

SERVICE MANAGER DIRECTIVE 21-03

(Service Manager Directive 21-03 replaces Service Manager Directive 09-02)

SUBJECT: DEFINITION OF SOCIAL HOUSING ARREARS AND PROCEDURE FOR ADVISING THE CENTRALIZED WAIT LIST FOR RENT-GEARED-TO-INCOME HOUSING OF OUTSTANDING ARREARS

The policies and procedures in this Directive are to be implemented by the Centralized Wait List Administrator or by Housing Providers funded by the City of Ottawa for the programs checked below:

<input checked="" type="checkbox"/>	Public Housing Program
<input checked="" type="checkbox"/>	Rent Supplement Program (commercial)
<input checked="" type="checkbox"/>	Ontario Community Housing Assistance Program (OCHAP)
<input checked="" type="checkbox"/>	Community Sponsored Housing Program (CSHP)
<input checked="" type="checkbox"/>	Provincial Reformed (<i>Provincial, Federal/Provincial Non-Profit</i>)
<input checked="" type="checkbox"/>	Provincial Reformed (<i>Provincial Co-operative</i>)
<input checked="" type="checkbox"/>	Limited Dividend Program
<input checked="" type="checkbox"/>	Section 26/27
<input checked="" type="checkbox"/>	Section 95 – Private
<input checked="" type="checkbox"/>	Section 95 – Pre 86 MNP
<input checked="" type="checkbox"/>	Pre-86 Urban Native Housing Program
<input checked="" type="checkbox"/>	Post-85 Urban Native Housing Program
<input checked="" type="checkbox"/>	Centralized Wait List (CWL) Administrator

If your program is not checked, this Directive does not apply to your project(s).

PURPOSE:

The purpose of this Directive is to communicate to Housing Providers and to the Centralized Wait List (CWL) Administrator the City of Ottawa definition of arrears for the purpose of eligibility for Rent-Geared-to-Income Assistance (RGIA) and to outline the procedure for reporting arrears to both the local Service Manager arrears database and the Provincial arrears database. This Directive replaces Directive 09-02 dated January 21, 2009.

LEGISLATIVE AUTHORITY:

Housing Services Act, 2011, sections 42, 52(3), 56(2)

HSA O. Reg. 367/11, sections 26, 60, 64

HSA O. Reg. 316/19, sections 10(4)(5)(6), 11(5)(6)(7)

Social Housing Reform Act, 2000, s.86

BACKGROUND:

The *Housing Services Act, 2011 (HSA)*, section 42 states that eligibility for Rent-Geared-to-Income Assistance (RGIA) shall be determined in accordance with the local eligibility rules made by the Service Manager and the prescribed provincial eligibility rules. Ontario Regulation 367/11, section 26 legislates ineligibility for RGIA due to amounts owed by a household to a prescribed Social Housing Provider.

For the purpose of this Directive, the following definitions shall apply:

- 'Social Housing Provider' refers to a prescribed Social Housing Provider that has designated projects under the *Housing Services Act, 2011*.
- 'Section 56 of the Act' refers to a household that received RGIA to which it was not entitled.
- 'Section 86 of the former Act' refers to household reimbursement of RGIA for which the household was not entitled.
- 'Housing project under any transferred housing program' refers to a housing project listed under a prescribed housing program for which responsibility was transferred to the Service Manager under the former *Social Housing Reform Act, 2000*.

HSA O. Reg 367/11 section 26 states:

*26(1) A household is ineligible for rent-geared-to-income assistance if a member of the household owes, with respect to a **previous tenancy** in any housing project under any transferred housing program,*

- a) arrears of rent;*
- b) an amount required by a service manager under section 56 of the Act or section 86 of the former Act; or*
- c) an amount for damage caused by a current member of the household.*

(2) Subsection (1) does not apply with respect to arrears or an amount owed by a member of the household if,

- a) the service manager is satisfied that there are extenuating circumstances¹; or*
- b) a member of the household has entered into an agreement, or made reasonable efforts to enter into an agreement, with the person to whom the arrears or amount is owed for the payment of the arrears or amount and the service manager is satisfied that the member is making or intends to make all reasonable efforts to repay the arrears or amount.*

(3) The arrears or amount owed by a member of the household is deemed, for the purpose of clause (2)(b), to be one-half of the actual arrears or amount owed if,

- a) a request has been made for the household to be included in the special priority household category and the request would be or has been granted; and*
- b) the arrears or amount is owed with respect to a unit of which the member and the abusing individual were joint tenants.*

HSA, O. Reg. 367/11, section 26 applies to all applicants requesting to be placed onto the Centralized Wait List (CWL) for Rent-Geared-to-Income (RGI) housing and to all households currently in receipt of RGIA that have an arrear with a Social Housing Provider for a previous market or RGI unit that they occupied.

Housing Providers are obligated to report social housing arrears to the CWL Administrator where there is no repayment schedule in good standing, as the household ceases to qualify for RGIA. The Service Manager is responsible to ensure all Housing Providers report arrears in a consistent, timely manner.

¹ Extenuating circumstances are unforeseen circumstances which were out of the control of the household, are unlikely to occur again and resulted in the household not being able to meet the requirement in order to remain eligible for RGI.

This Directive is issued by the Service Manager to clarify the definition of arrears, to establish reporting obligations regarding arrears and to clarify reporting requirements where default occurs on Repayment Agreements.

POLICY:

Definition of Arrears for the Purpose of Eligibility for RGIA

A social housing arrear in a housing project under any transferred housing program, is defined as:

- Unpaid rent (full or partial month)
- Unpaid parking charges (full or partial month)
- Retroactive lump sum rental payments owed, due to reporting misrepresentation or failure to report household income as prescribed
- Damages to the unit, beyond normal wear and tear, attributable to a member of the household
- Damages to common areas of a Housing Provider community which are attributable to a member of the household
- RGI subsidy overpayment

This definition shall apply to both social housing market and RGI tenants/members for the purpose RGIA eligibility.

Arrears for a current tenant/member

If a current tenant/member has arrears with their Housing Provider there are two (2) methods of arrear recovery:

- 1) A repayment agreement may be established for the arrears between the tenant/member and the Housing Provider.
- 2) A Housing Provider may also recover the arrears from the tenant/member by applying an increase to the geared-to-income rent, which is permitted under section 56 of the HSA and O. Reg 367/11 section 65.
 - The increase may not be more than 10 per cent of the geared-to-income rent that would otherwise be payable.
 - The Housing Provider must give the household notice of any increase and the increase is not effective until the beginning of the second month after the month in which the notice was given.
 - If an increase in RGI rent would otherwise come into effect during the period from January 1, 2021 to December 31, 2021, the increase is not effective until January 1, 2022.

A household cannot be transferred to a new RGI unit with the same Housing Provider (internal transfer) or a different Housing Provider until a repayment agreement for the arrears at the former unit has been established and is in good standing or the arrears have been paid in full.

Arrears for a former tenant/member

A tenant/member of a Housing Provider is considered a former tenant/member when there is a change of address from where the arrear occurred, which includes but is not limited to the following situations:

- The tenant/member gave proper termination notice to the Housing Provider and vacated the unit
- The tenant/member enters a new lease agreement/occupancy agreement for a new RGI unit with either their existing Housing Provider or a new Housing Provider
- The tenant/member abandoned the unit without providing proper termination notice to the Housing Provider, and
- The tenant/member has adhered to a judgment or court order to vacate the unit.

Housing Providers shall follow the process outlined below to report former social housing tenant/member arrears to the local and provincial arrear databases for the purpose of RGI eligibility.

Reporting of Former Tenant/Member Arrears to the Centralized Wait List (CWL) Administrator

Housing Providers are required to advise the CWL Administrator of arrears owed by a **former** market or RGI tenant/member that is in excess of \$100. Housing Providers must immediately notify the CWL Administrator as soon as information is received that the tenant/member has, or intends to, vacate the unit by completing the *Arrears Information* Form which is attached to this Directive as Appendix A.

It is recognized that the initial assessment of the arrears owing may not be finalized at the first point of notification. The Housing Provider shall amend the total amount of the arrears owing by notifying the CWL Administrator at any subsequent point once the final amount of money owing has been determined.

Annual Update of Former Tenant/Member Arrears

Housing Providers are required to provide an annual status update to the CWL Administrator for all former tenant/member arrears. This annual update should include the following:

- Total amount of arrears left to be paid
- Status of arrears (i.e. arrears have been paid in full)
- Confirmation that the repayment agreement continues to be in good standing, or if the repayment agreement is not in good standing, when the last payment under the agreement was made

Maintaining Records

Where there is an arrear owing by either a past or current tenant/member, documents pertaining to the arrear must be kept on file until the arrear is paid in full or written off by a court bankruptcy decision. In these situations, it may be necessary to keep such documentation in excess of the maximum period referenced in the HSA or other statutes, as the arrear remains owing.

Repayment Agreements for RGIA Arrears

A repayment agreement related to a tenancy may be established at any time. Repayment Agreements shall include the following details:

- Amount of arrears of rent
- Amount of money owed by a household for reimbursement of RGIA for which the household was not entitled
- Amount of money owed in respect of damage caused by a member of the household
- Duration of the repayment agreement
- Date the agreement takes effect
- Terms of the repayment agreement (\$ / month)
- Date the arrears will be paid in full
- Actions that will be taken if the repayment agreement is breached such as the potential loss of RGI eligibility for failure to comply with the agreement

Reporting Former Tenant/Member Repayment Agreement Defaults to the CWL Administrator

If a former tenant/member has a formal or informal repayment agreement in place with a Social Housing Provider and defaults on **more than one** regular payment, the tenant/member will be in default of their repayment agreement making all monies owed due and payable upon demand. Housing Providers are required to advise the CWL Administrator within 30 days of the default using the *Arrear Repayment Agreement Default* Form which is attached to this Directive as Appendix B.

Housing Provider Communication with Tenants/Members who Default on a Repayment Agreement

When an RGI or market tenant/member defaults on their repayment agreement, the Housing Provider to whom the arrears are owed must provide immediate written notice of the default to the tenant/member. The notice must include information about the default and provide specific instructions on how to put the repayment schedule into good standing, with a maximum of thirty (30) days to take such action. The notice must state that failure to comply with the repayment agreement will result in either:

- Ineligibility for the current tenant/member to apply for future Rent-Geared-to-Income assistance (RGIA) if the arrear was incurred at their current rental unit
- Ineligibility for RGIA for tenant/members currently in receipt of RGIA at a **different rental unit** from where the arrear was incurred, or
- Ineligibility for a past tenant/member to apply for RGIA

When a Former Tenant/Member is in Receipt of RGIA in Another Unit

When a former RGI or market tenant/member defaults on their repayment agreement and the tenant/member is currently residing in another RGI unit, the CWL Administrator will immediately notify the current Housing Provider of the default. The CWL Administrator will include the following information in their notification:

- Former Housing Provider name
- Former rental unit address
- Former Housing Provider contact information (phone number and email address)
- Balance of the arrears
- The date the last payment was made under the repayment agreement

The current Housing Provider may contact the previous Housing Provider for any other arrears details that may be required.

The current Housing Provider must immediately send the tenant/member a Notice of Decision advising their tenant/member that they are ineligible for RGIA using the *Service Manager General Ineligible Notice of Decision template*, attached as Appendix C. The Notice of Decision should include the following information:

- Effective date of ineligibility
- Reasons for the decision – Your household has ceased to meet an eligibility requirement for RGIA, as described in O. Reg. 367/11 s. 26 (arrears)
- The following information:
 - former Housing Provider name
 - former rental unit address
 - former Housing Provider contact information (phone number and email address)
 - balance of the arrears
 - the date the last payment was made under the repayment agreement.
- Information advising of the right to appeal the loss of RGIA decision, the internal review process, as well as the deadline to submit a request for an internal review

If the tenant/member addresses the arrears repayment default and returns the arrears repayment agreement to “good standing” and provides the required verification to their Housing Provider, the Housing Provider must advise the tenant/member in writing that they remain eligible for RGIA.

Important Factors for Consideration When Reporting Arrears to the CWL Administrator

Validation of Social Housing Arrears

If for any reason a Housing Provider is unable to substantiate the arrears owed, which includes but is not limited to, not keeping and/or inability to locate written records of the arrears (invoices, Notice of Decision, etc.), the arrears cannot be reported to the CWL Administrator.

When a Housing Provider has reported arrears to the CWL Administrator and subsequently cannot substantiate the arrears owed, the Housing Provider must immediately advise the CWL Administrator. Once verified, the tenant/member's name will be removed from the local and provincial arrears databases and the individual will be eligible immediately to apply for social housing.

Statute of Limitations

Where a Housing Provider has the right to collect arrears owing there is a **two (2) year limitation period** to take action to recover the arrears². To prevent the limitation period from expiring, a Housing Provider must make reasonable and ongoing attempts to collect the arrears owing. This includes:

- Sending an arrears notification to the individual at the last known address
- Sending the arrears to a collection agency or by taking the individual to either the Landlord and Tenant Board or Small Claims Court, and
- Attempting to enter a repayment agreement to recover the arrears

The limitation period only applies to commencing legal action and/or identifying arrears for the purpose of the local and provincial arrears database. It does not preclude or prevent collection by other methods, including voluntary repayments at any point in time. A Housing Provider may request a voluntary repayment schedule, and the Housing Provider may accept a repayment schedule, after the limitation period has expired.

Factors Affecting Limitation Periods:

(i) No Action Taken Within Specific Time Limits:

If the Housing Provider has not taken action to recover the arrears within the specified time limitation period, the Housing Provider cannot consider the amount owing as arrears for the purpose of RGIA and cannot register the arrears with the local and provincial arrears database.

(ii) Action Taken Within Specific Time Limits:

If the Housing Provider has taken action to recover the arrears within the specified limitation period, the new time limitation period does not commence until the action is stopped or abandoned.

(iii) Voluntary Arrears Repayment Agreement:

When a voluntary arrears repayment agreement is signed by the tenant/member, the limitation period will start when the Housing Provider becomes aware that the tenant/member has defaulted on the agreement by failing to make a payment.

(iv) Court or Tribunal Order:

If the Housing Provider has obtained a court or tribunal order for the arrears owing, there is **no limitation period** for the collection of that amount. This means that the arrears can be recorded with the arrears database and remain on the database until such time the arrear is paid in full.

² Limitations Act, 2002

Bankruptcy

If a former or current tenant/member files for bankruptcy, he or she may be discharged of debts arising before the date of bankruptcy. The CWL Administrator must be notified only when the arrears owing to the Housing Provider are listed on the bankruptcy discharge statement. The tenant/member must bring written proof of the bankruptcy discharge to the CWL Administrator. Once verified, the tenant/member's name will be removed from the arrears database and the individual will be immediately eligible for RGIA.

ACTION REQUIRED:

Housing Providers are required to report social housing arrears and follow the procedures outlined in this Directive effective immediately.

Lisa Goodfellow
Manager, Social Housing

Dated: July 2, 2021