				AGI of 2.25% per year for 2 years, starting rent \$2,000			
	Rent without AGI	Rent with AGI	Yearly Difference		Rent without AGI	Rent with AGI	Yearly Difference
Year 1	\$1,170.70	\$1,196.58	\$310.56	Year 1	\$2,036.00	\$2,081.00	\$540.00
Year 2	\$1,191.77	\$1,245.04	\$639.24	Year 2	\$2,072.65	\$2,165.28	\$1,111.56
Year 3	\$1,213.22	\$1,267.45	\$650.76	Year 3	\$2,109.96	\$2,204.26	\$1,131.60
Total Difference Paid Due to AGI After				Total Difference Paid Due to AGI After			
	5 years	10 years	15 years		5 years	10 years	15 years
	\$2,937.36	\$6,495.48	\$10,385.28		\$5,107.80	\$11,295.84	\$18,060.84

Table 3: Above guideline increase of 2.5% per year for one year

AGI of 2.5% per year for 1 year, starting rent \$1,150				AGI of 2.5% per year for 1 year, starting rent \$2,000			
	Rent without AGI	Rent with AGI	Yearly Difference		Rent without AGI	Rent with AGI	Yearly Difference
Year 1	\$1,170.70	\$1,199.45	\$345.00	Year 1	\$2,036.00	\$2,086.00	\$600.00
Year 2	\$1,191.77	\$1,221.04	\$351.24	Year 2	\$2,072.65	\$2,123.55	\$610.80
Year 3	\$1,213.22	\$1,243.02	\$357.60	Year 3	\$2,109.96	\$2,161.77	\$621.72
Total Difference Paid Due to AGI After				Total Difference Paid Due to AGI After			
	5 years	10 years	15 years		5 years	10 years	15 years
	\$1,788.36	\$3,743.52	\$5,880.96		\$3,109.92	\$6,510.12	\$10,227.24

¹² While the increase in rent resulting from the AGI remains in place after the one-to-three years has elapsed, tenants are due a rent decrease once the weighted useful life of the repairs has expired. Note, however, that since the weighted useful life of items is typically 12-20 years, this means tenants will at the very least be paying the AGI-inflated rent for this amount of time. Furthermore, whether a tenant will ever actually get the decrease they are owed is another issue. Tenants are only owed a decrease if they remain in their unit for the duration of the item's weighted useful life. Meanwhile, landlords in Toronto have thus far not been proactively applying decreases to tenants' rent, and have sometimes even contested tenants' claim to the decrease. For purposes of the above calculations, we have assumed the weighted useful life of the items included in the AGI to be at least 15 years.

Financial Strain

As the tables show, an AGI results in tenants paying several hundred dollars to thousands of dollars more in rent *per year*. This leads to financial strain. In a housing climate where around half of renter households are already paying unaffordable rents, such increases merely heap additional financial stress onto tenants, forcing some to cut back on food costs and other essentials and displacing those who simply cannot afford the increase. The incomes of many tenants do not increase at the rate of the rent increase guideline, let alone at the rate of an AGI. Given the gap between what many longstanding tenants now pay in rent and current market rents, if a tenant is priced out of their building due to an AGI, they are likely also priced out of their neighbourhood and may even be at risk of homelessness.¹³

The initial notice of an AGI creates significant stress and concern for tenants. A tenant in East York renting from landlord Akelius noted that when they received notice of an AGI, they were already paying almost 30% of their gross income towards rent. This meant that the AGI would have pushed them above that threshold of affordability. The tenant explained:

We were nervous because we knew money was tight for us, and we knew that we couldn't afford to move, which is a reality for many tenants in Toronto. And this increase compounded over three years could make it hard for us to stay in our home. That was a point of sincere concern.

For tenants living paycheck to paycheck or on fixed incomes, the proposed rent increase is particularly daunting. A Parkdale tenant living in a building owned by Nuspor Investments said that when tenants first got notice of the AGI, many were worried. "There was definitely fear," they said. "Many people live more or less paycheck to paycheck, so even \$35 a month is a significant squeeze."

Even tenants who get raises at work that help them better absorb the rent increase feel the financial strain. An Akelius tenant in Rosedale who has faced multiple AGIs noted that even with cost of living pay increases, paying the increased rent still causes strain. As they explained: "It's almost \$5,000 more per year. You feel it, you do feel it. The rent increases are in excess of the cost of living increases by a significant margin." A Hollyburn Properties tenant living in Midtown who has also faced multiple AGIs said:

It's a significant amount of money. It was like I was giving my raise, every year, to Hollyburn. I work hard, and why should I be paying Hollyburn, this company that has millions of dollars, and I'm trying to save for retirement?

They had calculated that the AGIs had meant an extra \$25,000 that went to Hollyburn instead of towards their retirement, putting them at financial risk in the future:

I don't know if I'll be able to afford to stay once I retire. It's definitely a concern of mine. I'm already going to be working past retirement age, and how many more AGIs are they going to hit us with over the next 10 years?

For tenants already retired and receiving a pension, their income is not increasing as their rent balloons, forcing many seniors to move out.

Displacement

The inability to afford higher rents resulting from AGIs leads to displacement. A CAPREIT tenant in East York described knowing tenants who were unable to afford the AGI sought by the landlord, giving them no choice but to leave. They explained: "I know of three people who are leaving the building since they filed for the AGI. ...If you get a 4.7% increase, and you're a pensioner, your pension isn't going up 4.7%." After already being dealt one AGI, tenants living in an Akelius building left en masse ahead of a second AGI coming into effect. A tenant described the exodus:

Eleven people moved out during and just after the renovations for the second AGI. ...We were smart enough to ask the landlord if they were going to apply for an AGI and they said 'Yes.' So we knew the second one was coming.

This represented more than 20% of apartments in the building.¹⁴

Meanwhile, a Hollyburn tenant was able to point to specific tenants who had moved out because rents simply became too high. They noted, however, that while many tenants have left for this reason, it can be hard to know sometimes whether a tenant simply decided to move on or was pushed out by the rent increases. Although one would think landlords may be averse to a tactic that drives tenants out, the tenant said: "The landlord is just glad that people are gone." This is because landlords can raise rent as much as they want on vacant units. We will return to this point in the next section, when examining AGIs from the perspective of landlords.

Financial strain and the risk of displacement are increased when landlords apply for multiple AGIs for the same building over the course of a few years. Table 4 shows how the monthly rent increased over time for two actual apartments in an Akelius building that has seen AGIs of 2.9% and 5.5% since 2012.

¹³ CBC News, *Yorkville Tenants Say Proposed Rent Hikes Could Make Some of Them Homeless*, 2019.

¹⁴ The nature of the renovations themselves may have contributed in part to these move outs, a theme we will return to below.

Table 4: Monthly rent for two apartments over time

2012	2013	2014	2015	2016	2017	2018	2019	2020
\$1,237.20	\$1,295.96	\$1,314.75	\$1,335.78	\$1,362.49	\$1,382.92	\$1,449.30	\$1,493.50	\$1,542.03
\$1,855.80	\$1,943.95	\$1,972.13	\$2,003.68	\$2,043.75	\$2,074.40	\$2,173.97	\$2,240.27	\$2,313.07

The rent increases resulting from the two AGIs mean that these tenants now pay \$3,658 and \$5,487 more in rent *per year*, respectively, than they did in 2012. Even though these increases are far from the maximum allowed for an AGI, the increase in rent over time is significant. For workers and people on social assistance who may not even see their incomes keep pace with inflation, these increases mean a larger and larger share of their income goes towards rent as time passes.

Living Through the Renovations

AGIs typically follow disruptive and invasive renovations that dramatically impact tenants’ quality of life and the enjoyment of their living space. Elevator replacement may be merely an inconvenience for some, but leaves many tenants unable to come and go as they please, if at all. Hallway work and balcony and window replacement creates enormous amounts of dust that enter into apartments, while balcony replacement means tenants don’t have outdoor access for anywhere from several months to a few years. Meanwhile, roof repairs and balcony replacement are notoriously unpleasant for tenants, causing noise that makes it nearly impossible to remain at home while work is being done—which can be for 12 hours per day and last for months.

An Akelius tenant in Rosedale who lived through balcony renovations described the experience:

You know what a jackhammer sounds like, but you don’t know what it’s like to be in a box someone is jackhammering on [until you live through balcony replacement work]. It is so resonant. There is no escape, and it is unrelenting. Eight, nine, ten hours a day they’re jackhammering the wall. ...It was bad enough that we had to leave the apartment for large stretches of the day.

This went on for an entire year, and during the summer tenants had to remove their air conditioners and keep their windows closed because of the dust. A Hollyburn tenant in Midtown described another impact of balcony work: “I lost my balcony for two years. ...You’re shit out of luck for your balcony for a period of time—always during the summer, when you want to use it.”

Elevator work can be disruptive in a different way. An Annex tenant living in a building owned by Mountrealco and managed by Briarlane noted that tenants were without an elevator for four months, meaning that people living with disabilities or seniors unable to easily use the stairs were significantly impacted. A Don Mills tenant living in a building managed by Compten Management that underwent elevator work said that the landlord told tenants that if they had a disability, they had to make their own accommodations to get access to their apartment. When the tenant confronted management about this, the landlord “basically said they would do nothing. They said they did not have to make accommodations for people in the buildings and that this was only going to go on for seven or eight weeks.” This elevator work ended up taking over four months. After media attention focused on the issue, management said the superintendent would be available to help tenants from 9:00-5:00 on weekdays and 1:00-4:00 on weekends. But, this left many tenants stuck in their apartments during the summer and unable to leave or access their apartments when they wanted or needed to.¹⁵

Indeed, tenants frequently noted how landlords either made no efforts to minimize inconveniences related to work being done or even inconvenienced tenants further throughout the course of the repairs. For example, when Akelius did balcony repairs for one building, they promised tenants noise cancelling headphones, but instead provided two packets of single-use foam earplugs to each apartment. When repairing the parking lot, Akelius opted not to bother arranging street parking with the City of Toronto for its tenants. This lack of effort leads many tenants to believe that their landlord hopes tenants will move out due to the work that leads to an AGI. Given how disruptive many of the renovations are, it is not surprising that some tenants do just that.

Meanwhile, tenants may be left with updates that lack function or forced to live with shoddy work. A Starlight Investments tenant in Little Portugal noted how the landlord replaced perfectly functional windows with new ones that wouldn’t open widely, meaning tenants could no longer ventilate their apartments during the summer. An Akelius tenant

¹⁵ Aaron D’Andrea, *Elevator Retrofit Strands North York Residents with Mobility Issues*, 2018.

in East York observed that even before tenants received notice of the AGI, some of the work to the building entrance was crumbling, meanwhile the poor choice of lights on needless floor lighting on staircases resulted in people burning their ankles and children burning their fingers.

In some cases, an AGI application comes on the heels of minor repairs and work that is not terribly disruptive or seems only cosmetic in nature. But this work may be no more welcome to tenants than disruptive roof or balcony repairs. Tenants report that security cameras feel like an invasion of privacy, while lobby renovations, replacing numbers on doors, and painting and re-carpeting hallways often seem like unnecessary work that may increase the value of the landlord's asset but does nothing to improve their living conditions. In these cases, tenants will be asked to pay for repairs that they did not request and that do not improve their homes. When it comes to this sort of work, the irritation begins when tenants receive notice of their rent increase.

Receiving Notice and Navigating the LTB Process

N1 forms notifying tenants of a rent increase that exceeds the guideline amount are typically met with confusion and outrage, as well as the financial anxieties already discussed. Tenants who have just lived through disruptive and inconvenient renovations may feel they are due a rent *decrease* in order to compensate them for their troubles. Meanwhile, tenants who have not been inconvenienced at all by work they deem largely superficial, cosmetic, or unnecessary are often furious to learn that they are being asked to foot the bill. This resentment is merely compounded by the fact that many tenants who face AGIs have landlords that neglect everyday maintenance issues and are slow to respond to the genuine maintenance needs of tenants, whether it be pests, mold, or in-unit repairs.

A common sentiment among tenants who have faced AGIs is that transferring costs on to tenants is fundamentally unjust. From their perspective, it is the landlord's responsibility to maintain the building, which they ought to be able to do thanks to the rent tenants pay. Tenants argue that landlords should be required to set aside a share of their accumulated profits to make necessary capital repairs and upgrades. However, under current rules, landlords are under no obligation to manage their finances responsibly and save for capital repairs. A CAPREIT tenant in East York noted the inconsistency between how tenants and landlords are currently treated. Tenants are expected to manage their finances and have money to pay rent each month, "[b]ut this huge landlord doesn't have to organize their finances so they have enough money set aside for repairs." This sense of injustice is only heightened because tenants have no ownership stake in their building. A Hollyburn tenant in Midtown made the comparison with condo buildings:

When people live in a condominium they pay maintenance fees and there's a reserve fund to pay for capital expenditures as years go on. These owners have a financial interest in the building. But renters, in addition to our monthly rent, are expected to pay maintenance fees, to fund the reserve fund, but we have zero financial interest in the building. And to me it seems wrong.

With an AGI, tenants foot the bill for repairs that simply increase the value of the landlord's asset, but rather than sharing in the financial gains, they are worse off financially. A Parkdale tenant likened an AGI to being presented with a bill for new tires from a car rental company because you happened to be the first person to rent the car since the tire change. The expectation is that the price of maintenance is factored into rental costs, and that over time the car rental company sets aside money from rentals to pay for new tires. Yet, with AGIs, the *Residential Tenancies Act* abandons this logic. Another Parkdale tenant put it succinctly: "We pay rent. If you have to renovate, then renovate, but take the money from our rent."

The way tenants are informed about their landlord's application for an AGI also sows confusion early in the process. Tenants typically receive an N1 notice—a rent increase notice—in advance of their usual rent increase anniversary. This means that tenants in a building receive notice of an AGI in a staggered manner. Unless a tenant is familiar with AGIs, they may not realize that their neighbours are also facing the same significant rent increase. This can delay collective organizing around the issue.

In addition, the N1 notice gives the impression that the proposed rent increase is official. While a landlord must check the box indicating the AGI has to be approved by the LTB and the N1 form's second page notes that tenants need not pay the AGI portion until an LTB order is issued, the amount entered in the box showing "Your New Rent" would appear to anyone as authoritative. Tenants unfamiliar with the process or unaware they can fight the AGI can easily come to think it is just a matter of the LTB rubber stamping the landlord's request.

Faced with their landlord trying to transfer costs to them and raise their rent significantly, tenants respond in different ways. Some do not engage with the process and accept the landlord's ask, either because they do not realize they can contest the increase or they do not want to. Others come together as a group to try to fight the AGI at the LTB. More rarely, tenants will organize outside of the LTB process to put pressure on their landlord to drop the AGI entirely. Of the tenants interviewed for this report, it was those in the last group who looked back positively on their experience rather than feeling they had been wronged. Here, we focus on the LTB process first, before moving on to other organizing efforts.

As described above, the LTB process for AGIs involves a Case Management Hearing, and possibly a Merits Hearing, where the expenses claimed in the landlord's application are scrutinized. Landlords have resources to hire high-paid lawyers and paralegals who can devote time to their cases and have experience with AGIs. Tenants, meanwhile, are often encountering the process for the first time and have jobs and other responsibilities that demand their time and attention.

Even participating in the LTB process may involve tenant organizing. Door knocking to set up email or messaging groups and arrange lobby meetings is common early on, and communication between tenants may continue throughout the process, resulting in tenants' collective participation. The Federation of Metro Tenants' Associations (FMTA) conducts outreach to help tenants facing AGIs. The FMTA will distribute flyers in a building, informing tenants of a lobby meeting where they help tenants understand the process, their rights, and give them information about the city's Tenant Defence Fund, which provides tenants with up to \$1,000 to pay a paralegal or lawyer to take on their AGI case.¹⁶ Neighbourhood groups like Parkdale Organize may also support tenants organizing in response to AGIs. Landlords are often hostile toward tenants' attempts to organize and act collectively, and have been known to remove flyers and notices distributed by the FMTA and other groups, as well as discourage tenants from meeting in lobbies.

The burden of challenging a landlord's application falls on tenants, and is cumbersome. Prior to the Case Management Hearing, tenants can obtain a copy of their landlord's L5 application and supporting documentation. These documents can include hundreds of pages of invoices, receipts, and other information relating to the application and expenses being claimed. Even if tenants do not believe that landlords should be able to transfer costs on to them via an AGI, challenging an AGI at the LTB means accepting the logic of AGIs and focusing attention on disputing particular costs. Tenants are effectively fighting a battle where the question is just how much of a rent increase they will be burdened with. And as tenants quickly learn, key issues like what counts as *necessary* or *cosmetic* are hardly straightforward. For example, Akelius tenants in Rosedale who had their balconies replaced had to pay for new railings as well, even though in principle the old balcony railings could have been re-used (the new railings cost 55% as much as the actual wall and balcony repairs). Compten Management tenants were charged a 10% project management fee

for their superintendent to screw in new light bulbs. Starlight tenants in Little Portugal were asked to pay for new numbers on apartment doors. Nuspor Investments tenants in Parkdale were asked to pay for landscaping work and lobby renovations. Akelius tenants in East York were charged for new locks and keys that the landlord paid for to allow contractors to enter the building after the landlord had decided to remove the superintendent from the building. This list could go on and on.

Notably, the burden of scrutinizing the landlord's application falls to tenants, which effectively turns the LTB into a body that rubber stamps whatever landlords ask for, so long as tenants do not protest. Yet, tenants report that landlords inflate costs in their applications and frequently include ineligible expenditures. This is confirmed when landlords agree to remove these items from their application, lowering the rent increase being requested. Thus, whether a cost is transferred on to tenants actually has more to do with whether tenants challenge it than its eligibility, since unchallenged items are unlikely to be removed even if legally they are ineligible.¹⁷

Tenants are encouraged to negotiate during the Case Management Hearing and agree with their landlord on the amount for the AGI. Indeed, tenants reported feeling pressured to negotiate at this hearing rather than going on to a Merits Hearing, for a few reasons. First, their inexperience makes it difficult for them to know whether they are being treated fairly, and so at the time may believe their landlord's offer to be a fair one. Second, they may not think they will be able to take work off for a second hearing or that the group of tenants will be able to stay organized through to another hearing. Third, tenants worry about risking their chances with an LTB adjudicator at the Merits Hearing, where a larger increase than what is being offered in mediation could be approved.¹⁸ Fourth, they may be encouraged to accept a deal by their paralegal—however, some tenants suspect this has more to do with a paralegal's financial incentives than the quality of the offer from the landlord.

The reality is that a fee of around \$1,000 typically represents fairly low compensation for a paralegal, given how much time it can take to review the landlord's documentation, meet with and advise tenants, and prepare for and attend two hearings. Some tenants said that their paralegal indicated this amount of money was sufficient to retain them up to and including the Case Management Hearing but not beyond, all but ensuring an agreement would be reached there. Another reality is simply that not all paralegals will be willing to devote the

¹⁶ However, participating in the LTB process does not necessarily require tenants organizing. One or two tenants may decide to collect signatures to access the Tenant Defence Fund and attend the Case Management Hearing.

¹⁷ As an illustration: if tenants believe that a certain item in good condition was repaired fairly recently and thus the landlord's claim for those costs is ineligible, the burden is on them to produce evidence that the boiler, or roof, or elevator was indeed replaced within the relevant time period. It is not clear how tenants can be expected to have this evidence, in particular given that they may have only recently moved into the building.

¹⁸ While beyond the scope of this report, who these adjudicators are and how they are appointed is an issue that merits close attention. As research by tenant groups like Keep Your Rent has uncovered, these adjudicators are political appointees who often have no legal experience or may even represent landlords in a professional capacity.

same amount of time and energy to a case or fight as diligently for tenants' interests. Whereas some tenants reported being very happy with their paralegal, many felt that a better outcome could have been achieved. It is certainly possible that this simply reflects tenants' disappointment in the outcome of their case, but they could often point to specific things their paralegal did that revealed their level of commitment.

In hindsight, tenants note that at the very least paralegals have expertise and experience to greatly assist tenants. But in addition to choosing a paralegal wisely, tenants need to be leading the decision making and directing their paralegal on how to act, rather than the other way around. And if tenants want to reject offers at the Case Management Hearing and move on to a Merits Hearing, they may decide to represent themselves, depending on their resources.

This is not to say that tenants are critical of the Tenant Defence Fund. This fund offers essential support and gives tenants the means to benefit from helpful expertise and experience. However, because of how the LTB process is structured and the level of funding for the city's program, tenants are not being set up for maximum success. Increasing the amount awarded to tenants to match the true costs of representation for an AGI would help here.

For tenants who fight an AGI exclusively via the LTB process, the most common outcome appears to be a small reduction to the landlord's proposed rent increase, typically reducing the AGI by 10-15%, and sometimes by as much as 25%.¹⁹ There are occasions where massive costs are removed from the application and a larger reduction is obtained or an issue with the application sees it dismissed entirely, but typically tenants win a reduction to the AGI that lessens the financial burden but still leaves them with a significant rent increase. The process leaves most tenants dissatisfied and feeling that the LTB's function is essentially to approve a landlord's request.

Fighting AGIs Outside the LTB Process

While tenants do have to at least participate in the LTB process if they want to challenge an AGI to ensure their landlord's ask is not approved in their absence, they are not limited to the LTB process. Tenants in Toronto have had success fighting AGIs by focusing their efforts largely on organizing outside of the LTB process. Here, the strategy is to put pressure on their landlord and make demands from a position of strength. Parkdale tenants from a Nuspor Investments building and Starlight tenants in Little Portugal are among those that have had success with this strategy.

Organizing in these cases started off in much the same

way as when getting tenants together to challenge an AGI at the LTB, with door knocking to set up lobby meetings and ensure tenants were connected and communicating, and lobby meetings to discuss strategy and plan actions. However, tenants' attention was focused more on actions that would put pressure on their landlord, and they worked continuously to maintain strong connections with each other, secure maximum involvement, and make decisions as a group.

In both cases, tenants reacted strongly upon receiving their N1 forms and felt the transferring of costs on to tenants was unjustified.²⁰ As they began speaking to each other about the increase and their feelings about it, tenants eventually decided to set up lobby meetings to discuss the issue as a group. For the Nuspor tenants in Parkdale, notice of their AGI came around the time that MetCap tenants in Parkdale went on a rent strike to protest AGIs and other issues. The successful MetCap rent strike helped demonstrate how to effectively organize and what could be achieved when tenants took collective action. Meanwhile, a Starlight tenant in Little Portugal had reached out to a legal clinic worker, who encouraged them to meet as a group and stay in touch with each other.

The specific actions tenants take to put pressure on their landlord can depend on the particulars of a situation, the landlord involved, and the opportunities available to tenants. While they were fighting the AGI, the Starlight tenants found out that the landlord had applied to the city for a variance that would allow them to convert storage lockers into additional apartments. By initiating a letter writing campaign targeting the panel that approves such applications and signing up to present their case against the application, the tenants showed the landlord that they were willing and able to act as a group and would not back down, forcing the landlord to decide whether the fight over the AGI was worth it. Starlight withdrew the variance application, which strengthened the tenants' position and confidence. At the Case Management Hearing for the AGI, Starlight offered a slight reduction to the AGI, which the tenants rejected. The tenants also reached out to other Starlight tenants by putting up posters around other Starlight buildings in the city; this caught the landlord's attention, who had their staff remove posters. As a result of all this, Starlight wrote the tenants to say that some components of the application would be removed, significantly reducing the AGI they were requesting.

The Nuspor tenants decided to go on a rent strike to put pressure on their landlord to withdraw the AGI application entirely. Initially, through many rounds of door knocking and many meetings, tenants reached a consensus that any AGI was

¹⁹ These estimates are based on interviews with tenants and discussions with tenant organizers and lawyers.

²⁰ At the same time, many felt that there was not much they could do by fighting the AGI at the LTB because there was no disputing the work had been done, and even if they felt much of it was unnecessary or superficial, they were repairs that typically led to AGIs. While it is true that tenants often end up paying for such repairs through an AGI, it is impossible to say whether or not such costs would have been approved by an adjudicator in these cases.

unacceptable. Meanwhile, the landlord had notified tenants that all the toilets in the building would be replaced, and there were rumours that the windows could soon be replaced, signalling to tenants that more work was to come, followed by more AGIs. Tenants felt that fighting the first AGI was crucial, otherwise they could see their rent skyrocket in the coming years. Even tenants who had recently moved in and would not be subject to the AGI application filed joined the fight for this reason.

The decision to go on a rent strike came after the landlord dismissed tenants' collective demands that the AGI be dropped and maintenance issues be addressed in the building. Prior to the Case Management Hearing, tenants voted to go on a rent strike.²¹ This gave tenants leverage ahead of their hearing, and after demonstrating outside the LTB prior to the hearing they demanded zero increase above the guideline. The tenants had decided that any offer from the landlord that was above the guideline would have to be brought back to the building committee for a vote, and no agreement was reached via mediation. As the rent strike entered its second month, tenants decided to distribute flyers in the landlord's community to raise awareness about the landlord's practices and the attempt to raise rent above the guideline. The landlord then offered to lower the increase by two-thirds, but that offer was rejected by the building committee. As they had done previously, the landlord also tried to appeal to tenants individually rather than negotiate with them as a group. Tenants then planned another public demonstration to raise awareness about the case; the day before that took place, the landlord called their lawyer to inform them the AGI application was being withdrawn.

Looking back, tenants observe that not only did the organizing result in the AGI being withdrawn, but it strengthened the sense of community in the building and neighbourhood, while creating a foundation for tenants to take action on other issues in the building as they arise. Indeed, most tenants interviewed for this report noted how coming together to fight an AGI helped strengthen connections between tenants and encouraged the formation of a tenants association.

It is important to note that AGI applications typically come against a backdrop of empty units being renovated as tenants move out and rents for those units often increasing by 50-100%. Many longstanding tenants also report noticing that their landlords are more responsive to newer tenants and their maintenance needs. Many repairs preceding an AGI seem to longstanding tenants to be more about attracting new, higher paying residents than improving the living conditions of those in the building. Meanwhile, if the renovations drive some

people to leave, or the AGI prices some tenants out, that simply means more vacant units for the landlord to renovate and rent at a much higher rate. This larger context in which AGIs take place in is not lost on tenants who face them.

In April 2020, the UN Special Rapporteur on the right to housing accused Akelius of violating tenants' human rights.²² Leilani Farha said that Akelius' business model, in its drive to maximize profits, was the culprit:

I have been told that Akelius purchases apartment blocks, often with tenants already living in them, and then undertakes renovations to communal areas and vacant apartments within the block, regardless of need. These renovations are a vehicle for Akelius to charge substantially increased rents to both new and existing tenants, enabling it to circumvent vital rent-control regulations which commonly allow for above-control rent increases where modernization works are undertaken.

As we see have seen already, and will discuss in more detail next, Akelius' business model is far from unique, and the company is hardly alone in using AGIs as part of a playbook to maximize profits. While the announcement from the UN may have caught some people by surprise, it was hardly news to Toronto tenants.

²¹ Although a large group of tenants withheld their rent, not everyone did. Some tenants were on repayment plans, so withholding rent would put them at increased risk of eviction; others did not feel comfortable withholding rent. Tenant organizers were understanding and worked to keep tenants unified, and some tenants who continued paying rent participated in actions and supported the cause.

²² United Nations Office of the High Commissioner for Human Rights, *Corporate Landlord is Abusing Tenants' Human Rights, Says UN Housing Expert*, 2020.

3. Landlords and AGIs

THE INCREASE in AGI applications over the past several years has happened in the context of increasing financialization in housing and the growing concentration of purpose-built rental units in the hands of large financialized and corporate landlords. This section begins with a brief introduction to financialization, before examining how financialized and corporate landlords view AGIs, the share of AGIs these landlords are responsible for, and landlord profits. This section draws on landlord annual reports and investor documents, and on discussions from industry events.

The Rise of Financialized Landlords

In Toronto and across Canada, the ownership of apartment buildings and other rental housing has been changing in recent decades. While most properties and units are owned by independent landlords who own one building or a few, a growing number have been acquired by large corporate owners and by large financial firms.

Many large corporate owners are family-owned private firms, often third-generation firms that emerged after the Second World War. In Toronto, many of the biggest landlords are family-owned and private real estate corporations. These include companies like Medallion, Greenrock, M&R Holdings, O'Shanter, Homestead, Crestview, and Hollyburn.

Since the late 1990s, there has been a rise in financialized ownership of apartment buildings, in which financial firms acquire and manage apartments as products for investors. This trend has emerged as part of financialization in the global economy, in which finance capital has taken on an increasingly dominant role in the operations of the economy and everyday life. In terms of apartment buildings, financialization involves the acquisition of apartment properties by financialized landlords, such as private equity firms, asset management companies, pension funds, insurance companies, and real estate investments trusts (REITs). These types of firms have been actively acquiring apartments over the past two decades. As of 2019, an estimated 18% of Canadian apartments are owned by financial firms. REITs alone have risen from owning zero suites in 1996, to 194,000 in 2019.²³

Financial firms have attracted attention because of their extreme focus on driving value for investors. REITs, for example, state that their main objectives are to raise the value of

their assets and deliver returns to investors. While private landlords of all types have historically pursued apartment ownership as a profit-making enterprise, financial firms appear to be more single-mindedly focused on extracting profits. In addition, these firms have advantages associated with their size, sophistication, and access to capital markets. As such, they have created new ways to extract greater profits from old apartment buildings.

To generate higher revenues and profits, financialized landlords actively manage their buildings using an approach called “repositioning.” This means that they reposition a building in the market to be more profitable. Repositioning involves reducing expenses by investing in energy efficiency upgrades, firing superintendents, harmonizing property management, and capitalizing in other ways on economies of scale. Repositioning also involves generating more revenues by charging higher fees and rents. Landlords can charge higher fees by monetizing amenities like parking, laundry, storage, party room access, sub-metering utilities, and so on. Perhaps most importantly, firms drive revenue by increasing tenants’ rents. A “value-add” strategy to repositioning, in particular, focuses on raising rents to close gaps between existing rents in a building and market rents. There are three ways this can be done in Ontario in purpose-built rental buildings subject to rent control: (1) raising rents on sitting tenants according to the guideline amount; (2) raising rents on turnover, capitalizing on vacancy decontrol; and, (3) applying for AGIs. Applying for AGIs can serve a dual purpose, not only securing rent increases above the guideline but also displacing tenants unable to afford the increase, thus achieving turnover and enabling even larger rent increases.

AGIs as a Profit-Making Strategy

AGIs are therefore one of the revenue-generating approaches adopted by financialized landlords to drive higher profits for investors. Financial firms openly describe AGIs in this manner, as a tool to drive higher revenues. CAPREIT, one of the largest private landlords in Canada, discussed AGIs in their annual reports in the context of how they drive growth. The REIT put it this way: “In line with its focus to maximize average monthly rents, CAPREIT continues to pursue AGIs where it believes appropriate.”²⁴ AGIs are pursued not because of a need to maintain buildings or because there is a need for

²³ Martine August, “The Financialization of Canadian Multi-Family Rental Housing: From Trailer to Tower,” *Journal of Urban Affairs*, 2020. Updated with current ownership figures.

²⁴ CAPREIT, *2017 Annual Report*, p. 71.

certain repairs, but when it is their financial interest to do so. As they noted, “Management continues to pursue applications in Ontario for AGIs where it believes increases above the annual guideline are supported by market conditions to raise monthly rents.”²⁵

Centurion REIT’s annual reports discussed AGIs in a section titled “Revenue Opportunities,” making it clear that the firm views AGIs as a tool for revenue generation.²⁶ Similarly, Northview REIT described AGIs as one of five “value creation initiatives.” Notably, Northview’s plan to create value by applying for AGIs was to capitalize on repair costs that they had not even spent. Northview described how “[t]he significant capital that was invested in the assets prior to [acquisition and the company’s formation] has enabled management to submit applications to the Ontario LTB to increase rents by more than the regulated annual increase.”²⁷ In Northview REIT’s case, the firm applied for AGIs to recoup costs from prior to its own formation.

InterRent REIT has similarly framed AGIs as a strategy for driving higher revenues. The firm’s 2017 annual report noted that “there are two ways to capture the upside from capital invested in the REIT’s repositioning programs. The first way is achieving market rent on suite turnover, and the second way is through AGIs for existing tenants.”²⁸ AGIs are clearly not understood in relation to the need for certain repairs or a desire to maintain buildings, but as a way to capitalize on (and profit) from investment, over and above its costs. In company reports, InterRent REIT spelled out how AGIs are a revenue-generating strategy, including detailed forecasts for rolling out planned AGI applications to deliver \$1.1 million in revenue generated from rent increases.

The decision to apply for AGIs has more to do with a firm’s investment strategy than it does with the need for repairs or the funding of vital upgrades. As the REIT documents reviewed above reveal, AGIs are seen as a tool for revenue generation. George Van Noten of Minto Properties and Minto REIT, however, described AGIs as something “to think through” in terms of “where does it fit in your investment strategy?”²⁹ Some investment strategies, such as a short-term plan to buy and then “flip” a property, may not include AGI applications, since the profits from AGIs may only be realized over a longer time frame. As he explained: “If you’re buying a value-add asset and you’re playing to a short-term hold—and [seeking] to drive up the terminal value—then doing an AGI

is not material in that equation.” These comments underline how financial firms view apartment ownership as a game to play, in which AGIs are simply one tool to increase revenues, in line with certain investment strategies.

The decision to apply for AGIs has also been discussed by landlords as a political calculation. Van Noten described how some investors, such as pension funds, are wary of the negative political attention that can occur if tenants fight back against AGI applications. He explained:

We think very carefully about that. We think about our partners, if we think it’s going to be a contentious exercise. We think about our pension partners and how this might land on them—they have a high degree of sensitivity to people showing up on their front door.

Such comments reveal that AGIs are totally optional for financial firms; they’re a tool that generates more income, but that income may not be worth the negative impacts associated with tenant protests or bad press.

Fear of negative press has not, evidently, held Minto back from applying for AGIs—the firm was among the most aggressive in applying for AGIs in our study. From 2012-2019, they applied for AGIs affecting approximately 5,100 suites, despite having only 2,300 suites in their Toronto portfolio.³⁰ In other words, the firm applied for AGIs affecting more than twice the number of suites in their portfolio. Three of Minto’s properties (111 Pacific, 740 York Mills, and 7 Richgrove) were subject to four AGI applications each in these years.

By comparison, Park Property Management—another large firm—filed only one AGI application from 2012-2019 impacting fewer than 200 units, despite owning a similarly large (1,900-suite) portfolio of aging post-war towers. This shows that landlords clearly do not *need* to apply for AGIs, and that applying is a choice based on a firm’s business strategy and appetite for negative press. The CEO of Park, Margaret Herd, underlined these points herself, explaining that: “we probably do two AGIs a year at the most. We’re very specific about what we’ll take to the LTB for an AGI.”³¹ In particular, the firm avoids applying for AGIs to cover the costs of things that tenants would see as deferred maintenance. As Herd explained: “We don’t take cosmetic improvements because the residents will claim that those are just deferred maintenance. We want to make sure they can have no claim that what we were doing was neglect.” These comments suggest that it is a practice of other

²⁵ CAPREIT, *2019 Annual Report*, p. 25.

²⁶ E.g. Centurion Apartment REIT, *2017 Annual Report*, p. 25.

²⁷ Northview REIT, *2018 Annual Report*, p. 26.

²⁸ InterRent REIT, *2017 Annual Report*, p. 43.

²⁹ These comments were made at an event hosted by the Federation of Rental-Housing Providers of Ontario in Toronto on March 7, 2019, entitled “How to Handle Crisis, Rent Strikes, Protest.”

³⁰ We estimated the number of units impacted by each AGI. See Appendix for more information.

³¹ These comments were made at an event hosted by the Federation of Rental-Housing Providers of Ontario in Toronto on March 7, 2019, entitled “How to Handle Crisis, Rent Strikes, Protest.”

While our data includes Toronto only, Park owns buildings elsewhere in Ontario.

landlords to apply for AGIs after making repairs resulting from neglect. This allows landlords to capitalize on saving money (while they neglect needed repairs), and then derive profits from maintenance when it is finally completed.

Park Property Management also selectively applies for AGIs based on if the company thinks tenants can afford the rent increase. While this may seem charitable, it signals that AGIs are not being used to recoup costs of needed repairs, but are a way to extract more from tenants in markets where they see that opportunity. As CEO Herd explained:

In some buildings we don't do it at all. We spent \$5 million at Thorncliffe Park putting in new windows and a [inaudible] system, but recognizing that it's considered a priority neighbourhood and that people there are the ones that could least afford having an AGI going up 3% per year, we just said, 'we're not going to do it—it's not worth having the tenants leaving because they can't afford the increase in rent.' It's not worth the media that goes along with it.

This once again underlines that, for landlords, applying for an AGI is a choice about whether to try to extract extra payments from tenants to increase profits. While Park Property Management may choose not to apply for AGIs in certain situations, other landlords may choose differently. Recall how AGIs are merely one way landlords in Ontario may try to increase revenues. Vacancy decontrol allows landlords to increase rent as high as they want when units turnover. For many landlords, the possibility that an AGI may price some tenants out is an incentive to pursue the increase, not a disincentive. Financialized landlords are driven to turnover units and maximize their profits by increasing rents.³² The strategies they employ have also been adopted by many corporate landlords. For these landlords, the question is not whether tenants in the building can afford the rent increase, but whether there are tenants in the market that will pay closer to market rates.

Types of Landlords and AGIs, 2012-2019

As discussed above, the use of AGIs in Toronto has increased substantially in recent years. A closer look reveals that this impact is driven primarily by financialized and corporate landlords, which accounted for 64% of AGI applications in Toronto between 2012-2019.³³

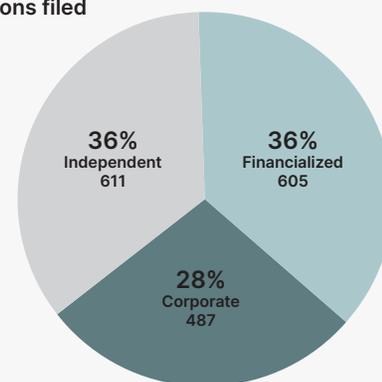
We can best appreciate the impact these landlords have on tenants and the affordability of housing in Toronto by looking at their share of AGIs in terms of units impacted. Although most AGI applications are for purpose-built rental

buildings and are intended to impact all units in a building, some AGIs apply only to particular units, to individual condos, or to houses. If we consider only applications filed, an AGI impacting a home with two rental units is equivalent to an AGI impacting hundreds of units in a high-rise apartment building.

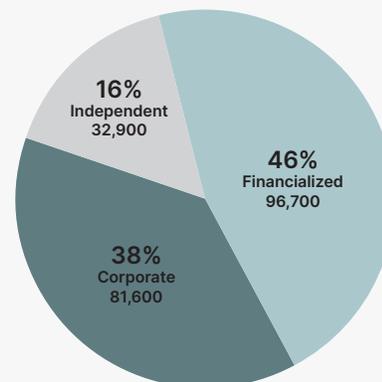
In order to calculate the share of AGIs by financialized and corporate landlords in terms of units impacted, we estimated the number of units impacted by each AGI in our data set.³⁴ Financialized and corporate landlords were responsible for 84% of AGIs in Toronto from 2012-2019, when considered as a percentage of the units impacted by AGIs. This means that of all the apartments subject to AGI applications in Toronto during this time, 84% of these apartments were owned by a financialized or corporate landlord at the time of the application. Figure 2 shows the share of AGIs by corporate and financialized landlords in Toronto from 2012-2019.

Figure 2: Toronto AGIs by landlord type, 2012-2019

AGI applications filed



Units impacted by AGIs^a



a: Number of units impacted are estimates. See Appendix for more information.

³² August, 2020.

³³ LTB data and publicly available information about building ownership and acquisitions. See Appendix for information about the data discussed in this report.

³⁴ L5 applications list the units an AGI is intended to apply to. Lacking access to actual L5 applications for the AGIs in our data set, we estimated the number of units impacted by each AGI in our data set, relying on information about the number of units in each building included in our data set. It is reasonable to assume that the margin of error for these estimates is consistent across applications from different types of landlords, thus does not impact the percentage reported here. See Appendix for more information about these calculations.

Major financial players and big corporate firms make up the list of top 20 AGI-filing landlords by units impacted, shown in Table 5. In fact, these 20 companies alone were responsible for over 60% of AGIs in Toronto between 2012-2019, in terms of units impacted. The list is dominated by financial firms, including CAPREIT, Starlight, GWL Realty Advisors,

Realstar, and BCIMC. Together, financialized landlords were responsible for 46% of Toronto AGIs during this time. Large corporate firms were responsible for 38% of Toronto AGIs in this time period, led by Greenrock, M&R Holdings, O'Shanter, and Homestead.

Table 5: Top 20 landlords applying for AGIs, by units affected, 2012-2019

	Landlord	Type	Filings	Units Affected ^a
1	CAPREIT	Financial	115	22,600
2	Starlight Investments	Financial	205	16,100
3	Realstar ^b	Financial	32	9,400
4	GWL Realty Advisors	Financial	21	9,100
5	BCIMC	Financial	27	7,200
6	Greenrock	Corporate	14	7,200
7	M&R Holdings	Corporate	26	5,600
8	O'Shanter	Corporate	36	5,300
9	Homestead	Corporate	24	5,300
10	Minto	Financial	24	5,100
11	Greenwin ^c	Corporate	28	4,900
12	Medallion	Corporate	17	4,600
13	H & R / Princess Management	Financial	20	4,500
14	Timbercreek	Financial	27	4,300
15	Barney River	Corporate	15	3,600
16	Hollyburn	Corporate	42	3,500
17	Continuum REIT	Financial	11	3,000
18	Oxford	Financial	15	2,400
19	Centurion REIT	Financial	27	2,200
20	Sunlife Financial	Financial	10	2,100

a: Rounded to the nearest 100. Number of units affected are estimates; see Appendix for more information.

b: This includes data for certain Realstar-managed properties, some of which may indeed be owned by separate financial firms (e.g. Hardit Corporation and Talisker Corporation). For these properties it is difficult to determine ownership.

c: Greenwin manages a number of buildings for other landlords. AGIs included here are only for buildings where we believe Greenwin has an ownership stake or is affiliated with the identified owner.

In contrast, independent landlords were unlikely to apply for AGIs. Despite owning the majority of units in Toronto, independent operators represented 36% of filings, affecting 16% of units from 2012-2019. Property management companies appear to have large role in determining which independent landlords apply for AGIs, according to our data. Briarlane, for instance, filed at least 91 AGI applications on behalf of landlords between 2012-2019. While some of these applications were on behalf of corporate clients, many were for independent landlords. Firms like Briarlane bring the expertise, scale, and know-how found in bigger firms, which allows small-scale operators to adopt their techniques.

Landlord Profits

We have seen how financialized landlords pursue AGIs as a revenue-generation strategy. We have also seen that large financialized and corporate landlords are the most active in applying for AGIs in Toronto. As we will argue that AGIs are not needed for landlords to survive, we turn in this section to the profit margins of some of the biggest applicants for AGIs in the city.

Investor returns are one way of understanding how profitable financialized landlords can be. BCIMC manages investments for British Columbia's public sector, including public sector pensions. Their investments in domestic real estate, which includes purpose-built rental buildings in Toronto, provide investors with annual returns of around 8%.³⁵ Centurion, a private residential REIT, delivers annual returns of around 10% for its investors.³⁶ GWL Realty Advisors is part of the Great-West Life insurance company's real estate group, with a variety of real estate investment funds. Their Canadian Real Estate Investment Fund No. 1, which allows pensions, group savings plans, and individuals to invest in Canadian residential and commercial real estate, provides investors with 9% annual returns.³⁷ Akelius, which describes itself as "a long-term investor in residential real estate," has seen average annual returns of 11.5%.³⁸ Meanwhile, InterRent REIT, a publicly traded residential REIT, noted that an individual who invested in the REIT in 2014 would have tripled their money by the end of 2019.³⁹

These kinds of returns mean that investors are seeing their wealth increase by more than 8% each year by entrusting their money to these landlords. How and when investors access their increased wealth depends on the nature of their investment (i.e. whether they own shares of a REIT, have a stake in real estate through their pension, or have invested some other way). In the case of REITs, for example, returns for investors come in the form of dividends and the increase in value of their units of the REIT—shares of a REIT are called "units," and those who own units of a REIT are called "unitholders." REITs often refer to the amount paid in dividends to unitholders over a period of time as a "distribution" made to investors.

Investors in residential real estate are receiving these considerable returns because financialized landlords are extremely profitable. In 2019, CAPREIT reported \$778 million in revenues. After paying utilities, property taxes, and other operating costs, CAPREIT had a net operating income (NOI) of \$508 million, giving it margins of 65%. REITs typically report NOI, which they view as a good measure for determining the profitability of their investments. Although REITs may differ slightly in how they calculate NOI, it is typically revenues (i.e. rent and fees charged to tenants) minus property taxes, utilities, and other operating costs like maintenance, employee salaries, and advertising. A large share of a REIT's profits are distributed directly to unitholders. In 2019, CAPREIT distributed around \$220 million to its unitholders, or around 28% of its total revenues.⁴⁰

Other Canadian residential REITs report similar margins, and our review of financial reports reveals that NOI margins of 60-65% are standard for Canadian residential REITs. On revenues of \$145 million in 2019, InterRent REIT had an NOI of \$96 million and distributed around \$33 million to unitholders.⁴¹ Also in 2019, Minto Apartment REIT had an NOI of \$65 million and distributed around \$20 million to unitholders, from its \$104 million in revenues.⁴² In 2018, Northview REIT had an NOI of \$212 million and distributed \$100 million to unitholders, while reporting \$364 million in revenues.⁴³ On operating revenues of \$68 million in 2018, Centurion had an NOI

³⁵ BCIMC, *Corporate Annual Report 2018-19*.

³⁶ Centurion Apartment REIT, *Investing in Apartments for Income and Stability*, 2017.

³⁷ GWL Realty Advisors, *Canadian Real Estate Investment Fund No. 1 2019 Annual Report*.

³⁸ Akelius, *2019 Annual Report*, p. 10.

³⁹ InterRent REIT, *2019 Annual Report*.

⁴⁰ CAPREIT, 2019. There are a variety of metrics that may be considered to indicate the true profits of a REIT, and NOI is sometimes referred to as "gross profits." Due to the complexity of the operations of these companies, their acquisition and sale of buildings, and the nature of accounting, it can be difficult to determine precisely what their net profits are for some time period. We believe that NOI is a useful indicator of profits that provides some consistency across landlords and across time spans. A portion of NOI may go towards interest payments or funding acquisitions, and a large share goes towards paying dividends to unitholders. The amount distributed to unitholders can be seen as a floor for determining profits for a given year.

⁴¹ InterRent REIT, 2019.

⁴² Minto Apartment REIT, *2019 Annual Report*. Note: not all buildings owned by Minto are part of the REIT's portfolio or were at the time of the AGIs in our data set.

⁴³ Northview REIT, 2018.

of \$46 million and distributed around \$50 million to unitholders.^{44, 45}

Financial information is only publicly available for some landlords. But it is reasonable to think that other landlords using the same value-generation strategies and amassing large portfolios have similar margins. Take Starlight, for example, which is a privately held real estate investment and asset management company. Starlight aggressively pursues AGIs and seeks to maximize its profits by turning over units and exploiting vacancy decontrol.⁴⁶ It has amassed its portfolio of buildings almost exclusively through acquisitions, such as the 2020 acquisition of Northview REIT (in partnership with KingSett Capital). Given Starlight's business model and growth, we believe it is safe to assume that the company is quite profitable. The institutional investors and wealthy individuals investing with Starlight would not do so if returns were not comparable to other financialized landlords. The same can be said for asset management companies and landlords who manage funds for institutional investors, like Timbercreek (now Hazelview) or Realstar.

Big corporate landlords and large family-owned private firms also manage to amass large portfolios, compete with financialized landlords, and often use a similar playbook to drive profits. While we are not privy to their books, these are successful companies operating in a sector that has seen investors flock to it in recent years because of the large profits to be made, so it stands to reason they make healthy profits themselves.

AGIs undoubtedly pad landlord revenues. An AGI of 2% or 9% will increase a landlord's revenue from that building by at least that much. However, given the profits landlords are enjoying, such increases in revenue represent only a fraction of their margins. This aligns with what landlords themselves say, as seen earlier in this section. Applying for an AGI is a choice—one that landlords in Toronto have increasingly decided to make because it is in their financial interest to do so. As the next section shows, this is out-of-step with the stated policy rationale for AGIs.

⁴⁴ Centurion Apartment REIT, *2018 Annual Report*. This estimate of money paid to unitholders is based on multiplying the average number of outstanding units by the distribution for "Class A units," which is the lower distribution amount for units of the REIT. It appears that Centurion had additional income from investments in 2018.

⁴⁵ Although it is not a REIT, GWL Realty Advisors reports NOI for its Canadian real estate fund, which includes a number of Toronto purpose-built rental buildings that were subject to multiple AGIs between 2012-2019. The fund had an NOI of \$241 million in 2019 (GWL Realty Advisors, 2019).

⁴⁶ August, 2020.

4. Examining the Rationale for AGIs

WE HAVE seen that AGIs can put tenants under intense financial strain and fuel displacement. We have also seen that many large and incredibly profitable landlords view AGIs as a tool to increase revenues and help them achieve their primary goal of maximizing profits. As financialized landlords continue to acquire purpose-built rental buildings and their priorities and strategies are adopted by landlords throughout the city, a growing number of Toronto renters are seeing the costs of capital repairs transferred on to them.

Given this, it seems only natural to ask: *Why do we have AGIs?* Or, to put it another way: *Why do we have this provision in the Residential Tenancies Act that allows for the transferring of certain costs from landlords on to tenants?*⁴⁷

In response to our inquiry about the rationale for AGIs, current Minister of Municipal Affairs and Housing, Steve Clark, said:

Above guideline rent increases allow landlords to invest in repairs and upgrades to their aging rental buildings and ensure that tenants can continue to have access to well-maintained and secure rental housing. Above guideline increases play an important role in ensuring that Ontario's rental stock is well maintained.⁴⁸

What is not clear from this response is whether AGIs are necessary to ensure landlords invest in repairs and upgrades—as opposed to merely facilitating this—or why this may be the case. AGIs may allow landlords to invest in their buildings, but this alone does not provide a good rationale for the policy. For example, setting aside a portion of rental revenues each year would also allow landlords to invest in repairs and upgrades. While the Minister's response suggests that certain repairs and upgrades would not happen without AGIs, it does not explicitly say this, nor does it provide any insight into why these repairs and upgrades would not otherwise happen and why AGIs are an appropriate policy to address this issue.

In order to get a better understanding of the rationale for AGIs, we looked at the record of debate around relevant

legislation in Ontario. The main rationale for AGIs, as stated by policy makers, is to incentivize property owners to maintain their buildings by allowing them to transfer the costs of certain repairs on to tenants. Why landlords would need this incentive has not always been clearly expressed.

In 1997, the *Tenant Protection Act* was introduced by the Progressive Conservative government. Minister of Municipal Affairs and Housing Al Leach justified AGIs as incentives for landlords to do maintenance. In his comments, he stated that landlords simply would not invest in their buildings without an incentive to do so:

Under the current system, it is not surprising that property owners are not doing any repairs to their buildings. The current system allows the property owner to recover very little of the money spent on repairs, so the repairs are not done. ...We're going to fix that by letting property owners recover the money they legitimately spend to repair the buildings. We're giving the property owners an incentive to do maintenance and we're giving them the means to recover the money they spend on repairs.⁴⁹

When introducing the *Residential Tenancies Act* in 2006, Liberal Minister of Municipal Affairs and Housing, John Gerretsen, similarly described how AGIs would “protect landlords and offer incentives to them to invest in and maintain their buildings.”⁵⁰ Speaking favourably of the legislation, fellow Liberal Brad Duguid said:

So landlords will still be encouraged to make necessary repairs and capital investments but they won't be able to get out of hand, nor will tenants have to continue to pay for those investments well into the future when the landlords stop paying for the costs.⁵¹

While it is clear that lawmakers thought it was important to incentivize landlords to do certain repairs, they did not specify why they believed this to be the case. One interpretation is that lawmakers believed landlords would simply not bother

⁴⁷ This question could be understood in at least two ways. One could interpret it as seeking a causal explanation for the presence of AGIs. An answer to that question could involve an account of who proposed the idea, who lobbied for AGIs, and what decision makers discussed behind the scenes when AGIs were included in legislation. The question could alternatively be interpreted as seeking a rationale for having AGIs—which is our intent here. An answer to that question looks at the rationale for this transfer of costs from landlords to tenants. It is assumed that a government that enacts or maintains a policy should be able to justify its existence. If they cannot, we suggest that the law should be changed.

⁴⁸ Correspondence, received January 11, 2021.

⁴⁹ Ontario Legislative Assembly, *Hansard*, 36th Parliament, 1st Session, May 12 1997.

⁵⁰ Ontario Legislative Assembly, *Hansard*, 38th Parliament, 2nd Session, May 9 2006.

⁵¹ Ontario Legislative Assembly, *Hansard*, 38th Parliament, 2nd Session, May 9 2006.

to invest in their properties unless they were allowed some financial gain. We call this the “lazy landlord” rationale.

The lazy landlord rationale clearly does not justify AGIs. If landlords can afford to do repairs but are simply unwilling to, there are better ways to incentivize maintenance that do not transfer costs on to tenants and that do not gift landlords with increased profits. For example, government could adequately enforce appropriate property standards and impose penalties on landlords when certain necessary repairs are not completed. If the problem is a lack of landlord motivation, the appropriate solution should motivate landlords without causing harm to tenants, which AGIs clearly do.

A second interpretation is that policy makers believe landlords need to be able to transfer certain costs on to tenants because they *can not afford* to invest in their buildings otherwise. In 1992, the NDP Minister of Housing Evelyn Gigantes discussed AGIs in debating the *Rent Control Act*. The inclusion of AGIs in the legislation was based on feedback from landlords, who “asked to be able to get rent increases above the rent control guideline in order to pay for major repairs.” The Minister noted that most landlords wouldn’t need it, saying that, “most landlords never apply for an increase above the rent control guideline. The vast majority of landlords, about 80% annually, are able to continue to maintain their buildings using only the guideline rent increase each year.” The legislation, she said, “balances the need for landlords to repair their buildings with the need for tenants to be protected from high increases.”⁵²

In 2006, Progressive Conservative Lisa MacLeod claimed that landlords *needed* to transfer costs of repairs to tenants:

Ever since rental control was introduced 30 years ago, the system has recognized that landlords need to be able to increase rents for major cost increases. Over the years, the grounds for applications have effectively been made fewer and fewer... Restricting landlords from recovering their full justifiable costs through the above-guideline rent increase application process will discourage landlords from investing in their buildings.⁵³

In 2017, Liberal lawmakers expressed similar sentiments, asserting that without AGIs, landlords would be *unable* to carry out certain repairs. Nathalie Des Rosiers outlined the government’s thinking:

It’s also possible for landlords who are faced with huge renovation costs that are important and necessary for the building—huge capital costs above the rental guideline increase—that will be borne by the tenants.

...[T]his is an integral part of rent control « à l’ontarienne ». This is an integral part of ensuring that landlords who want to do and have to do important work to maintain their building—to provide accessibility, for example, for persons with disabilities—are not prevented from doing so.⁵⁴

These lawmakers go beyond claiming that AGIs will incentivize or encourage repairs and suggest that landlords need to pass costs on to their tenants. The claim is that tenants must cover the costs because landlords themselves cannot. We call this the “cash-strapped landlord” rationale for AGIs.⁵⁵

The most obvious problem with the cash-strapped landlord rationale is that it is simply not true. As the previous section demonstrated, Toronto’s large landlords have massive profit margins. They make more than enough to invest in maintenance, repairs, security, or whatever upgrading is currently used to apply for AGIs, while still turning hefty profits.⁵⁶ Meanwhile, financialized and corporate landlords accounted for 64% of AGI applications in Toronto from 2012-2019, and 84% of AGIs in terms of units impacted. This means that a large majority of AGI applications come from landlords who can easily afford to cover the costs themselves.

Admittedly, not all Toronto (or Ontario) landlords are large corporate or financialized firms. Smaller landlords—the “mom and pop” operators that attract more sympathetic media attention⁵⁷—could be the players lawmakers have in mind when endorsing AGIs. If these operators were in need of AGIs to survive, however, we would expect to see them applying for AGIs en masse, over the years. Our data reveals, though, that the bulk of independent owners are not applying for AGIs. Neither have we seen a rash of landlord bankruptcies—suggesting that most are getting on just fine without the AGI-induced revenue boost.

Although rents are high even in rental buildings owned by smaller landlords and one would think all landlords are enjoying healthy revenues and profits, it is possible that some landlords are genuinely unable to afford certain capital repairs. While we suspect that small-scale landlords are quite capable of living within their means, it is also important to

⁵² Ontario Legislative Assembly, *Hansard*, 35th Parliament, 2nd Session, June 1 1992.

⁵³ Ontario Legislative Assembly, *Hansard*, 38th Parliament, 2nd Session, June 20 2006.

⁵⁴ Ontario Legislative Assembly, *Hansard*, 41st Parliament, 2nd Session, April 25 2017.

⁵⁵ Note that both the lazy landlord rationale and the cash-strapped landlord rationale are consistent with Minister Clark’s response. The Minister noted that AGIs allow landlords to invest in their buildings. The natural question is: *why* are AGIs needed in order for landlords to invest in their buildings? The two rationales provide different answers to this question. To our ears, “allow” implies that landlords would be unable to invest in their buildings without AGIs, which is in line with the cash-strapped landlord rationale.

⁵⁶ Whether landlords could afford these repairs in previous decades, with different rent controls and a different rental market, is beyond the scope of this report and would require examining landlord profits from this era. The concern, here, is whether the rationale for AGIs justifies their existence today.

⁵⁷ Kath Hulse, “The everyman archetype: Discursive reframing of private landlords in the financialization of rental housing,” *Housing Studies*, 2020.

note that the current system is not designed around this cash-strapped landlord logic. If it were, there would be a mechanism to ensure that landlords actually *need* an AGI due to lack of funds. If lawmakers believe that landlords should be able to charge tenants for expenses they cannot otherwise afford, it is only reasonable that landlords should be required to demonstrate that they actually need the funds in their AGI applications. Such a requirement would be a simple check to avoid cases in which hugely profitable landlords transfer their maintenance expenses on to tenants, despite being able to easily afford them, or (as we've shown) as a revenue-generation strategy. Curiously, though, landlords currently do not have to provide any information about their revenues or profits over the years when applying for an AGI. Instead, landlords making hundreds of millions of dollars in profits each year simply transfer the costs of maintaining their buildings—which are assets whose value increases more through the repairs—on to tenants who are already facing unaffordable rents. It is hard to see how this is rational, let alone fair.

At the very least, requiring landlords to provide information about their revenues and profits when applying for an AGI could help ensure that costs are only transferred to tenants when there is an actual need, from the landlord's perspective. And given that AGIs involve capital repairs that are infrequent and last for 10-20 years or more, a landlord's financial statements from the previous few decades are relevant. If landlords are making profits, then they are able to set aside money each year for capital repairs when they are needed. Thus, how much money a landlord has made in the years prior to an AGI application is important for determining whether they are genuinely unable to afford the capital repairs.⁵⁸

While adding such a requirement to the application process and making such financial information part of the documentation that tenants are able to review when arguing their case at the LTB might ensure that only "cash-strapped" landlords would be eligible to transfer costs on to tenants, there remains the question of whether AGIs are justifiable in even those cases. Let us suppose, for the sake of discussion, that there are in fact some landlords who do not make enough from rents to pay for necessary capital repairs. AGIs transfer these costs on to tenants, resulting in significant rent increases. On the one hand, this promotes the viability of a certain business model, i.e. a private landlords' ability to make profit. On the other hand, it affects the relative affordability of rent for tenants. By allowing landlords to transfer the costs of certain repairs

on to tenants, we are prioritizing the first over the second. Given the affordability crisis, the fact that AGIs exacerbate the problem, and that housing is a basic need, we argue that the affordability of housing should take precedence over landlord profits. In our view, transferring these costs on to tenants is not justified, even if landlords are genuinely unable to afford them. In short, if it is not possible to have affordable rents and landlords make a profit while adequately maintaining buildings, then we are faced with the question of why this model for delivering housing is deemed acceptable. We suggest it would be better to prioritize affordable rents, and explore other models for delivering housing.⁵⁹

If our society is faced with a choice between private landlords being able to make a profit and people being able to afford rent, we think that the affordability of housing should be prioritized. Even for those who might disagree, however, it is the case that landlords are currently able to pay for capital repairs without applying for AGIs, at least in the vast majority of cases. Thus, AGIs are simply not justified by the rationales that have been offered by lawmakers. If landlords can afford to pay these costs but do not, government should not offer an incentive paid by someone else (i.e. tenants). And even if there are cases in which landlords truly cannot afford certain necessary repairs, current regulations are not designed to identify them.

⁵⁸ Cases where a landlord has only recently acquired a building may be more complicated, but the basic idea is that this financial information should be considered. In the case of recent acquisitions, the financial statements of the previous landlord and the purchasing landlord's statements regarding the rest of their portfolio could be relevant.

⁵⁹ The claim is not that the two are inherently incommensurable but only that AGIs present us with an *apparent* choice between the two and prioritize the viability of a certain business model. The affordability of housing and the realities of different models of housing are beyond the scope of this report. Note, too, that we believe landlords can make profits even without AGIs, based on the evidence discussed in the previous section. The point here is simply that even *if* it were true that landlords could not afford to pay for these repairs, it does not follow that AGIs are justified. Furthermore, we are not claiming that rents are unaffordable only because of AGIs, although AGIs do make rents less affordable for tenants.

Conclusion

AGIs HAVE been on the rise in Toronto in recent years, with two and a half times more applications in fiscal year 2019-20 than there were in 2012-13. In a city where around half of renters are paying unaffordable rents, a rent increase of up to 3% above the rent increase guideline for three successive years is hardly trivial. AGIs can result in tenants paying tens of thousands of dollars more in rent over the course of their tenancies, if they are not priced out of their homes and displaced from their neighbourhoods.

Discussions and regulations relating to AGIs often focus on repairs and maintenance, and it is true that the city's purpose-built rental stock is old and in need of repairs. However, as we have seen, what motivates landlords to conduct renovations and apply for AGIs is not the need for certain repairs but the opportunity to increase their revenues. Landlords—which in Toronto increasingly means financial firms or entities operating purely as investment vehicles—are not shy about admitting this in their annual reports, in their investor documents, and at industry events. Although lawmakers appear to believe that the quality of housing improves as landlord revenues increase, tenants who see their requests for basic maintenance go ignored while their lobby is renovated or a new carpet put down in the hallway know that the relationship between revenues and maintenance is not so straightforward. Despite handsome profits, many landlords are content to ignore pests and in-unit repairs, particularly when these impact longstanding tenants paying lower rents. Meanwhile, AGIs incentivize landlords to conduct the sorts of repairs that can result in an AGI being awarded.

Large corporate and financialized landlords account for the vast majority of AGIs in Toronto, meaning that these provisions in the *Residential Tenancies Act* facilitate the further transfer of income from tenants to these incredibly profitable entities. Close scrutiny of the stated rationales for AGIs reveals that these rent increases are unjustified. There are ways to encourage landlords to maintain their buildings that do not create significant harms for tenants, as AGIs do. Yet, via an administrative process that favours landlords, tenants are allowed to challenge only a cost's eligibility, leaving unexamined whether their landlord makes more than enough through collecting rent to pay for the capital repairs themselves. As a result, landlords who are making millions in profits are able to further boost their revenues by transferring the cost of repairs on to tenants.

During to the COVID-19 pandemic, the LTB moved to written hearings for AGI applications. This limits tenants' ability to participate in the administrative process and may shorten the timeframe tenants have to organize in response to an AGI. Tenants reported finding the normal administrative process confusing and unfair, and written hearings severely limit their ability to get answers to questions, examine evidence upon request, and know if they are being treated fairly. It is also not clear how tenants can negotiate in this new process. Tenants seeking information about these changes or trying to obtain documentation their landlord is not providing find themselves waiting on hold for hours to reach an overtaxed LTB. Thus, despite announcing a "rent freeze" for 2021, the Ontario provincial government appears to have made it easier for landlords to increase rents through AGIs.

The move to written hearings will likely encourage tenants to organize and fight AGIs outside of the LTB process. Tenants in Toronto have been successful fighting AGIs by putting pressure directly on their landlord, and as tenants struggle in the wake of the pandemic, witness tenants organizing around other issues, and see their ability to advocate on their behalf further constrained at the LTB, we can expect more tenants to gravitate towards strategies that have been successful.

As we have learned, landlords make a financial and political calculation when applying for AGIs. They may choose not to pursue an AGI if they do not think the market can support the rent increase, if they think it will not be profitable for them to pursue, or if it might result in a backlash, negative publicity, and other costs. Tenants who have fought AGIs outside of the LTB process—while, of course, participating in the administrative process as well—have understood that their landlords view things in these terms. The challenge for tenants is to increase the costs to the point where their landlord decides that obtaining the AGI is simply not worth it. Landlords typically do not need the extra revenue they can obtain through an AGI. They are happy to take it if the system allows them to and it is easy for them to do so, but they do not need the money.

Appendix: Details on our Methods

Tenant Interviews

Tenant interviews were conducted by Philip Zigman via Zoom and telephone in September and October 2020.

L5 Data

Data regarding all L5 applications in Toronto from January 1, 2012 to March 31, 2020 was obtained from the LTB. Data regarding the number of L5 applications in Ontario was obtained from annual reports issued by Social Justice Tribunals Ontario. These annual reports cover fiscal years, from April 1 to March 31. In order to compare Toronto-based data to Ontario data, we used fiscal years, while for the remainder of our analysis we used calendar-year data for 2012 to 2019 (inclusive), the years for which we had complete data.

Units Impacted

While most AGI applications are for purpose-built rental buildings, some AGI applications are for houses, condo units, or a small number of units within a larger building. Considered only as applications, an L5 that impacts one tenant in a house is equivalent to an L5 impacting hundreds of tenants in a high-rise building. In order to better understand the impact of AGIs and of particular landlords, we estimated the number of units subject to each AGI in our data set. The following method was used for calculating the number of units subject to an AGI.

If LTB data listed specific units subject to an AGI, only those units were counted. If no specific units were listed, we counted all units in the building (or buildings) listed as subject to the AGI, relying on publicly available information about the number of units in each purpose-built rental building in our data set. For houses, condo units, and apartments above stores, we estimated that one unit was impacted by the AGI application. We recognize that an AGI may not apply to each unit in a building because tenants may move out during the process and new tenants will not be subject to the AGI, and there may be vacant units in a building. For this reason, our unit calculations should be understood only as estimates.

However, a few things are worth noting. First, when capital repairs impact entire buildings, it is usually the landlord's intention when applying for an AGI that it apply to all units in the building. Second, natural turnover is relatively low for purpose-built rental buildings, and when there is significant turnover during an AGI this may be due to the AGI itself,

either because of the disruptive renovations or tenants not being able to afford the anticipated increase. Third, vacancy rates are extremely low, particularly in purpose-built rental buildings. Fourth, on some occasions LTB data lists only a single address even though multiple buildings are subject to the AGI—something which can only be determined by reviewing the application or order itself, and which is more common with larger landlords who own neighbouring buildings. As we restricted ourselves to addresses listed in the LTB data, the number of units counted for certain AGIs will actually underestimate their impact.

Fifth, and perhaps most importantly, the key finding we report is the percentage of AGIs that different types of landlords are responsible for. While the estimated raw number of units impacted by each AGI may be inflated slightly, this is likely to be consistent across all purpose-built rental buildings to the same degree, regardless of landlord type. Because the units in non-purpose-built rental buildings make up such a small share of the total units impacted by AGIs in our data set and the margin of error for our unit estimates for purpose-built rental buildings should be consistent across landlord types, slight discrepancies in the total number of units impacted by each AGI will not impact the percentage of AGIs different types of landlords are responsible for, in terms of units impacted. To test this, we calculated the share of AGIs financialized and corporate landlords are responsible for in three different ways: using 100% of the units in each purpose built-rental building in our database, using 90% of the units, and using 80% of the units. The results were consistent across these different calculations.

Landlords

Our LTB data often included information about the organization filing the L5 application, be it the landlord, property management firm, or paralegal acting on their behalf. We relied on publicly available information to supplement the LTB data and determine the identity of landlords for applications involving purpose-built rental buildings, at the time of the L5 application. When a building was listed to a subsidiary of a larger landlord, we attributed the AGI to the parent company.

In order to classify landlords as independent, corporate, or financialized, we carried out additional research (and drew on existing knowledge on our team) related to

the structure of each landlord. Financialized firms are those operating apartments as investment products for investors, and include pension funds, insurance companies, REITs, asset management companies, and private equity firms. We classified a landlord as “corporate” if they were a chain owning several properties or more. We classified a landlord as “independent” if it appeared that they owned only one or a few buildings. As buildings are often owned by numbered companies or holding companies, it can be challenging to determine their ownership. The lack of publicly available information may have resulted in some landlords being classified as independent, despite actually being subsidiaries of a larger landlord; thus, our analysis may have underestimated the impact of financialized and corporate landlords. In cases where corporate firms were partnered with financial firms, we classified landlords as financial.

