APPENDIX A

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Ministry of Public Safety and Solicitor General

GOVERNMENT MODERNIZES LAW FOR LANDLORDS, TENANTS

VICTORIA – The government has introduced new residential tenancy legislation that will streamline regulations, strengthen protections for both landlords and tenants, and help revitalize investment in the rental housing market, Solicitor General Rich Coleman announced today.

"We made a New Era commitment to modernize residential tenancy legislation in clear language that everyone can understand," said Coleman. "The old legislation was complicated and difficult for users to comprehend. Our new law will clarify responsibilities of both landlords and tenants, streamline processes and simplify regulations."

The revised Residential Tenancy Act addresses the following issues:

- Screening fees: The new law prohibits landlords from charging application or screening fees to prospective tenants, who faced paying several fees if they applied for more than one rental unit. The new law will also protect tenants from unscrupulous landlords who collect screening fees when they have no intention of renting out a unit.

- Security deposits:The new law maintains the current half a month's rent as a damage deposit to ensure access and affordability and allows landlords to collect extra deposits for keys, access cards and garage door openers. This will reduce replacement costs and improve security by increasing the probability of these items being returned.

- Rent fairness:The new law will have a simpler formula to calculate rent increases. These will be set by regulation and will be limited to a small annual increase, initially in the range of three to four per cent, plus a consumer price index adjustment. This will limit how much rents can be raised and protect tenants from unrestricted increases. Changes also give landlords more flexibility in the timing of rent increases. The old system encouraged landlords to raise rents every year because increases could not be carried over. Permitting landlords to carry forward allowable rent increases will give them flexibility in dealing with tenants while supporting a healthy rental market.

- Inspections: Tenants and landlords often dispute the amount that should be returned from damage deposits, and tenants sometimes have difficulty getting their damage deposits back. To reduce disputes, the new law will require landlords and tenants to conduct joint inspections before tenants move in and out, and require a signed report that describes the condition of the rental unit.

- Illegal activity: Currently, landlords can only evict if a tenant's illegal activity unreasonably

affects other tenants, causes extraordinary damage or is a safety risk. Under the new law, landlords will be able to evict tenants for illegal activities, such as marijuana grow operations, that have caused or are likely to cause damage or affect the safety and well-being of the landlord or other tenants.

- Pets: Currently, there are no clear rules governing pets in rental units, and landlords are deterred from accepting them because it is difficult to recover damage done by pets when it exceeds the damage deposit. Under the new law, landlords will have the right to decide whether to allow pets and will be permitted to collect an added damage deposit to cover damage that might be caused by pets. This should encourage more landlords to accept pets, while protecting them against possible damage.

"These changes will stimulate a healthy rental market and improve rental choices, while reducing the over 20,000 costly, time-consuming and confrontational residential tenancy arbitrations held each year," said Coleman."The new legislation strikes a balance between the rights and obligations of landlords and tenants."

Coleman also introduced the Manufactured Home Park Tenancy Act today to deal with the unique needs of landlords of manufactured home parks and tenants who usually own their home but rent the site on which their home sits. The separate act gives homeowners and park owners easier access to relevant information.

Both the Residential Tenancy Act and Manufactured Home Park Tenancy Act were developed after extensive consultation with landlords, tenants and other interested groups.

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Visit the province's Web site at http://www.gov.bc.ca/ for online information and services.

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APPENDIX B.

Summary of Changes to the Residential Tenancy Act (Bill 70)
Prepared by the Tenants Rights Action Coalition

November 2002

Solicitor General Rich Coleman, introduced Bill 70, the Residential Tenancy Act (RTA), in late October. According to the government press release, Bill 70 modernizes the law for landlords and tenants in clear language that everyone can understand. The Tenants Rights Action Coalition (TRAC) acknowledges that the modernization of the Residential Tenancy Act was a major undertaking by the government. While the RTA under Bill 70 includes some positive changes for British Columbia's tenants, the most important changes favour landlords. On the whole this Act is an erosion of tenant protections and has the potential to increase homelessness in British Columbia.

TRAC has long called for a plain language version of the RTA, one that would give increased clarity to the landlord/tenant relationship. While the new Act is better laid out and easier to follow, it is not consistently written in plain language and is difficult to interpret and understand in many places. Like all plain language exercises, it requires field-testing and revision.

The existing RTA covers both conventional tenancies and manufactured homes. As part of the modernization process, a separate Act, The Manufactured Home Act (Bill 71), has been created to deal with situations where someone owns a manufactured home, but rents the pad. TRAC believes that separating these two Acts is positive, especially as the dispute resolutions mechanisms of the RTB will be available to both. However, as many of the sections are similar, we have many of the same concerns with the two Acts.

It will take some months until Regulations are written and the provisions in Bill 70 are proclaimed into law. In the meantime TRAC is urging government to engage stakeholder groups in a consultation process during the drafting of the Regulations. We encourage tenant advocates to write to Minister Coleman and MLA's with concerns regarding Bill 70.

What follows is a summary of the major changes to the RTA and our corresponding concerns and comments. TRAC has provided this information to all MLAs and has attempted, for the most part unsuccessfully, to meet with a number of government MLAs. TRAC recommended that Bill 70 be put on hold pending meaningful consultation with stakeholder groups. Failing that we provided a list of 27 amendments to make the Act more fair and equitable.

Application and Tenancy Agreement

Bill 70 explicitly prohibits landlords from charging prospective tenants application fees or processing fees. This is a positive change, as the practice of collecting fees is becoming more common. As it was written, there was no real enforcement to support this

change, as prospective tenants were not covered by the Act. During the committee stage on Bill 70, an amendment to include prospective tenants under the RTA was accepted. This will mean that they can use the RTO dispute resolution services for this or any violation.

Bill 70 also requires that all tenancy agreements must be in writing and include the landlords and tenant's correct legal name and address. The landlord must now provide an address for service and phone number. The landlord must issue receipts if rent is paid in cash. These are all positive changes, although TRAC questions the enforceability of this section.

Inspection Reports

Landlords and tenants are now required to do a move-in and move-out inspection report and the landlord must provide the tenant with a copy of the report within 7 days (although there is no real penalty in the Act for not doing so). The provision for inspections is a positive step, and will go a long way in reducing the numbers of arbitration hearings.

However, the consequence to tenants (and landlords) if they do not complete an inspection report is grossly disproportionate to the failure to participate in an inspection. Under Bill 70 if a landlord proposes two times to the tenant to conduct an inspection and the tenant does not attend, the landlord can do the inspection on their own and the right of the tenant to recover their security deposit is extinguished. Bill 70 does not permit the tenant to do the inspection without the landlord.

While the landlord loses the right to claim against the deposit if they do not conduct an inspection at the start and end of the tenancy, tenants are at a disadvantage because they do not have any real control over the timing of the inspection. TRAC is concerned that tenants who speak English as a second language, have literacy problems, live with a mental illness or have addiction problems will be particularly vulnerable to be exploitation by unscrupulous landlords under this new system.

TRAC recommended a more appropriate consequence for one party refusing to participate in an inspection, was to make that party deemed to have accepted the report. Both parties would still have to go to arbitration if there was a dispute about the deposit, but the party who had completed the inspection report would have the upper hand.

Reasonable terms of tenancy

Section 6 of Bill 70 states that a term in a tenancy agreement that is "unconscionable" is not enforceable. Many parts of the province experience very low vacancy rates and many tenants are desperate to find any type of affordable accommodation. "Unconscionable" lowers the bar in terms of what would be acceptable in a tenancy agreement. Tenants desperate for housing may sign an agreement with an entirely unreasonable term in order to obtain housing but have no recourse because the term is not "unconscionable". In

addition, the term "unconscionable" may not be widely understood and is arguably not plain language.

TRAC recommended that the term "unconscionable" be replaced with the current RTA's term of "unreasonable". We argued that was a more appropriate test and is better understood by both tenants and landlords. Unfortunately, the amendment was not accepted.

TRAC also recommended that Section 6(3) of the current RTA which provides that "a term that is not reasonable is not enforceable" should be incorporated in the new Act, but this too was not accepted.

Copy of tenancy agreement

In the current Act, if a landlord does not give the tenant a copy of their signed rental agreement or lease, the tenant can withhold rent payable until such time they receive a copy. Upon receipt of lease or tenancy agreement, all suspended rent is to be paid immediately. TRAC sees this as an effective measure to ensure landlords comply with their obligation under the RTA. Bill 70 makes no reference to such an enforcement mechanism.

Quiet Enjoyment

Under Bill 70, a tenant's right to quiet enjoyment is explicit. This is a positive change as it will be better understood by both tenants and landlords.

Guest fees

In the explanatory notes that accompanied Bill 70, it was stated that guest fees would no longer be permitted. The charging of a "fee" for guests (whether or not they are overnight) is a common practice in residential hotels (SROs). TRAC has been lobbying for this change for years, but is concerned that without explicit wording in the Act, the practice will continue. While the amendment to abolish guest fees in the Act was not accepted, the Minister made it clear in the House that the prohibition of guest fees will be reinforced in the Regulations.

Pets

The issue of pets was one of the most difficult to deal with in terms of balancing the interests of all parties. Some landlords have legitimate reasons, such as allergies or shared ventilation systems, to prohibit pets. At the same time, responsible pet owners make good, stable tenants and need increased access to rental housing. In our brief to government, TRAC recommended that a simple clause be added to the RTA:

> "A clause in the tenancy agreement that arbitrarily or unreasonably prohibits the occupation of pets in or about the residential premises is void."

Bill 70 allows landlords to prohibit pets or restrict the size, kind or number. It also allows landlords to charge an extra pet deposit of up to half a months rent.

TRAC is concerned that that these changes are too limiting, as they allow a landlord to adopt a "no pet" clause in the tenancy agreement, something the Courts have ruled against as they do not differentiate between having a goldfish or a vicious dog. In addition, allowing landlords to charge an extra deposit for pets is prohibitive for those on limited or fixed incomes (during debate in the House, the Minister made it clear that tenants on income assistance would not be able to get an extra deposit from MHR for a pet, as pets are not a necessity). Also, as the landlord continues to hold the deposit, tenants with pets will be vulnerable to losing more money at the end of the tenancy.

Terminating or restricting services or facilities

Under Bill 70, if the landlord considers a service as not being "essential" they can terminate it with 30 days notice and compensate the tenant by reducing the rent accordingly. This section gives the landlord a lot of power to cut services which could substantionally reduce the value of the tenancy and the quiet enjoyment of the tenant.

In addition, TRAC is concerned that this section creates ambiguity in terms of what is considered an essential service. For example if the heating system breaks down and the landlord provides the tenant with a space heater, would it be considered an equal replacement? This section has the potential to lower standards and increase abuse by unscrupulous landlords.

Monthly entry/inspections

Bill 70 permits landlords to conduct monthly inspections of the rental unit with proper notice and for a reasonable purpose. It appears the intent of permitting monthly inspections is to curtail marijuana grow-ops and other illegal activity. Instead of dealing with grow-ops, this section increases the likelihood of invasion of tenants' privacy. In the early 1990's protections were put into the Act to protect vulnerable tenants, particularly single women from harassment. This provision turns back the clock and opens the door to harassment by unscrupulous landlords.

Emergency repairs: electrical

The Act provides for circumstances where a tenant can conduct a repair in the event of an emergency and the landlord is unavailable or unwilling to conduct the repair. The most common emergency repairs are electrical, yet these situations were not considered "emergency" in Bill 70 or the current Act, despite the fact that are often life threatening.

TRAC recommended that electrical problems be included in the section on emergency repairs and this was accepted as an amendment during the committee stage of debate in House.

Move out time

Bill 70 provides that move-out time is 1pm on the day the tenancy ends, unless otherwise provided for in the tenancy agreement. This is a positive addition as there is often great confusion around move-out time. However, the specific wording in Bill 70 leaves tenants in the potential position of having to rent a hotel room or be homeless if the tenancy ends on the last day of the month and the new tenancy does not begin until the first of the month.

TRAC recommended the time to vacate the rental premise should be 1 pm the day the rent is due. This would allow tenants to move out of their old premises and into their new one on the same day. However, this change was not accepted.

Rent increases

Under Bill 70, landlords will automatically be allowed rent increases of CPI plus 3 or 4% (this is not explicit in the Act, but will be in the regulations) and tenants will have no ability to dispute increases at or below this amount. While this does provide the certainty of a known number for a yearly increase, it is overly generous (at present cost of living it could be as much as 6% per year) and means that all tenants, even those whose housing is falling apart, will face the same increase. This new system provides no incentive for landlords to upgrade or maintain their buildings.

In addition, Bill 70 permits landlords to play "catch-up", meaning if they had not given a rent increase in the previous three years they can impose a compounded simultaneous rent increase. While this will not be retroactive, it could result in increases of over 20%. It is unconscionable that consumer protection legislation would allow a consumer to be required to pay an increase for a service they used 3 years earlier. TRAC is concerned that this change will have serious impacts on tenants living on fixed incomes, particularly seniors.

Under the existing rent protection system, tenants can dispute increases they feel are unwarranted or unjustified. TRAC recommends that tenants be able to dispute any rent increase, and that the landlord justify any increase over CPI. This change was not accepted by government.

Extension of time to pay the rent

In the current RTA, tenants who are unable to pay the rent within five days after receiving an eviction notice, are able to ask an arbitrator for an extension of time to pay the rent. This section was only applied by arbitrators when the tenant had foreseeable income coming and was able to commit to a payment plan. However, this provision gave some protection to tenants who had come upon hard times and gave some discretion to arbitrators not to evict families that were waiting for crisis welfare assistance. It was a "last chance" section used to protect tenants from becoming homeless.

Bill 70 eliminates this provision. TRAC recommended that it be maintained.

Illegal activity

TRAC recognizes the importance of landlords being able to limit illegal activity in rental premises, as it benefits others tenants, as well as the community. Under the current RTA, landlords can issue an eviction notice if a tenant or their guest has given them "reasonable cause" to end the tenancy. This includes situations where the lawful rights and interests of the landlord or other tenants are jeopardized, whether or not the activity of the tenant is legal or illegal.

Under Bill 70, landlords will be able to evict a tenant for an illegal activity that is "likely" to cause damage or jeopardize the interest of another tenant. While tenants still have the right to dispute the notice at arbitration, TRAC is concerned that vulnerable tenants (ie/ those with addictions or living with a mental illness) are unlikely to do so, especially as there is no longer any legal assistance available. In essence, this section has the potential to allow landlords to unilaterally decide when a tenant has done something illegal and punish them by making them homeless all without requiring any real proof that the tenant's activities have resulted in damage or jeopardized other tenants.

Vacant possession for renovation

Under the current RTA, landlords are able to evict tenants for renovations that are really cosmetic repairs such as the replacement of carpets, cabinets etc. Evictions for renovation should only be given when the nature of repairs or improvements are extensive enough to require municipal permits. In our brief, TRAC recommended that types of renovations that would require vacant possession be prescribed in a Regulation so as to strengthen this section and close this loophole. Essentially TRAC recommended "no permit, no eviction". Unfortunately this change was not included in Bill 70.

Tenant compensation for landlord use

Bill 70 provides that tenants are entitled to the equivalent of one month's rent when they are evicted for the landlord's use of the premises, whether it be for renovation, demolition or simply because the landlord wants to move in. In addition, if the landlord does not follow the process laid out in the eviction notice for landlord use, the penalty is double one month's rent. This penalty should be a deterrent to prevent retaliatory evictions and we see this as a positive change.

TRAC recommends that this provision be extended to tenants who must vacate their suites as result of a municipal or provincial order as the eviction is not due the tenant's behavior, but is because of the landlords disregard for the law.

Tenant's notice – fixed term agreements

Bill 70 explicitly allows a tenant in a fixed term tenancy agreement to give the landlord a move out notice if the landlord has breached a material term. While this is not new, it is positive to have it clearly stated in the Act.

Security Deposits

Bill 70 continues to allow landlords to collect and hold a security deposit of up to one month's rent. However, now the landlord can also require an extra deposit for keys, access cards and garage door openers. In the House the Minister indicated this could be as much as $100.

Landlords illegally withholding security deposits is one of the top concerns TRAC hears from tenants. As a solution, TRAC recommended the creation of an independent Security Deposit Trust Fund, but this was not accepted. Instead Bill 70 extinguishes landlords' right to make a claim against the deposit if they do not do so within 15 days after the tenancy ends. In addition, tenants will be entitled to get double the amount of the security deposit back if the landlord does not follow the proper process for making a claim against the deposit.

These are positive changes in that they send a message to landlords about illegally withholding security deposits. How effective they are will depend on enforcement.

Arbitration

Bill 70 does not significantly change the Residential Tenancy Branch's arbitration system. However some things are more clearly spelled out than before, which will hopefully be positive in terms of creating more consistency and accountability.

For example, arbitrators are now required to consider the interpretation and policy guidelines before making a decision. In addition, joint arbitrations appear to be encouraged.

Somewhat more unclear is the role that arbitrators can now play in "assisting" the parties to settle their dispute. While this does not appear to mean arbitrators will provide mediation services, it does seem to indicate that arbitrators will have more leeway to settle disputes during arbitration hearings. TRAC is not necessarily opposed to this, but is concerned that inherent power imbalances within the landlord-tenant relationship be acknowledged and tenants not be required to "settle the dispute" if they have applied for arbitration.