



RENTAL RECOMMENDATIONS 2015

REFORMING THE BC RESIDENTIAL TENANCY SYSTEM

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City of Vancouver
Renters' Advisory Committee

HOW SHOULD WE IMPROVE THE TENANCY SYSTEM?

THE CITY OF VANCOUVER
HAS LONG ADVOCATED
FOR BETTER POLICIES
FOR RENTERS. THESE
ARE PRIORITIES THAT
OUR COMMITTEE HAS
IDENTIFIED FOR FUTURE
ACTION.



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SUMMARY

This report builds on the longstanding work of other organizations to present recommendations for improving the residential tenancy system

In April 2015, Vancouver City Council requested that our committee review BC's Residential Tenancy Act. We were tasked with identifying potential changes to increase resources for this city's renters, to strengthen the protections in our tenancy legislation, and to support affordable rental housing in Vancouver. This is our response.

Our tenancy system is important. When people do not have access to effective dispute resolution processes, they feel disempowered. When people can't count on being able to have secure housing, that not only undermines their quality of life, it undermines their dignity and sense that they are full members of our society.

We undertake this task in the context of a Vancouver which has an unhealthily low vacancy rate (as low as 0.7% in Vancouver's

West End, according to the Canada Mortgage and Housing Corporation Fall 2014 Rental Market Report).

This report focuses on BC's Residential Tenancy Act ("RTA", or the "Act") and the operations and policies of the Residential Tenancy Branch ("RTB", or the "Branch") that administers the Act. We are building on the excellent work that has been done on this issue by many BC organizations. We thank the groups that have advocated on issues affecting renters and whose work influenced this document. We reference several of their reports and policy statements next to particular recommendations in this publication and recommend their work for your study. These organizations include the Active Manufactured Homeowners Association, BC ACORN, the BC Law Institute, the BC Public Interest Advocacy Centre (BC PIAC), the Carnegie Community Action Project, the Community Legal Assistance Society (CLAS),

Mandate of the Renters' Advisory Committee

Our mandate is to advise Council on strategic city priorities relating to renters, to monitor and respond to the impacts of provincial and federal legislation affecting tenants, and to advise Council on enhancing access and inclusion for renters in developing city policy and civic life.



the Housing Justice Project, Landlord BC, Pivot Legal Society, the Tenant Resource & Advisory Centre (TRAC), and West Coast LEAF. We were also influenced by past City of Vancouver resolutions, bills introduced in the BC legislature over the last decade, and by the provincial government's housing strategy.

In short, our recommendations seek to achieve the following:

1. Clarifying the legal regime governing tenancies
2. Modernizing the Branch's technology and systems
3. Making the Branch faster and more responsive to tenants
4. Ensuring there are real penalties for landlords who break laws
5. Strengthening protections for low-income renters
6. Better ensuring that renters have security and stability in their housing

As a newly formed committee, the recommendations we've made here are not our final word on RTA and RTB issues. They're a starting point. We look forward to ongoing dialogue with council on these matters.

- The Renters' Advisory Committee

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1. MAKING THE RULES CLEARER

The system should be clear about what to do when there's a problem, who is entitled to what, and where to go to obtain remedies. For many renters, it isn't.

1.1 Roommates

Recommendation: Modify the Act to create a clear regime to govern tenants who are renting out one of their rooms with their landlord's consent

Due to Vancouver's high housing costs, it's common for some tenants to rent a place to live and then rent out one of their extra rooms to someone else whom they then live with as roommates. Craigslist has a whole section for such shared accommodation. But when there's a dispute between those roommates, for instance when the head roommate wants to evict her tenant, it's unclear whether the RTA applies and what the legal status of each roommate is.

The Residential Tenancy Act doesn't apply where a tenant shares a kitchen or bathroom with the owner of a property. But when someone is renting from a non-owner tenant, the Act can apply. Sometimes the Residential Tenancy Branch takes jurisdiction over such disputes, and sometimes they don't, instead forcing the parties to seek remedies in court. The status quo is undesirable because there isn't a clear set of rules to govern what's become a very common situation.

See: "Cracks in the Foundation", Pivot Legal Society, <http://www.pivotallegal.org/cracks_in_the_foundation> at pages 60-65 for details in support of the proposition that all those who pay rent should be covered by the RTA.

RULES FOR ROOMMATES

There are conflicting decisions about whether roommate disputes can be dealt with by the Residential Tenancy Branch.

We recommend that this be clarified.



TRANSITIONAL HOUSING

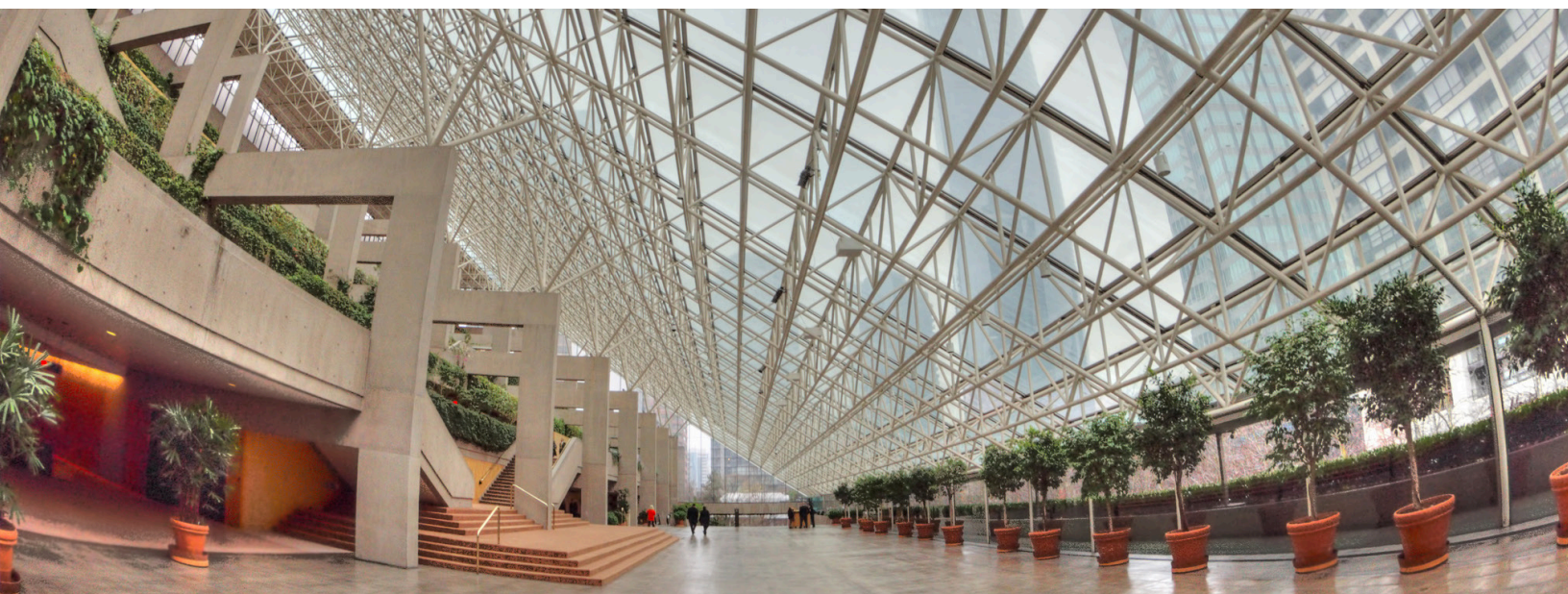
Transitional housing isn't covered by the Residential Tenancy Act. But ambiguity about just what 'transitional housing' is has saddled some of the most vulnerable in our society with needless and protracted litigation.



SHARING WITH AN OWNER

Tenants who share a bathroom or kitchen with the owner of a property aren't covered by the Act. Even if the entire Act doesn't apply to such tenants, they should be protected by some of its provisions.





1.2 Transitional Housing

Recommendation: The Residential Tenancy Act should include provisions for transitional housing and provide clarity about whether housing is transitional or not.

The Residential Tenancy Act states that it does not apply to "transitional housing". The Act does not define what such transitional housing is, however. As a result of this lack of legislative clarity, some non-profit operators have claimed that they operate transitional housing that is not subject to the RTA, even though they don't always offer the supportive services that typically accompany transitional housing. This has created a problem where some of the most vulnerable tenants in Vancouver, such as those living in SRO hotels in the Downtown Eastside (DTES) and Downtown South, must engage in complicated arguments at the RTB about the legislative intent of the exclusion of transitional housing whenever they seek to do something simple, like get a damage deposit back, or seek

an order that critical repairs be done. Advocates faced with such cases can't advise tenants with certainty about what the law is, what tenants' rights are or even whether tenants should pursue issues at the RTB or in court. This uncertainty can drag disputes out and add to complexity for everyone. We believe that in order to better protect tenants and residents of transitional housing, the RTA should be amended to include a clearer and more predictable definition of what transitional housing is.

The RTA does not apply to types of housing which are more likely to be rented by lower-income persons and, as a result, they are left with less housing security.

See: "13 Recommendations for Positive Change", BC Public Interest Advocacy Centre, et. al., <<http://bcpiac.com/611/>> at page 11.

See: "On The Brink: The DTES Housing Crisis", Carnegie Community Action Project, <<https://ccapvancouver.files.wordpress.com/2015/03/on-the-brink-dtes-housing-crisis.pdf>> at page 14.

1.3 Accommodation shared with the owner of the unit

Recommendation: The Act should include some protections for renters who share their accommodation with the owner of

Clear rules make the system work efficiently

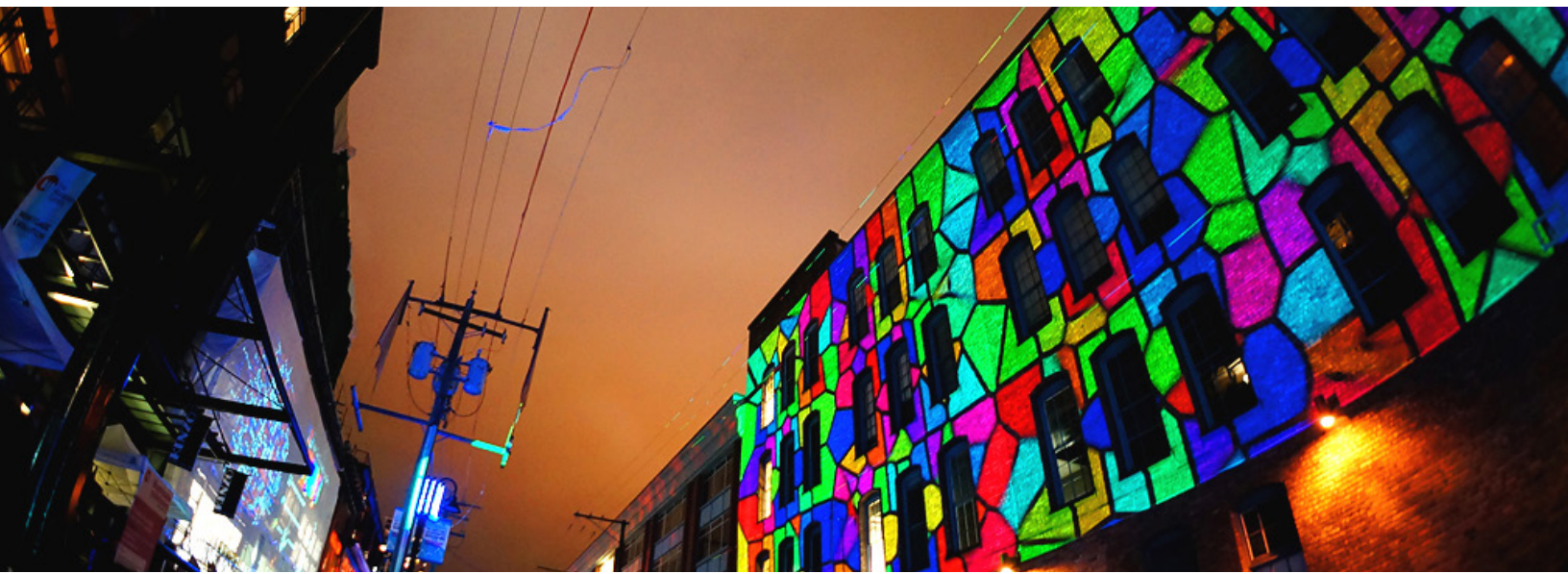
Tenants shouldn't be surprised by complicated arguments about whether housing disputes are addressed by the RTB. They shouldn't find themselves having to go to court to deal with a commonplace tenancy issue.



the rental unit, even if the entire Act does not apply

The Act does not cover accommodation that is shared with the owner of the rental unit. As a low vacancy rate drives more renters to seek spare rooms in people's houses, we think it is undesirable for such situations to be solely dealt with by the general law of contract and the courts. There should be special provisions in the Act for those residing in these forms of accommodation. Portions of the Act, such as the regimes governing abandoned property and security deposits, would provide useful clarity to tenants and landlords. This is the case even if the entire Act would not apply to such tenancies.

See: "13 Recommendations for Positive Change", *BC Public Interest Advocacy Centre, et. al.*, <<http://bcpiac.com/611/>> at page 12.



2. MODERNIZING TECH & SYSTEMS

We recommend updating the residential tenancy system so that people can file for dispute resolution online, communicate via email, and record their hearings

2.1 “Your call may be recorded for quality and training purposes...”

Recommendation: Record RTB hearings and keep them on file until the time frame to apply for judicial review expires. Alternatively, remove the rule which prevents tenants and landlords from recording their own hearings.

The Residential Tenancy Branch no longer records its hearings, as part of its move away from in-person hearings. The recording of hearings is helpful if a case goes to judicial review. It also serves as a check on arbitrator misconduct. More than 99% of all dispute resolution hearings are conducted over the telephone; we propose that the Branch should have an automated system

to record these telephone calls and that all parties to a dispute resolution proceeding should have access to the recordings.

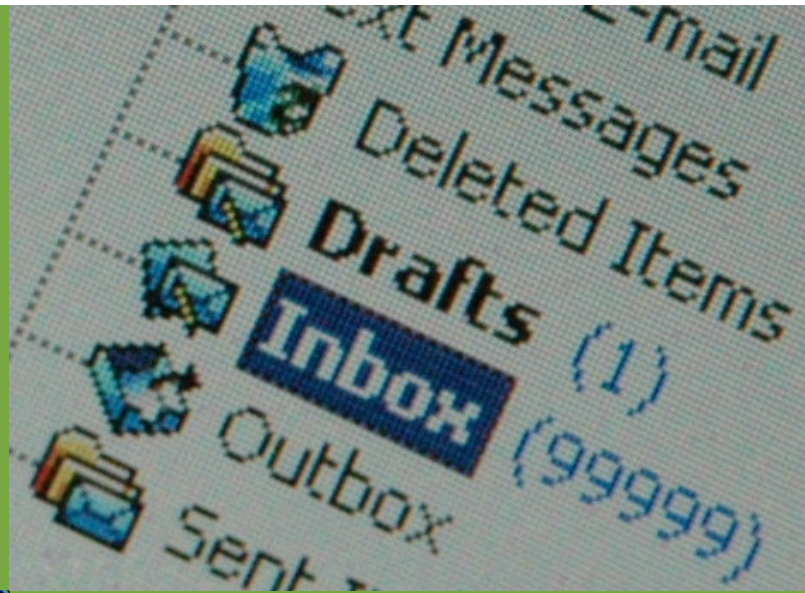
In the alternative, the Branch's rules currently give arbitrators the ability to permit hearings to be recorded by an official court reporter. For cost reasons, the rules should be amended to permit other, cheaper, means of recording. Existing privacy laws would apply to all such recordings.

See: “Dispute Resolution Rules of Procedure”, BC Residential Tenancy Branch, <<http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf>> at rule 9.

See: “On Shaky Ground”, Community Legal Assistance Society,

ALLOW EMAIL AND SMS

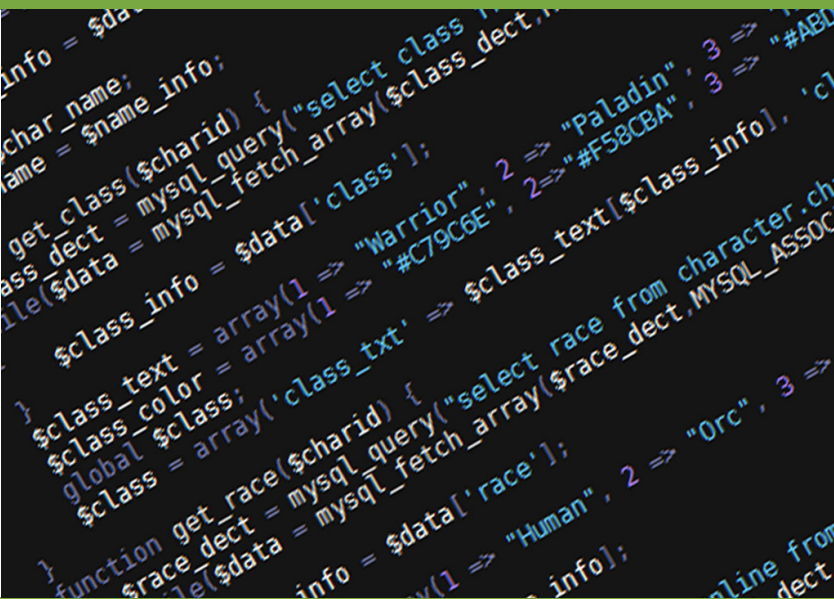
When landlords and tenants communicate about things like a forwarding address, they can't use email or text. They should be able to – provided they can prove receipt.



ALLOW ONLINE FILING

The Branch allows for the online filing of disputes, but not if a tenant wants a waiver of the filing fee.

Low income British Columbians should be able to file online, too.

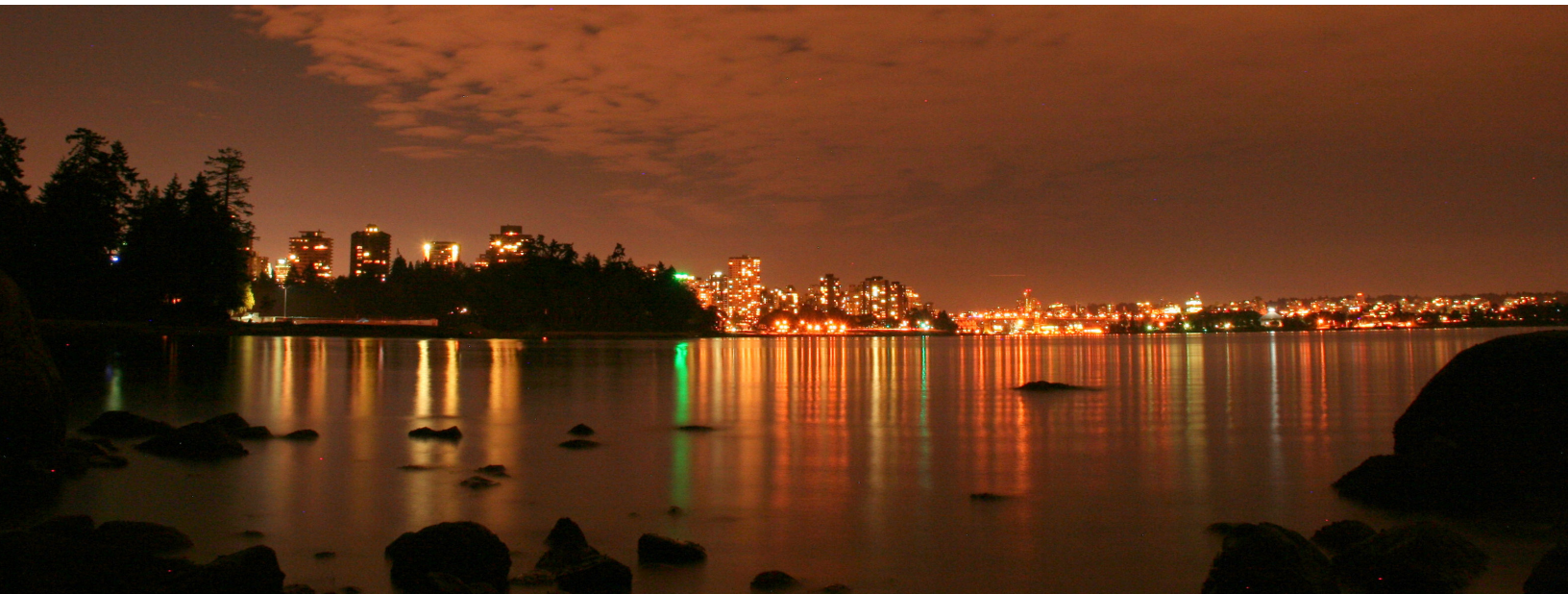


ALLOW RECORDING

Renters and landlords are prohibited from audio recording their dispute resolution hearings.

Recording hearings should be allowed, subject to privacy rules.





<http://www.clasbc.net/new_report_finds_that_bc_s_residential_tenancy_system_is_plagued_by_unfairness> at page 49.

2.2 Online filing

Recommendation: Accept fee waivers when an application for dispute resolution is submitted online

There are fees involved in filing for dispute resolution with the Branch. The Branch will waive these fees for low income persons. Presently, most Vancouverites can apply for dispute resolution a number of ways, including online. But those who are seeking a fee waiver cannot complete the process online, instead having to rely on going to an office in person or using a fax machine. The ability to submit a fee waiver request by fax in conjunction with an online application is itself new. The dispute resolution process would be more accessible if it were possible to file online.

See: "Online Application," BC Residential Tenancy Branch, <<http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/tools-and-resources/online-application>>.

2.3 Automatically waive filing fees for low income tenants

Recommendation: Tenant fees for accessing dispute resolution procedures should be automatically waived where it is possible to identify that a tenant is low-income

The Branch currently waives filing fees for tenants who provide documentation showing that their income is under the Statistics Canada Low-Income Cut-Off (LICO). The Branch also has discretion to waive filing fees even without such documentation in appropriate cases. The Branch should formalize this policy by automatically waiving filing fees when it is possible to identify that an individual's income falls below the LICO. At times this could be done based on address: there are some buildings in Vancouver, such as certain SROs in the Downtown Eastside and the Downtown South, where all of the tenants are low-income and qualify for fee waivers. The Branch could also investigate other options such as obtaining the social assistance rolls directly from the Ministry of Social Development & Social Innovation,

See: "Cracks in the Foundation", Report, Pivot Legal Society, <<http://www.pivotlegal.org/pivot-points/publications/cracks-in-the-foundation>>, at page 65.

Technology has changed. Government should too.

The Residential Tenancy system could better serve British Columbians if it were updated to reflect modern technologies. Such technologies can build-in accountability, and they can ease communications.



2.4 Email and text message

Recommendation: Allow certain communications between tenants and landlords to occur via email or text message, such as when a tenant provides a forwarding address to their landlord

Section 88 of the Act lists the ways that tenants and landlords can exchange documents in a way that counts under the legislation. It allows for communications to be faxed, sent via ordinary mail, and other means. The provision should be amended to allow for communications via email or text message in appropriate circumstances, and where there is evidence that the communication was received. The status quo means that many tenants send communications via these electronic means and are then surprised when the Residential Tenancy Branch tells them to send the communication again via one of the authorized means. This is the case, for instance, where a tenant sends a letter to a landlord requesting the return of their security deposit via email - something which does not oblige the landlord to return the deposit. If the tenant had instead faxed the letter, then the landlord's obligation to return the deposit would have been triggered. This distinction is a holdover from an earlier time.

2.5 Telephone Infoline

Recommendation: Ensure that hold times on the Branch's information line meet acceptable service standards, especially at key times of the month

Recommendation: Expand Infoline Service Hours until 6:30pm

The Residential Tenancy Branch offers a telephone information line. It is open Monday to Friday from 9am to 4pm. The Information Officers who staff the line do good work - they provide details about what landlords and tenants should do so that disputes are avoided and the law is followed. However, with hold times averaging more than half an hour, it is challenging for Vancouverites to access these RTB staff. Hold times are especially long towards the end of the month, reflecting the cyclicity of residential tenancy issues. This system would better serve Vancouverites if hold-times were reasonable and if the line were open later than 4pm, to reflect that it is challenging for many Vancouverites to access government services during the day.

While we are cautious about offering recommendations that will involve increased expenditure, we are also mindful that the RTB's budget is much lower than that of other BC tribunals.



3. A FASTER, MORE EFFICIENT SYSTEM

We recommend making the system more efficient by eliminating unnecessary hearings and by ensuring that tenants have the information they need prior to a hearing

3.1 Direct Request for Security Deposits

Recommendation: Amend the Act to allow for direct requests for tenants seeking the return of a security deposit

A direct request is an expedited process where the Branch issues orders without needing to hold a full dispute resolution hearing. Landlords have access to this direct request process where a tenant has not paid their rent - it allows landlords to expeditiously evict tenants who are overholding after not paying rent.

At the present time, it takes approximately 7 months from the date of application to have a hearing for an order that a landlord

return a security deposit where they are improperly withholding it. For some tenants, a landlord not returning their security deposit poses a serious financial challenge. It is often unnecessary to have a full hearing in such cases, however. Expedited direct requests should be made available to tenants in appropriate cases, at the discretion of the RTB. This could increase efficiency and free up arbitrators to handle matters that actually require full oral hearings.

See: "Housing Matters BC: The Housing Strategy for British Columbia" Government of British Columbia (2014), <http://www.housingmattersbc.ca/docs/HousingMattersBC_2014.pdf>, at page 20 which discusses the goal of providing a streamlined and modern-

LESS DELAY

It can take almost a year to schedule certain types of RTB hearings.

There are practical ways to redesign these processes to make the system faster given existing resource levels.



TRANSLATION

Many British Columbians who don't speak English don't have meaningful access to the RTB dispute resolution system. Other tribunals offer translation.

The RTB should offer translation, too.

KNOW THE CHARGES

Tenants routinely show up at RTB hearings where they are facing eviction, without any indication of what they are being accused of.

We recommend that the Branch's forms be redesigned to solve this.





ized residential tenancy branch system which delivers timely and efficient access to services.

3.2 Translation Services

Recommendation: Provide translators for dispute resolution hearings as necessary

In Vancouver, around 40% of residents do not count English as their first language. Language barriers regular affect the fairness of RTB arbitration hearings. Other tribunals, including the Workers' Compensation Appeal Tribunal and the Social Security Tribunal provide translators in appropriate circumstances. Translation should be provided in RTB dispute resolution hearings, too. We are cognizant that there would be a financial cost to this, but in our opinion this is one of the most important things that could be done to transform the relationship that Vancouverites have with the RTB dispute resolution system.

See: "Housing Justice Dialogue #2," Housing Justice Project (2014), <http://housingjustice.ca/wp-content/uploads/2012/02/Housing-Justice-Dialogue-2_The-Residential-Tenancy-Act-Time-for-an-Overhaul.docx.pdf>, at page 4.

3.3 People should know what they're accused of before their hearing

Recommendation: The Branch should amend their forms to include a place to write specifics of any allegations so that respondents know what they're accused of before any hearing. This would include written reasons for, say, the termination of a tenancy, along with particulars of any alleged acts or omissions by the tenant.

The current Notice to End Tenancy Form requires landlords to indicate what section of the RTA they are relying on. But because some sections of the Act are very general, tenants are often left guessing about exactly what the landlord thinks they did wrong, right up to the start of the hearing. This increases the chance the tenant will be unable to respond fully to their landlord's allegations at a hearing. This is inefficient for all involved, as it often results in hearings being adjourned so that tenants can adequately prepare their response. The solution is as simple as it would be transformative: have a box on the form which specifies particulars of just what the accusation is. The BC Law Institute has been recommending this since 1973, and the idea is no less good today.

Legal processes can be scary and aggravating

This is especially so if you don't know what you're accused of. Or if you can't speak your arbitrator's language. Or if your dispute takes a year to resolve.

Our recommendations seek to solve these problems.



See: "Report on Landlord and Tenant Relationships", Report, BC Law Institute (1973), <<http://www.bcli.org/sites/default/files/report13.pdf>>, at page 206.

3.4 Evidence timelines should be staggered so that the party with the burden of proof submits their evidence first

Recommendation: Switch evidence submission timelines so that the party with the burden of proof provides their evidence and submissions first, and then the other party has time to submit their evidence and submissions afterwards

Where a tenant is being evicted and challenges the eviction, that tenant currently has to provide all of their evidence to the Residential Tenancy Branch before their landlord. Often, the tenant is obliged to provide their evidence to the RTB before their landlord has even provided the tenant with a reason why the landlord is seeking to evict.

According to Rule 3.14 of the Residential Tenancy Branch Dispute Resolution Rules of Procedure, an applicant must submit their evidence a minimum of 14 days before their hearing. Rule 3.15 specifies that the respondent must submit their evidence at

least 7 days before the hearing. When a tenant disputes a notice to end tenancy for cause, their evidence is due before their landlord's evidence is due. Sometimes, it is when their landlord has submitted evidence that they find out what the details surrounding the cause for eviction are, but their evidence submission timeline has passed. These evidence deadlines should be switched: the party with the burden of proof should be obliged to submit their evidence first.

See: "On Shaky Ground", Community Legal Assistance Society, <http://www.clasbc.net/new_report_finds_that_bc_s_residential_tenancy_system_is_plagued_by_unfairness> at page 33.



4. GETTING TOUGH ON LAW-BREAKERS

We recommend reforming the system to ensure that there are meaningful consequences for landlords who break the law.

4.1 Minimum Penalties for Illegal Evictions and Lockouts

Recommendation: Create a mandatory minimum penalty that is awarded to a tenant if a landlord breaks the law and evicts them without following the proper legal process

Where landlords engage in illegal evictions without due process, tenants can be left homeless, often with their possessions inaccessible in the rental unit, or thrown outside and unprotected from the elements and theft. These lockouts can ruin tenants financially and emotionally, and they occur far too often.

When a tenant is locked out illegally from a unit, the tenant can apply for dispute resolution to get compensation. Tenants are

required to prove the amount of loss that has occurred. It can often be complicated for a tenant to gather proof of how much their belongings cost and to document the emotional toll of such actions (called 'aggravated damages'). For very low-income tenants who sleep on the street after being illegally evicted, the amount that a landlord must pay after flagrantly violating a tenant's rights can be negligible.

Some landlords have concluded that an illegal eviction can be less costly and onerous than going through the proper channels with the Residential Tenancy Branch and hiring a regulated court bailiff. We can deter this by stipulating that in these egregious circumstances, tenants are automatically entitled to

MANDATORY MINIMUMS

It should never be cheaper for a landlord to just ignore the law rather than follow it. Where a landlord doesn't follow the proper process to evict a tenant, we recommend that there should be tough minimum penalties.



a specified minimum amount of compensation and only need to provide detailed proof of their damages if the total of their claim is greater than the minimum. Tough mandatory minimums would go a long way towards restoring confidence in this system.

4.2 Effective penalties for bad faith conduct

Recommendation: Increase the penalty for a Notice to End Tenancy that was issued in bad faith

Some landlords need to evict tenants so that they or a close family member can move into the unit themselves. Others need the unit to be vacant so that they can do renovations. Where a tenant can show that a landlord evicted them for one of these reasons, but then didn't follow through with their plan, the Act provides for a penalty: the landlord is to pay the tenant two months' rent. This is to protect tenants' security of tenure and ensure that landlords cannot arbitrarily evict tenants.

Many organizations have observed that in Vancouver's current rental market the two month penalty has not served as an effective deterrent to landlords who are seeking to bypass the

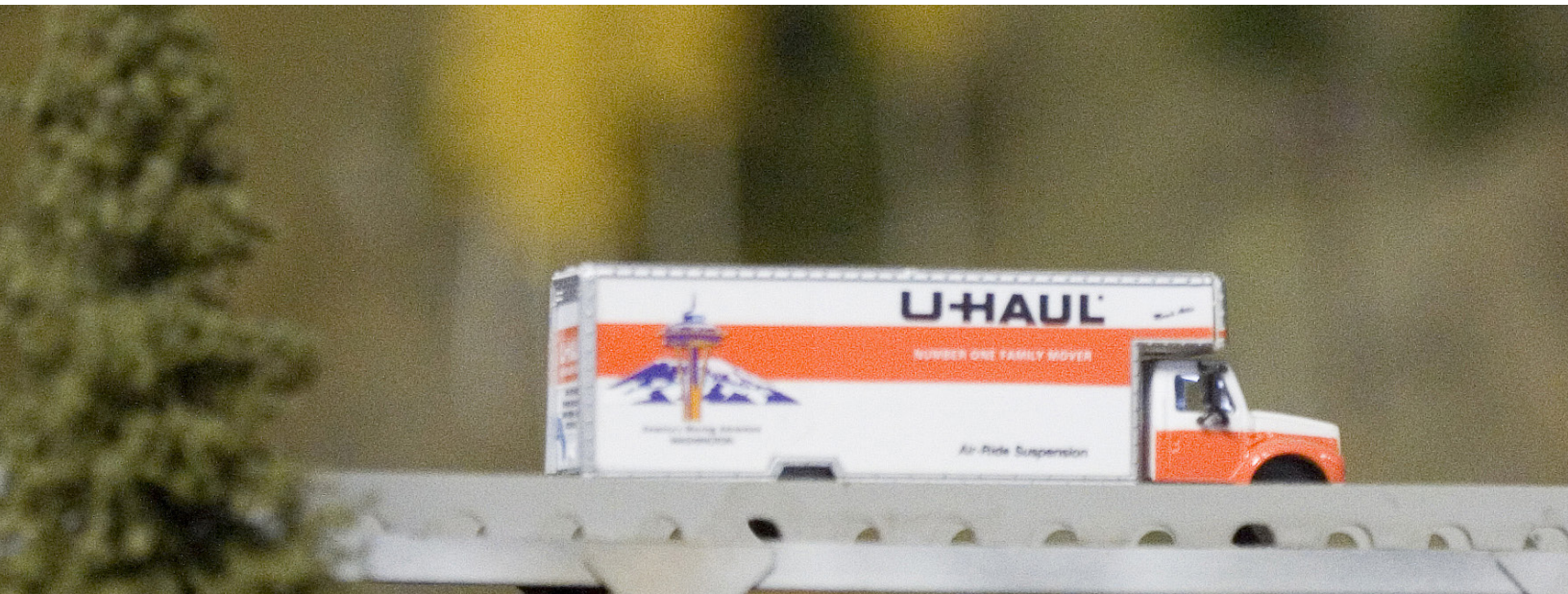
Act's rent control provisions. Such landlords claim that they will engage in renovations or have a family member move into a unit, but instead re-advertise the unit at a significantly higher rent. The prospect of a penalty equivalent to two months' rent has not proven sufficient to deter such behaviour; it has instead been seen as a cost of doing business. The penalty should be reviewed to ensure that this provision of the Act is achieving its purpose.

See: "13 Recommendations for Positive Change", BC Public Interest Advocacy Centre, et. al., <<http://bcpiac.com/611/>> at page 9.

4.3 Prevent landlords from enforcing an order of possession where they know that a tenant has sought review of it

Recommendation: Before a landlord is able to hire a bailiff to evict a tenant, the landlord should have to swear that their Order of Possession has not been appealed

The Act includes an appeal process whereby someone who has received a decision can apply to the Branch to have it reviewed. They can do this if the decision was obtained by fraud, new information has come to light, or a party was unable to attend the



original hearing for unexpected reasons beyond their control. This system works expeditiously (the time period for seeking review of a decision is as little as 48 hours), but it contains a flaw: filing an appeal often does not put the eviction process on hold.

Where a landlord seeks to evict a recalcitrant tenant, they obtain an order from the Branch and then take it to the Supreme Court of British Columbia for authorization to hire a court bailiff who will enforce the order. Landlords are asked to contact the Branch to determine if a review of the order is pending before taking this step, however the law is arguably ambiguous about whether landlords can proceed with the eviction if they find out that the tenant has sought a review of the order.

We propose that this ambiguity should be cleared up: landlords should only be able to evict tenants if they have a final order from the Residential Tenancy Branch. Specifically, landlords should have to swear that the time period for seeking review of the decision is over and that the tenant has not sought review of the decision (or that the tenant's application for review has been dismissed). Only then should a landlord be authorized to hire a bailiff and evict a tenant.

The status quo is undesirable: it sees tenants succeed in applications for review - after their landlord has already had a bailiff evict them. For the system to work well, appeals should be considered for merit before, not after, a tenant has been evicted.

See: "13 Recommendations for Positive Change", BC Public Interest Advocacy Centre, et. al., <<http://bcpiac.com/611/>> at page 5 of the PDF.

4.4 Award administrative monetary penalties

Recommendation: The Residential Tenancy Branch should issue administrative penalties in cases where they are warranted

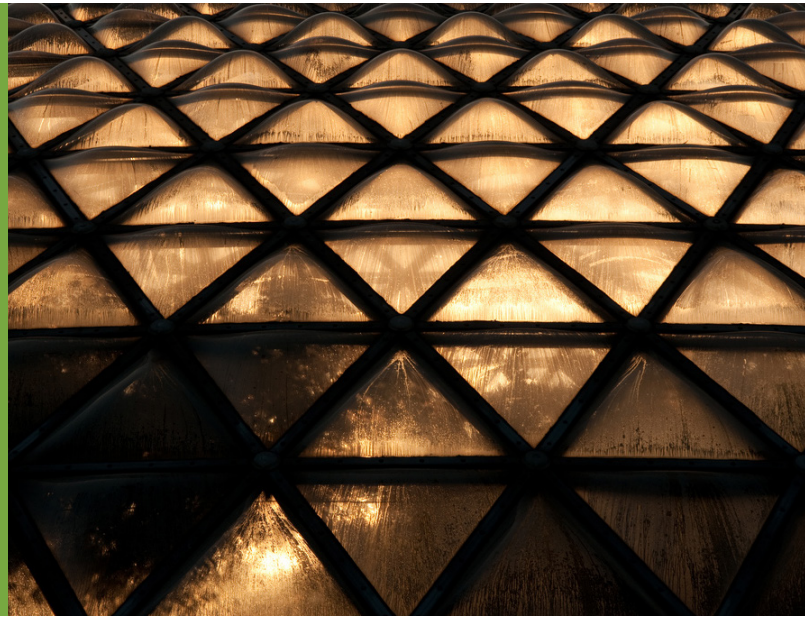
Recommendation: The Residential Tenancy Branch should have the legal power to inspect buildings as part of issuing monetary penalties

The Director of the Residential Tenancy Branch has the power under the Act to impose monetary penalties in cases where a landlord has flouted their obligations under the Act. The Director was given this power in 2006. To date, no landlord has ever had to pay such a penalty. We would like to see the Branch use

TOUGHER FINES

The principle of security of tenure is the bedrock of our residential tenancy system.

We recommend tougher penalties for those who evict tenants on false pre-tences.



their powers under the Act to award monetary penalties in order to send a message that flagrantly illegal behaviour will not be tolerated. The Act should also clarify that the Branch has legal authority to inspect buildings as part of issuing administrative penalties.

See: "Penalty system an ineffective deterrent for bad B.C. landlords", Vancouver Sun, May 1 2015, <<http://www.vancouversun.com/business/Penalty+system+ineffective+deterrent+landlords/11022236/story.html>>.



5. PROTECTING LOW-INCOME RENTERS

We recommend closing loopholes in the rent control system, providing special rules for SROs, stopping application deposits, and ensuring the system is flexible

5.1 Prevent contracting out of rent control

Recommendation: The Act should be amended to provide that where parties renew a fixed term tenancy agreement for the same property, rent increases are limited in the same manner as if the tenancy had continued uninterrupted

Recommendation: The Act should be amended to state that if a landlord repeatedly offers a tenant fixed term tenancy agreements with vacate clauses at the end, the third consecutive agreement automatically turns into a month-to-month tenancy at the end of its term

In a rental market such as Vancouver where the vacancy rate is extremely low, landlords have the upper hand. It is therefore not

surprising that it has become increasingly common for landlords to insist that prospective tenants sign tenancy agreements that require them to move out at the end of a fixed term (one year, for example), even though the landlord's intention is to offer tenants the opportunity to sign another fixed term agreement before the term ends.

While this practice provides landlords with more control over the duration of a tenancy, it deprives tenants of security of tenure. Some landlords have also used this practice to circumvent the Act's rent control provisions. Some RTB arbitrators have considered this landlord practice to be impermissible contracting out of the Act, while others haven't. Our committee's position is that

RELIEF FROM FORFEITURE

Until last year, tenants had a one-time-only ability to continue a tenancy where they had failed to pay rent on time for a good reason that they were able to remedy quickly. We recommend restoring this type of safety valve in the system.



SPECIAL RULES FOR SRO UNITS

We recommend empowering the City of Vancouver to create special rules for SROs, where rents can be controlled by the unit, not by the tenancy.



END APPLICATION DEPOSITS

The Act prohibits application and processing fees. Some landlords just ask for 'application deposits' instead. These should be prohibited; they have real implications for low-income renters.





the law on this practice should be clarified: landlords should not be able to circumvent the Act's protections for tenants.

5.2 Permit extensions of time for tenants to pay rent in specified circumstances

Recommendation: Provide the ability to restore tenancies for tenants who were prevented from paying rent on time because of specified exceptional circumstances, but are able to remedy the situation expeditiously

Past reports to Vancouver City Council have recommended that the system include a "safety valve," the discretion to continue the tenancies of those who have not paid rent within 5 days of it being due, but are able to pay shortly thereafter. Until last year the courts held this role, applying the doctrine of Relief from Forfeiture to give tenants a one-time-only ability to continue a tenancy where they had failed to pay rent within the time limits specified in the Act, but were able to remedy the situation quickly afterwards. Last year, the BC Court of Appeal found that the legislature had removed the court's discretion to provide this remedy. The legislature should amend the Act to allow tenancies to once again be restored in such exceptional situations.

This safety valve has been an important part of our tenancy system for a long time. The circumstances envisioned by past reports include situations where a tenant is able to show that their pay cheque was late in an extraordinary fashion, or where families were waiting for crisis assistance from welfare.

See: "Administrative Report to Vancouver City Council," Housing Centre Director, (June 11, 2003) <<http://former.vancouver.ca/cty-clerk/cclerk/20030624/a7.htm>>.

See: Ganitano v. Metro Vancouver Housing Corporation, 2014 BCCA 10 (CanLII)

5.3 Prohibit Application Deposits

Recommendation: The Act currently prohibits application and processing fees. We recommend prohibiting application deposits, too.

The Act prohibits "application and processing fees" as a tenant-protection mechanism. Instead, some landlords ask for "application deposits" as a way of circumventing this prohibition. For tenants whose applications are approved, this "deposit" is applied to their tenancy. For tenants whose applications are

Close loopholes in the rent control system

The act includes rent controls: rent increases are capped at inflation + 2%. But landlords have found a loophole to get around this: repeated fixed-term tenancies. We recommend closing this loophole.



unsuccessful, the "deposit" is supposed to be returned. Making tenants pay this sort of fee – which can be upwards of one month's rent – for every potential rental unit they are applying for discriminates against low-income tenants. It also invites fraught disputes where a landlord does not return the deposit to an unsuccessful applicant.

5.4 Special Protections for SRA units

Recommendation: Place rent control on the unit for Single Room Accommodation units

The Vancouver Charter provides the City with special powers in relation to Single Room Accommodation (SRA) units, which are rooming houses and residential hotels in the Downtown Core, together with non-market housing with rooms or studio units of less than 320 square feet. These units in Vancouver's DTES and Downtown South provide last-resort housing to some of the city's lowest-income renters. At the same time, higher turnover in these units has blunted the effect of the RTA's rent control provisions. The existing Vancouver Charter provisions have not stopped such units from becoming progressively less affordable for their current residents. Advocates from this area have

called for rent controls that apply by the rental unit, rather than the tenant. This recommendation also emerged from the comprehensive Downtown Eastside planning process.

See: "On The Brink: The DTES Housing Crisis", Carnegie Community Action Project, <<https://ccapvancouver.files.wordpress.com/2015/03/on-the-brink-dtes-housing-crisis.pdf>> at page 13.

See: "Downtown Eastside Local Area Plan", City of Vancouver, (March 15, 2014) <<http://vancouver.ca/files/cov/downtown-eastside-plan.pdf>> at page 103.

5.5 Amending the Rent Increase Formula

Recommendation: Review the rent increase formula

The Residential Tenancy Regulation sets out a yearly allowable rent increase amount: inflation + 2%. Many tenant advocacy organizations have suggested that this rate should be lower and more predictable. Any changes to this rate should follow a review of evidence about its implications and the approaches of other jurisdictions.

See: "13 Recommendations for Positive Change", BC Public Interest Advocacy Centre, et. al., <<http://bcpiac.com/611/>> at page 3.



6. STABLE AND SECURE HOUSING

We recommend making changes to the system to ensure that tenants can be secure in their housing: require advance notice where a non-profit will remove a rental subsidy, tackle renovictions by providing tenants with a right of first refusal, and more

6.1 Warnings Before Evictions for Cause

Recommendation: Require landlords to issue a notice of problems with a tenancy and to give tenants a reasonable chance to rectify problems before issuing a Notice to End Tenancy for Cause. The Branch should issue a form for landlords to use for giving formal notice of problems with a tenancy.

Currently, there is no requirement that landlords give tenants a chance to rectify problems prior to issuing a notice to end tenancy for cause. This means that a notice to end tenancy is sometimes the first time a tenant hears about a problem. Landlords should be required to issue a notice of problems with a tenancy and to give tenants a reasonable chance to rectify problems

before issuing a Notice to End Tenancy for Cause. This would be similar to the letters that are already required under section 45(3) of the Act to provide notification that a party is in breach of a material term of a tenancy agreement. The legislation should allow a landlord to apply for an exception to this rule in situations where the landlord can provide evidence of a safety issue.

See: "13 Recommendations for Positive Change", BC Public Interest Advocacy Centre, et. al., <<http://bcpiac.com/611/>> at page 11.

PREDICTABLE RENT RISES

When a non-profit housing provider removes a rental subsidy, a tenant should receive two months' notice. The amount of rent they may be asked to pay should be clear in advance.



THREE MONTHS OF NOTICE

When a landlord is going to use a unit for their own purposes such as moving in or renovations, tenants should be given three months' notice, to recognize how tight the rental market is.

LEAVING DOMESTIC VIOLENCE

We recommend amending the Act to allow tenants fleeing domestic violence to have a way out of fixed term tenancy agreements.





6.2 Notice of Removal of a Subsidy in Subsidized Housing

Recommendation: All non-profit housing providers should have to provide two full months' notice when a subsidy is being reduced or removed

Recommendation: All non-profit housing providers should have to disclose the amount of subsidy they are providing to renters so that renters know what their rent will be should the subsidy ever be removed

Because of an exemption from the Act, where a tenant's housing subsidy is being removed by a non-profit housing provider, tenants sometimes receive little notice and cannot readily predict how much their unsubsidized rent will be. We recommend that the legislation provide that all tenants will receive two months' notice if their housing subsidy is to be removed or reduced.

Additionally, non-profit housing providers should be required to regularly provide their tenants with information about the actual rent owing for the unit, exclusive of subsidies. The goal of this recommendation is to ensure that those who are receiving subsidies have an idea of how much their rent will be should their subsidy ever be removed. For example, a non-profit housing

provider could provide an annual notice of this form: "your rent is \$975 and your subsidy is \$475." This would prevent housing providers from setting rent at any arbitrary rate should a subsidy be withdrawn.

6.3 Set fair timelines when issuing orders of possession

Recommendation: The Act should mandate that arbitrators set appropriate timelines that are fair and just in all the circumstances when issuing orders of possession

Factor in fairness and hardship when evicting a tenant and issuing an order of possession. Arbitrators currently have no obligation to consider the potentially harsh consequences of a short-fuse eviction order. In practice, the RTB commonly issues orders of possession effective 48 hours after they are served, with no analysis of whether such a short timeline is necessary or appropriate.

Arbitrators should be required to balance the factors affecting both tenant and landlord (length of tenancy; tenant's risk of homelessness; whether there are children who will be affected by the eviction; any risk to the property; whether the tenant can

The bedrock of the residential tenancy system is security of tenure

The goal of these recommendations is to ensure that people can count on their housing being there and that we provide renters with sufficient notice if their housing will change.



continue to pay rent, etc.) before determining the timeline on an order of possession.

6.4 Three months' notice for no-fault evictions

Recommendation: Extend the notice period for evictions where a tenant must leave a property because of renovations or a family's use of the property

The Residential Tenancy Act provides that tenants will receive two months' notice when they are evicted for their landlord's use of the unit. This notice period applies when a landlord's close family member moves into a unit or when a landlord evicts a tenant to do renovations. With Vancouver's low vacancy rates, tenants often find it difficult to secure new accommodation within two months. This is particularly so for low income tenants. Vancouver City Council has passed a number of resolutions calling for this notice period to be extended. We recommend that the notice period be lengthened from two months to three.

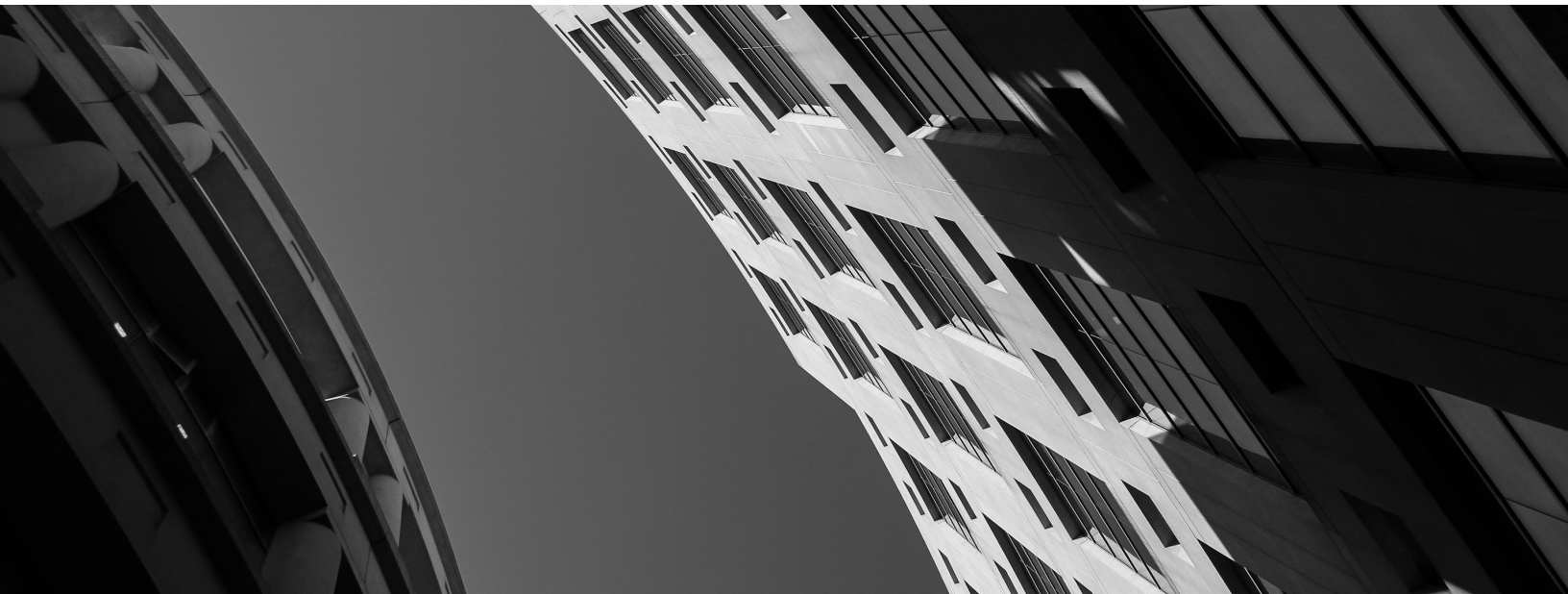
See: "Draft Motion on Notice," *City of Vancouver Planning and Environment meeting (Dec 18 2008)* <<http://former.vancouver.ca/cityclerk/cclerk/20081218/documents/pe3.pdf>>.

6.5 Compensation where a tenant is evicted as a result of a municipal order

Recommendation: Amend the Act so that landlords must provide tenants with compensation where the tenant has to vacate a rental unit in order to comply with a municipal order

Landlords can evict a tenant to comply with a municipal order. A common situation is where the city discovers an unregistered basement suite that is not allowed by zoning. After receiving such a municipal order, a landlord can end the tenancy with one month's notice.

When tenants are evicted because their landlord is going to move into the suite or because the landlord needs to do renovations, the tenant is compensated with a month's rent. Not so where a tenant is evicted so that their landlord can comply with a municipal order. Oftentimes the result is the same, though: if having a basement suite is illegal, for instance, the landlord will often end the tenancy and re-occupy the suite. It should not be the tenant's duty to ensure that the property they rent complies with municipal bylaws. Tenants should receive the same compensation and notice upon being evicted for this reason that



they would receive if they were being evicted because their landlord was going to retake occupation of their suite.

6.6 Right of First Refusal Following Renovations

Recommendation: Amend the Act to allow renters first right of refusal with the same rate of rent increase that would have applied had the tenancy not been interrupted by the renovation

The essence of the residential tenancy system is the principle of security of tenure. There is no reason this should be interrupted by renovations. We know that tenants are being evicted from their homes for cosmetic renovations of suites.

Ontario allows its renters to have a first right of refusal at the same rent that they had before moving out. Under the existing Act, landlords can apply for above-guideline rent increases where they have made significant upgrades to a unit and the rent they are charging is less than what comparable units rent for, with allowed amounts adjudicated by the Residential Tenancy Branch.

See: "13 Recommendations for Positive Change", BC Public Interest Advocacy Centre, et. al., <<http://bcpiac.com/611/>> at page 9.

See: "Draft Motion on Notice," City of Vancouver Planning and Environment meeting (Dec 18 2008) <<http://former.vancouver.ca/ctyclerk/cclerk/20081218/documents/pe3.pdf>>.

See: "Vancouver mayor urges overhaul of B.C. rental legislation" Vancouver Sun (Mar 19 2015) <<http://www.vancouversun.com/business/Vancouver+mayor+urges+overhaul+rental+legislation/10903024/story.html>> for comments from Landlord BC's David Hutniak.

6.7 Fleeing Domestic Violence and Fixed Term Tenancies

Recommendation: Amend the Act to allow tenants fleeing domestic violence to have a way out of fixed term tenancies

Tenants who break fixed-term housing leases must pay their landlord the balance of remaining rent in their contract and may be forced to pay for advertising to find a tenant to replace them. For low-income Vancouverites in particular, these significant financial penalties can act as a deterrent to escaping abuse. The Act should be amended to ensure that victims of domestic violence aren't trapped by fixed-term tenancies. Quebec,

Written Warnings

Landlords should give tenants a written warning about problems so that tenants have a chance to correct issues prior to being evicted.



Manitoba, Nova Scotia, and Ontario already have incorporated such provisions in their legislation. A bill has been introduced to this effect in the BC legislature. Should this bill pass, significant policy work will need to be done to develop this regulatory regime. We urge that this policy regime be developed in conjunction with women-serving organizations and with sensitivity to the particular circumstances of victims of abuse and violence.

See: "Briefing Note: Amending the RTA to Protect Victims of Domestic Violence", West Coast LEAF, <<http://www.westcoastleaf.org/2014/04/20/submission-re-amending-the-residential-tenancy-act-to-protect-victims-of-domestic-violence/>>.

See: "BC to review tenancy laws that may trap women in bad relationships," David P. Ball, The Tyee, April 24 2014, <<http://thetyee.ca/Blogs/TheHook/2014/04/24/BC-Housing-Domestic-Violence/>>.

RECOMMENDED READING

Reports, Documents, and Cases

"Cracks in the Foundation," Pivot Legal Society, (September 2006) <http://www.pivotlegal.org/cracks_in_the_foundation> .

"Briefing Note: Amending the RTA to Protect Victims of Domestic Violence," West Coast LEAF, <<http://www.westcoastleaf.org/2014/04/20/submission-re-amending-the-residential-tenancy-act-to-protect-victims-of-domestic-violence/>>.

"Draft Motion on Notice," City of Vancouver Planning and Environment meeting (Dec 18 2008) <<http://formervancouver.ca/ctyclerk/cclerk/20081218/documents/pe3.pdf>>.

"13 Recommendations for Positive Change," BC Public Interest Advocacy Centre, et. al., <<http://bcpiac.com/611/>>.

"Housing Justice Dialogue #2," Housing Justice Project (2014), <http://housingjustice.ca/wp-content/uploads/2012/02/Housing-Justice-Dialogue-2_The-Residential-Tenancy-Act-Time-for-an-Overhaul.docx.pdf>.

"On The Brink: The DTES Housing Crisis," Carnegie Community Action Project, <<https://ccapvancouver.files.wordpress.com/2015/03/on-the-brink-dtes-housing-crisis.pdf>>.

"Administrative Report to Vancouver City Council," Housing Centre Director, (June 11, 2003) <<http://formervancouver.ca/ctyclerk/cclerk/20030624/a7.htm>>.

"On Shaky Ground," Community Legal Assistance Society, <http://www.clasbc.net/new_report_finds_that_bc_s_residential_tenancy_system_is_plagued_by_unfairness>.

Ganitano v. Metro Vancouver Housing Corporation, 2014 BCCA 10 (CanLII).

"Housing Matters BC: The Housing Strategy for British Columbia," Government of British Columbia (2014), <http://www.housingmattersbc.ca/docs/Housing-MattersBC_2014.pdf>.

"Downtown Eastside Local Area Plan", City of Vancouver, (March 15, 2014) <<http://vancouver.ca/files/cov/downtown-eastside-plan.pdf>>.

"Suggested Amendments to BC's Residential Tenancy Act," TRAC Tenant Resource & Advisory Centre, et. al. <<https://drive.google.com/file/d/oB8CaGg3N3aZdVzR1YoZOS3diUkU/view?usp=sharing>>.

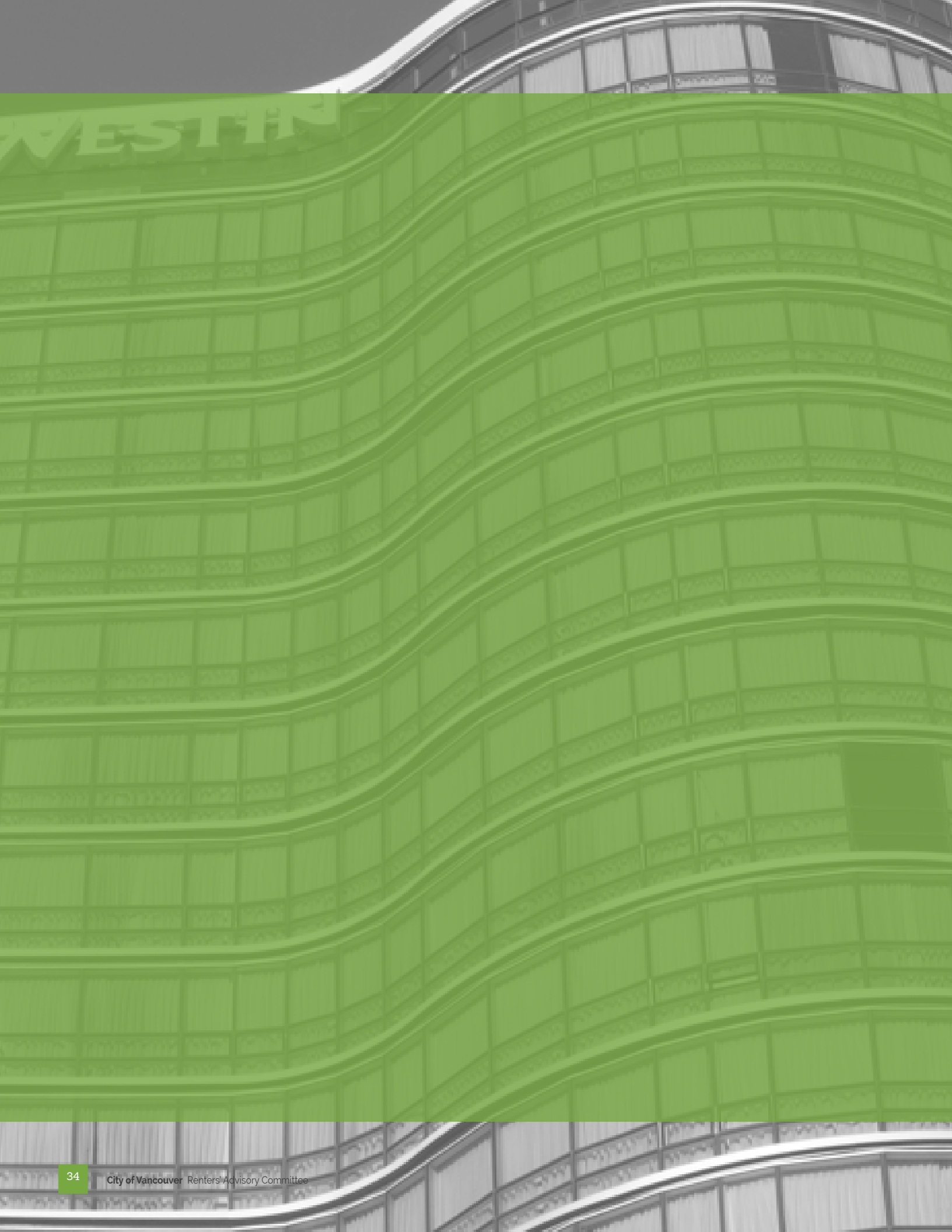
Media

"BC to review tenancy laws that may trap women in bad relationships," David P. Ball, The Tyee, April 24 2014, <<http://thetyee.ca/Blogs/TheHook/2014/04/24/BC-Housing-Domestic-Violence/>>.

"Vancouver mayor urges overhaul of B.C. rental legislation," Vancouver Sun (Mar 19 2015) <<http://www.vancouversun.com/business/Vancouver+mayor+urges+overhaul+rental+legislation/10903024/story.html>> for comments from Landlord BC's David Hutniak.

"Penalty system an ineffective deterrent for bad B.C. landlords," Vancouver Sun, May 1 2015, <<http://www.vancouversun.com/business/Penalty+system+ineffective+deterrent+landlords/11022236/story.html>>.





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