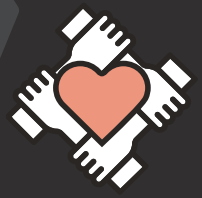
FIRST UNITED

Everyone Needs a Home



Solutions for preventing homelessness, evictions, and displacement

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Everyone Needs a Home: Solutions for Preventing Homelessness, Evictions, and Displacement

February 2024

Contents

Land Acknowledgement and Reconciliation

This report was prepared on stolen lands, on the unceded territories of the Xʷməθkwəy̓əm (Musqueam), Sḵwx̱wú7mesh (Squamish), & Səl̓ílwətaʔɬ (Tsleil-Waututh) peoples. The recommendations and amendments listed in this report are informed in part by participants of the BC Eviction Survey, who live across what we call British Columbia, on lands that have been stewarded by Indigenous people for thousands of years. We are grateful for being entrusted by participants to carry out this work as settlers and guests and are humbled to hold and share participants' stories, including those who are Indigenous. This report aims to put reconciliation into action by shedding light on the harsh realities that Indigenous tenants face in BC, to illustrate impacts of colonialism in existing laws and policies, and to reduce homelessness for all. We aim to advance reconciliation by pursuing these law reform recommendations, with intentional focus on improving conditions for Indigenous Peoples.

About FIRST UNITED

FIRST UNITED envisions a neighbourhood where the worth of every person is celebrated and all people thrive. Its responsive low-barrier programs serve low-income, underhoused and homeless individuals in Vancouver's Downtown Eastside and have for nearly 140 years. As a registered charity, it provides essential services including meals, legal advocacy, tax filing, spiritual care, mail and phone services, overdose response, essential items like clothing and toiletries, and shelter to residents in the community. FIRST UNITED also engages in systems change work to reduce homelessness, break the cycle of poverty, and address the racialization of poverty.

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Introduction

Everyone needs a home.

In British Columbia, hundreds of thousands of households rely on rental housing, and they also rely on the law to provide a basic level of protection and stability. Tenants in British Columbia have faced dramatic increases in rent paired with the highest eviction rates in the country.

The impacts on our most vulnerable neighbours cannot be overstated. Homelessness, community displacement, family separation, disconnection from work and necessary services, and a host of physical and mental health impacts follow eviction. We see a heightened risk of homelessness and displacement after eviction for Indigenous people. We see older people on fixed incomes forced to live on the street, in shelters, or in their cars. We see children forced to live apart from their families. We see tenants living in fear of landlords, afraid to request basic repairs or to use their rights because they are terrified of losing their homes. They know that here in BC, it is easy to evict. These impacts are not limited to those with the lowest incomes—now, we see them across the income spectrum.

The *Residential Tenancy Act* has the potential to meet these challenges, but in order to do so, it must change. It must offer a concrete response to the risks posed by the commodification of housing and profiteering. Many of the core features of the *Act* are decades old and do not address present realities.

In this platform, we provide evidence-based recommendations drawing on research and statistical analysis, case law, legislation from multiple Canadian jurisdictions, Residential Tenancy Branch datasets, and the BC Eviction Mapping dataset, which has documented the mechanisms of eviction since mid-2022. This dataset also includes over 850 first-hand accounts of eviction, many of which are from Indigenous tenants and other communities at risk. Our recommendations were developed in consultation with lawyers and community-based organizations across British Columbia who use the *Act* on a day-to-day basis on behalf of tenants.

Through amendments to the *Residential Tenancy Act,* we are confident that this government can prevent bad faith and unlawful evictions, improve procedural fairness, and increase housing stability and security for BC's diverse communities. As part of our ongoing systems change work, we will also continue to hear directly from those affected by displacement and evictions through our racial justice circles, and engage in public advocacy to end displacement and evictions of those living in encampments.

The time for change is now.

Summary of Proposed Amendments to the Residential Tenancy Act

1. Preventing Unnecessary Evictions to Reduce Homelessness and Displacement

A) Evidence before eviction: requiring landlord applications to evict

We recommend that the *Act* be amended:

- to require landlords to make an application to the RTB in order to end a tenancy for any reason including for "landlord's use" evictions.
- to require landlord or family occupancy to be for a continual period of 12 months, rather than 6 months where a landlord claims "landlord's use" as a reason for eviction.
- to remove the option for landlords to evict in advance on behalf of a purchaser.
- to require mutual agreements to be free of coercion, undue influence, or misrepresentation.

B) Early resolution prior to landlord's application to end tenancy

We recommend that the *Act* be amended:

- to require landlords to issue an initial *notice of nonpayment* with a 15 day repayment period before landlords are able to apply for an eviction order, and to make any eviction application voidable up to the date of hearing.
- to require landlords to issue an initial *notice of cause* for specified (less serious) tenancy issues with a 30 day resolution period before landlords are able to apply for an eviction order, and to make any eviction application voidable up to the date of hearing.
- to make "caretaker" evictions available to landlords only where there is no alternative accommodation for the caretaker.

C) Revising or removing disproportionate grounds for eviction

We recommend:

- that section 47(1)(c) (unreasonable number of occupants) be *revised* to specify that an "unreasonable number" is determined by applicable health, safety, or housing standards required by law.
- that the following basis for eviction be *removed*:
    - 47(1)(a) (the tenant did not pay a security or pet deposit on time)

2. Proportionality and making eviction a last resort

We recommend that the *Act* be amended:

- so that orders of possession must allow a reasonable time frame in which the tenant may find appropriate alternative housing.
- to require the RTB to treat eviction as a last resort, and to consider multiple factors in approving or declining a landlord's application to end the tenancy, namely:
    - The impacts of the decision on the parties, including economic, health, social, and cultural impacts;
    - The risk to the tenant of homelessness or community displacement if an eviction order is granted;
    - Any specific vulnerabilities that may put the tenant at risk of negative outcomes from eviction, including but not limited to: Indigenous identity, gender, sexual orientation and gender identity, family status, disability status, immigration status, being a person over the age of 65, and being a recipient of income assistance or otherwise of low income.
    - The best interests of any child directly affected;
    - Any relevant obligations under treaty or domestic and international human rights law, including those governing relationships between government and Indigenous peoples; and
    - the overall purposes of the *Act*.

3. Improving Procedural Fairness and Appeal Rights

We recommend amending the *Act*:

- to include a provision stating that in each case, the RTB shall adopt a procedure which affords to all persons directly affected by the proceeding an adequate opportunity to know the issues, prepare their case, and be heard on the matter.
- to include a provision stating that if a landlord is seeking to end a tenancy, the dispute resolution procedure adopted by the RTB shall afford the tenant an opportunity to review the landlord's grounds for ending the tenancy, and all available evidence, prior to requiring the tenant to provide evidence on issues raised by the landlord.
- so that the availability of review includes a) where the decision or order is wrong in law or fact or mixed law and fact, and b) a principle of natural justice has not been observed.
- to change the time limit to apply for review from 2 days to 15 days.

4. Protecting Tenants from Illegal Conduct

We recommend that the *Act* be amended:

- to prohibit landlords from harassing, obstructing, coercing, threatening, or interfering with a tenant and to prohibit retaliatory eviction.

- to prohibit landlords from inducing tenants to vacate a rental unit except in accordance with the processes specified in the *Act*.
- to provide for compensation in the amount of 12 months' rent where tenants have been induced to leave a unit in breach of this provision.
- to require the director to refuse to grant an order of possession or monetary order to a landlord if the landlord is in breach of their responsibilities or a material term, if the application is retaliatory, if the landlord owes a fine, is subject to investigation, or is otherwise noncompliant with the director's orders.
- to increase the maximum administrative penalty under section 87.4 and under the offence provisions in s. 95 be increased to $100,000 for landlords who are individuals, and to $500,000 for all corporations.

5. Diversity and Inclusion in Housing

We recommend that the *Act* be amended:

- to state that terms prohibiting additional occupants, or charging extra for additional occupants, are void and unenforceable.
- to prohibit landlords from interfering with tenants' installation of cooling equipment.
- to state that terms prohibiting pets, or charging extra rent for having pets, are void and unenforceable.
- to provide a right of continuation on the existing terms of a tenancy to remaining co-tenants in the event that one co-tenant gives notice to end the tenancy.
- to give tenants the right to assign their tenancies.
- to make clear that a sublease does not include an agreement entered into solely or partially for the purpose of avoiding the requirements of the *Act*.

6. Vacancy Control in British Columbia: Stopping Rent Gouging and Disincentivizing Illegal Evictions

We recommend that the *Act* be amended so that the allowable annual rent increase applies regardless of a change of landlord or tenant.

1. Preventing Unnecessary Evictions to Reduce Homelessness and Displacement

A) Evidence before eviction: requiring landlord applications to evict

Introduction

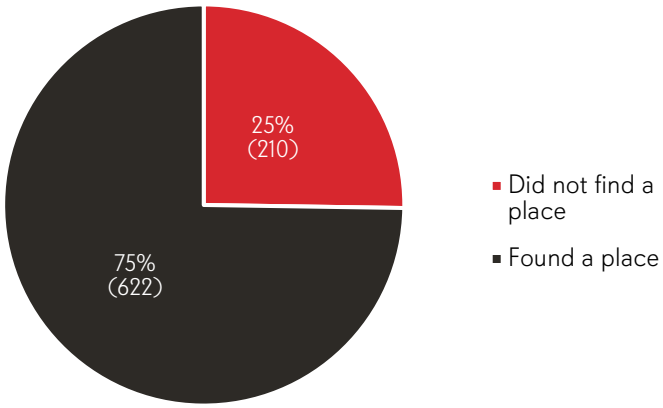
Right now, BC's *Residential Tenancy Act* permits landlords to give notices to end tenancy with no requirement for evidence or a hearing before an impartial decision maker. The burden falls on tenants to file an application for dispute resolution within extremely short timelines, and if they do not, they are deemed to accept the landlord's assertion that the tenancy must end.[1] The window of opportunity for tenants to act is small and the present *Act* does not provide a meaningful opportunity to determine whether the eviction is justified.

Losing one's home through eviction is devastating, and in British Columbia, a large proportion of evictions result in homelessness and community displacement. Based on the BC Eviction Survey dataset, 25% of overall evictions result in homelessness. For Indigenous people, this number is much higher—46% of evictions of Indigenous tenants resulted in homelessness. For people with disabilities, there was also a higher risk—34% of evictions of people with disabilities resulted in homelessness.

In terms of community displacement (being forced to move out of one's home community), eviction resulted in displacement in 78% of all cases. Again, for Indigenous people, this number was higher—a staggering 89% of evictions of Indigenous people resulted un community displacement. For people with disabilities, 84% of evictions resulted in community displacement.[2]

Preventing unnecessary evictions is a direct route to reducing homelessness and displacement in British Columbia.

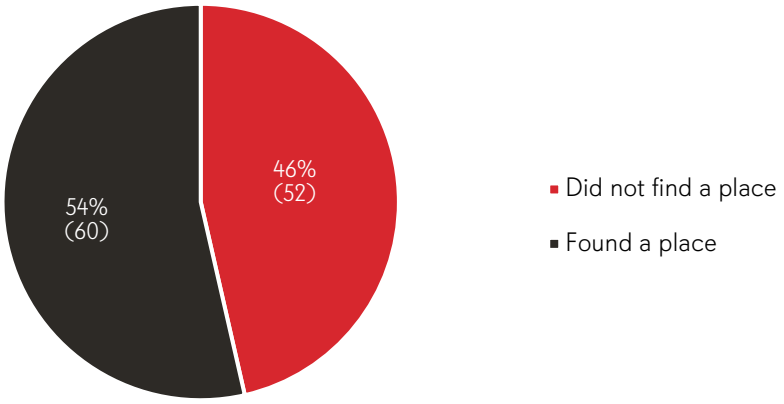
Fig. 1A.1 All Respondents - Homelessness



Appendix D includes additional charts of the proportion of tenants who became homeless, or displaced, who identify as Indigenous, people with disabilities, women and non-binary, people of colour, and SOGI minorities.

[1] *Residential Tenancy Act*, SBC 2002, c 78, ss. 46(4)-(5), 47(4)-(5), 48(5)-(6), 49(8)-(9), 49.1(5)-(6).
[2] Data collected from June 2022-November 2023 as part of the British Columbia Eviction Mapping Project. Project details, reports, and methodology available online at: https://firstunited.ca/how-we-help/bc-eviction-mapping/.

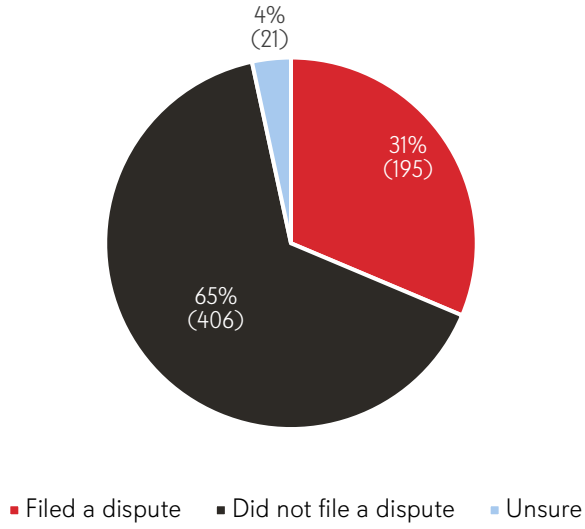
Fig. 1A.2 Indigenous Respondents - Homelessness



Most evictions in BC are "deemed accepted" by tenants - with no evidence or hearing

In the BC Eviction Survey dataset, **most tenants who are evicted did not file a dispute**. For the most part, this is not because they actually accepted the end of the tenancy (as presumed by the *Act*).

Fig. 1A.13 Proportion of tenants who filed a dispute after being formally evicted (overall)



To the contrary, the reasons tenants do not file disputes are linked to fear of retribution from their landlord, landlord harassment, or an assumption that they have no options but to accept the landlord's assertion that the tenancy is over. Indigenous tenants were slightly less likely to file a dispute with the RTB after formal eviction.

From the BC Eviction Survey dataset, the reasons given for not filing an application for dispute resolution fell within the following major themes:

Tenants fear their landlords	People who were evicted did not dispute because they were **afraid of landlord retaliation and harassment**: many tenants in this category had already experienced landlord harassment, threats, dishonesty, or neglect of basic property maintenance in the tenancy, and did not want to risk angering the landlord. In some cases, landlords specifically used the threat of eviction when tenants tried to raise maintenance issues. Representative examples from study respondents: "I was worried for my family's safety if I disputed." "Intimidation from landlord."
Landlords have the power	People who were evicted did not dispute because they **assumed landlord good faith and/or power**: many people did not use dispute resolution because they assumed the landlord's assertions (e.g. about purported family occupation) were unassailable, not because they agreed with the eviction. Some people subsequently realized landlords were not acting in good faith or that they did not have the right to evict, but had lost their homes and their right to dispute by that time. Representative examples from study respondents: "What is the point? Landlords have all the power." "I can't provide it's a bad faith eviction until after I've moved out." "He gave proper notice but never moved in."
Tenants face barriers to justice	People who were evicted also did not dispute due to **barriers to the dispute process** including being unable to pay the fee, seeing the dispute process as complex or intimidating, and specific barriers such as childcare, elder care, working many hours, and medical issues.[3] Representative examples from study respondents:

[3] *Supra* note 2 (manual coding).

"Didn't think we had the option [to dispute]."

"Too busy packing up my house, and my mom's handicap, and I was searching for a place to move to."

Landlords must bear the burden of showing that eviction is necessary

Based on these data, we submit that it **is ineffective and unfair to place the burden on tenants** to initiate an application for dispute resolution or deem them to have accepted eviction. Instead of creating balanced dispute resolution, this system defaults to the landlord's position, because the eviction stands unless the tenants are able to fight and willing to risk the consequences of conflict with their landlord.

Preventing bad faith "landlord's use" evictions – a critical first step

The ready availability of "landlord's use" evictions based solely on assertions of good faith intentions to occupy, in combination with the absence of vacancy control, provides a quick and easy way for landlords to remove tenants and raise rents by unlimited amounts. In effect, this allows landlords to profit from a scarcity of housing.

Even for those landlords that eventually have to pay the tenant 12 months of compensation for a bad faith eviction, the profit far outweighs the cost (we offer a sample calculation below in section 6). In their analysis of large-scale Canadian Housing Survey data, UBC scholars Silas Xuereb and Craig Jones have identified "landlord use" evictions as the reason BC's eviction rate is the highest in Canada. They also suggest that landlords are likely to be financially motivated to evict using this mechanism.[4]

The shift to requiring landlord applications has already been made in the case of evictions for "Landlord's Use – Renovations" and it was highly effective at preventing bad faith evictions and reducing RTB caseloads. After the 2021 amendment, there was a significant reduction in RTB caseload in this area, with only 21 RTB applications on the basis of renovations between November 2021 and June 2022.[5]

Requiring landlords to make an application to the RTB will mean that people cannot be evicted without sufficient evidence and a decision by an impartial decision maker who has reviewed the

[4] Xuereb, S. and Jones, C., *Estimating No-fault Evictions in Canada: Understanding BC's Disproportionate Eviction Rate in the 2021 Canadian Housing Survey* (UBC, 2023). Online: https://housingresearch.ubc.ca/sites/default/files/2023-05/estimating_no-fault_evictions_in_canada_0_2.pdf.
[5] Freedom of Information request FOI MAG-2022-21620 (RTB), available online: https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/completed-foi-requests.

evidence. This process will likely deter economically-motivated, frivolous, or malicious evictions, as eviction will no longer follow from the landlord's bare assertions on a form. Advance applications would mean that evictions are based on evidence and granted only after the opportunity for an impartial hearing.

Landlords listed "landlord's use" in a majority of formal evictions reported in the BC Eviction Mapping dataset (N=456, 73% of total formal evictions).[6] In these cases, 15% of tenants were homeless after eviction, and 72% were displaced from their neighbourhood.

As detailed in our memorandum to your office on July 7, 2023 (attached in Appendix B), **stemming the tide of bad faith "landlord's use" evictions by requiring advance applications from landlords is a critical, straightforward first step** in preventing unnecessary homelessness and displacement. We see this as the most pressing example due to the sheer volume of evictions, and **therefore recommend that the *Act* be amended on an urgent basis to require advance applications for all "landlord's use" notices.**

In the case of "landlord's use" evictions, **we also recommend a change to require landlord or family occupancy to be for a continual period of 12 months, rather than 6 months as is presently the case.** This change will help ensure that "landlord's use" evictions are available in situations in which the landlord, or their family, is genuinely in need of the unit as a residence and that they are less susceptible to misuse or short-term "residency" designed primarily to obtain tenant turnover.

Finally, **we recommend that the *Act* be amended to remove the option for landlords to evict in advance on behalf of a purchaser** (s. 49(5)(c)). Instead, purchasers of tenanted property will be able to apply for eviction for landlord's use after their purchase.

Requiring landlords to apply for eviction

An eviction application process is already in place in Ontario for all types of eviction,[7] and many other jurisdictions in Canada require some type of application and evidence from the landlord before an eviction is legally determined.[8] By permitting enforceable eviction without evidence, **British Columbia is the outlier**, which is especially troubling given the extreme housing crisis in this province.

This amendment will support a base level of housing security for tenants, and drastically reduce unsubstantiated evictions, and the homelessness and displacement that follow. It will also likely reduce the number of frivolous evictions that end up before the RTB, as landlords will need to

[6] This is corroborated by UBC's recent large-scale quantitative analysis using the Statistics Canada CHS data, (Xuereb, S. and Jones, C., *Estimating No-fault Evictions in Canada: Understanding BC's Disproportionate Eviction Rate in the 2021 Canadian Housing Survey* (UBC, 2023). Online: https://housingresearch.ubc.ca/sites/default/files/2023-05/estimating_no-fault_evictions_in_canada_0_2.pdf)
[7] *Residential Tenancies Act*, SO 2006 c 17, s 69(1).
[8] See, e.g., *Residential Tenancies Act*, SA 2004, C R-17.1, s 29; *The Residential Tenancies Act*, 2006, SS C R-22.0001 s. 67, *The Residential Tenancies Act,* CCSM c R 119 s 154; *Residential Tenancies Act*, RSNS 1989 c 401 s. 13 (although note deemed acceptance for non-payment notices), *Residential Tenancies Act,* SNL 2000 C R-14.1 s. 35(1), *Residential Tenancies Act* RSNWT 1988 c R-5 s. 63.

make a substantive application rather than simply notifying tenants of their desire to end the tenancy. In our 2023 consultations with legal advocates, participants from across BC strongly agreed that requiring landlords to have evidence and make an application would likely reduce tenant vulnerability and reduce frivolous or unsubstantiated evictions. As one participant noted "tenants will leave based on just a scribble on paper from their landlord, causing preventable homelessness."

This change may also reduce the caseload before the Compliance and Enforcement Unit ("CEU"): in a recent case, the CEU had to undertake a significant investigation where a landlord had issued multiple eviction notices to tenants based on a "government order" where no such order existed. Had the landlord been required to make an application to evict the tenants, this evidence would have been required as part of that application, and both the improper evictions and the costly investigation could have been avoided.[9]

Finally, this change will improve procedural fairness and increase the likelihood that British Columbia is meeting domestic and international human rights obligations, including those under the *Declaration on the Rights of Indigenous Peoples Act*. This is critical, given the extremely high stakes of eviction and the heightened impacts on Indigenous and other at-risk populations.

We therefore recommend that the *Act* be amended to require advance applications from landlords for all grounds of eviction. The application should include the requirement for landlords to provide particulars of the grounds for eviction in a prescribed form, and to confirm if they have already completed the advance notice process (outlined below) for more minor issues that can be resolved without eviction.

'Mutual Agreements to End' must be limited to non-coercive situations

Another way tenants lose their homes is by signing a "Mutual Agreement to End Tenancy" offered by landlords. While this was not nearly as prevalent in the BC Eviction Survey dataset as "landlord's use" evictions,[10] it deserves specific attention because when tenants sign this agreement they relinquish their rights under the *Act* in a situation where there is an inherent power disparity. The power imbalance between landlords and tenants and the threat of losing one's housing means that tenants can be subject to extreme pressure to sign mutual agreements to end tenancy, and feel they have little choice. Sometimes landlords use threats to obtain mutual agreements, including threats of "landlord's use" evictions.

Responses from the BC Eviction Survey dataset show how this section can be abused:

> "I ended up agreeing to sign the mutual agreement under the condition of a payout. The payout was nothing compared to how

[9] Notice of Administrative Penalty and Reasons for Decision: United Revenue Properties Ltd (January 6, 2023). https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/administrative-penalties/united_revenue_properties_ltd_dcn.pdf

[10] "I signed a mutual agreement to end tenancy" was selected as a reason for eviction in 3% of overall formal evictions (N=17). Data collected from June 2022-November 2023 as part of the British Columbia Eviction Mapping Project. Project details, reports, and methodology available online at: https://firstunited.ca/how-we-help/bc-eviction-mapping/.

> much my rent will be increasing over a year, but the landlord said if I don't take the money they will find a buyer who is willing to move in."
>
> "Coercion to sign mutual agreement, no recourse."

The *Act* currently provides no means of resolution for tenants who sign under duress. **We therefore recommend that the sections of the *Act* dealing with mutual agreements to end tenancy be amended to require mutual agreements to be free of coercion, undue influence, or misrepresentation.**

We have provided draft amending language in Appendix A.

B) Providing a meaningful opportunity for tenants to resolve issues prior to landlord's application to end tenancy

The current *Residential Tenancy Act* process escalates quickly from issues in the tenancy to eviction of the tenant, with little opportunity for parties to resolve problems.

Giving parties the opportunity to resolve issues at an early stage will serve the goals of **promoting stable and secure tenancies, preventing unnecessary evictions and the homelessness and displacement that follow, and reducing caseloads at the RTB.** A similar requirement already exists with regard to material breach evictions,[11] and this could readily be expanded to other sections.

This would be appropriate, in particular, for sections 46 (nonpayment) and some subsections of s 47 (cause) of the *Act*, both of which include issues that can readily be addressed without recourse to eviction.

Section 46 as it is presently drafted is harsh and inflexible, contributing to preventable homelessness and displacement. Right now, landlords can issue a Notice to End Tenancy the first day that rent is unpaid, and tenants have five days in which to pay any rent owing. If tenants do not pay (or file for dispute resolution) they are deemed to accept the end of the tenancy. If they do dispute the notice, and they are determined not to have paid the entire amount within five days, the *Act* leaves no room for any solution short of eviction, and no option for the tenant to pay the arrears after the five day period or to make a payment plan. This is so whether the tenant is short $1, or more.[12]

[11] *Residential Tenancy Act*, SBC 2002, c 78, s 47(1)(h).
[12] See, e.g. *LaBrie v Liu*, 2021 BCSC 2486, in which an arbitrator upheld a Notice to End Tenancy for unpaid rent when the tenant was $1 short due to a bank transfer fee. The decision was quashed on the basis of procedural unfairness, but this sheds light on the rigidity of s. 46 and the manner in which it is applied by the RTB.

Providing notice and opportunity to resolve nonpayment issues prior to eviction (s. 46)

Data from the BC Eviction Survey show that for evictions in which the landlord alleges nonpayment, 55% of tenants became homeless subsequent to eviction, and 89% of tenants were displaced from their neighbourhood.[13] Requiring advance notice of nonpayment with sufficient time to access resources will provide a targeted way of preventing homelessness and displacement.

The RTB's case data from March 2020 to May 2022 show 3,166 instances of orders of possession granted to landlords for nonpayment (of rent or utilities).[14] 97.5% of these orders of possession gave the tenant only 48 hours to find new housing during this time period (N = 3,088).[15]

In the same period, the RTB also recorded 3,028 disputes from tenants facing a nonpayment eviction. Tenants won their cases 8% of the time (N = 252), and lost 77% of the time (N=2,356). In each losing case for tenants, an order of possession would have been issued by the RTB automatically due to the operation of s. 55.[16] The RTB data does not disclose how many of these orders of possession are 48-hour orders when they arise from tenant applications.

This means that for issues flowing from nonpayment of rent, we can estimate that 5,522 orders of possession in favour of the landlord were issued by the RTB from March 2020-May 2022 (3,166 orders to landlords + 2,356 tenant losses on nonpayment disputes, as described above). Many of these could be averted by requiring an initial nonpayment notice from the landlord, allowing the tenant to access resources and resolve the issue before the landlord can apply for eviction.

With regard to s. 46 (nonpayment), requiring landlords to issue an initial *notice of nonpayment* with a payment period of 15 days will give the tenant a chance to pay the arrears and seek assistance if needed. After this, if the tenant does not pay, the landlord may apply to the RTB to end the tenancy as specified in the amendment described above. The *Act* should further stipulate that if the tenant pays the rent owing prior to the RTB hearing, the application to end

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[13] *Supra* note 2.

[14] Combined spreadsheet comprised of spreadsheets from Freedom of Information Requests MAG-2022-20740 and MAG-2022-20808, data combined using RequestID column (unique case identifier). 3436 is the total number of results in which OPU and/or OPR (Landlord-initiated Order of Possession applications) are listed as dispute codes and the IssueResult column value is either "Possession Granted – 2 day, Possession Granted – Other, and Possession Granted – Specific Date."

[15] Ibid. 3088 is the number of unique results in which OPU and/or OPR are listed as dispute codes and the IssueResult column value is "Possession Granted – 2 day"

[16] Combined spreadsheet comprised of spreadsheets from Freedom of Information Requests MAG-2022-20740 and MAG-2022-20808, data combined using RequestID column (unique case identifier). 3928 is the total number of results in which DisputeSubType = Tenant and DisputeIssueCode = CNR (CNU did not appear in the set). 252 is the total number where IssueResult = granted (tenant won). 2356 is the total number where IssueResult = Dismissed – With leave to re-apply or Dismissed – Without leave to re-apply.
It appears that the RTB does not comprehensively track orders of possession the case of tenant applications (including whether or not they are 48-hour orders), perhaps because the Act presently requires an order of possession to be issued by operation of law. We assume that the vast majority of orders of possession issued on tenant disputes when the tenant loses are 48-hour orders, in keeping with all available data from the RTB (see below, Section 2 of these submissions). The RTB does appear to track some orders of possession that emanate from tenant applications under the "CNOP" code, but the total number of tracked CNOP is far lower than the number of failed tenant applications, which should result in OP by operation of law. It is therefore assumed that the CNOP values do not accurately represent the total number of orders of possession for landlords that result from tenant-initiated applications. Furthermore, we expect this analysis significantly underestimates the number of tenants affected by Notices to End Tenancy for nonpayment, as the number of cases that end up before the RTB represents only a fraction of total evictions, as we know that most evicted tenants do not file a dispute (and thus these evictions are not tracked in RTB data) (see chart Fig. 4.1)

tenancy is cancelled. This would allow tenants a reasonable chance to make payments and access resources to maintain their tenancy, including loan programs available through the BC Rent Bank. This is similar to what is already in place in Ontario[17] and we have attached specific amending language for this section in Appendix A.

We therefore recommend that the *Act* be amended to require landlords to issue an initial *notice of nonpayment* with a 15 day repayment period before landlords are able to apply for an eviction order, and to make any eviction application voidable up to the date of hearing.

Providing notice and opportunity to resolve less serious "cause" issues prior to eviction (s. 47)

Likewise, with regard to s. 47 (cause), requiring landlords to issue an initial *notice of cause* would let the tenant know what the problem is and require them to resolve it. The tenant would then have 30 days to remedy the issue before the landlord would be permitted to make an application to end tenancy.

This would be an appropriate first step for matters presently included in s. 47(1)(c) (number of occupants) and (d) (interference/disturbance of another occupant, risk to health or property), (g) (failure to repair/maintain), (h) (material terms), (i) assignment or sublet without landlord permission, and (l) timely compliance with orders of the Director. If repairs to damage are required, we would suggest that the tenant should be required to either repair the damage or show proof that they have made arrangements to have it professionally repaired, within 30 days.

Data from the BC Eviction Survey show that for evictions in which the landlord alleges cause, 34% of tenants became homeless subsequent to eviction, and 77% of tenants were displaced from their neighbourhood.[18] Requiring advance notice of cause with sufficient time for the tenant to resolve the issue will also provide a targeted way of preventing homelessness and displacement.

In any of these situations, if the requirements are not met by the tenant within 30 days, the landlord would then be able to apply to the RTB to end the tenancy. The *Act* should further stipulate that if the tenant remedies the issue prior to hearing, the application to end tenancy should be voided or cancelled. This is similar to what is already in place in Ontario,[19] and there are voidable evictions on similar grounds in multiple other Canadian jurisdictions.[20]

We therefore recommend that the *Act* be amended to require landlords to issue an initial *notice of cause* for specified (less serious) tenancy issues with a 30 day resolution period before landlords are able to apply for an eviction order, and to make any eviction application voidable up to the date of hearing.

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[17] *Residential Tenancies Act*, SO 2006 c 17, ss 59, 74.
[18] *Supra* note 2.
[19] *Residential Tenancies Act*, SO 2006 c 17, ss 62, 64, 67.
[20] E.g. *Residential Tenancies Act*, SA 2004, C R-17.1, s 29; *The Residential Tenancies Act*, CCSM c R 119 ss 95.1, 96; *Residential Tenancy Act* RSPEI 2022 c 88 ss 60, 61; *The Residential Tenancies Act*, 2006, SS C R-22.0001 s. 67

The more serious health and safety situations covered by s. 47(1) (e) (illegal activity), (f) (extraordinary damage) and (k) (compliance with orders of various levels of government) should **not** require an initial notice of cause, which would allow the landlord to apply to the RTB to end the tenancy directly.

Closing the loophole on bad faith "caretaker" evictions

Right now, landlords are able to end tenancies by claiming the intention to use suites for a caretaker. Similarly to "landlord's use" evictions, these require little more than an assertion of good faith intentions by the landlords, and this section can be used in bad faith in a very similar way in order to force tenant turnover and increase rents.[21]

We therefore recommend that the availability of evictions based on the need for a caretaker unit be available to landlords only where there is no alternative accommodation available for the caretaker.

We have included draft amending language in Appendix A.

C) Revise or remove disproportionate grounds for eviction

The following grounds for eviction should be removed or revised in an amendment to the *Act* because they do not specify clear standards or because they provide for eviction where it is patently disproportionate. This amendment will help clarify the law and remove unnecessary grounds for eviction.

As presently worded, Section 47(1)(c) ("unreasonable number of occupants") is vague and gives no guidance to decision makers, landlords, or tenants. Specifying occupancy standards in reference to health, safety, or housing standards provides a clear basis for any restrictions and aligns with provincial and municipal health and safety regulations. This is similar to what is already in place in Ontario.[22]

We therefore recommend that section 47(1)(c) (unreasonable number of occupants) be *revised* to specify that an "unreasonable number" is determined by applicable health, safety, or housing standards required by law.

We have included draft amending language in Appendix A.

Section 47(1)(a) should be removed because eviction is a wildly disproportionate remedy for not paying a deposit on time. As with other monetary matters under the *Act*, landlords already have

[21] See, e.g. https://www.cbc.ca/news/canada/british-columbia/bc-rtb-caretaker-eviction-plan-a-real-estate-bad-faith-1.7055918.
[22] *Residential Tenancies Act*, SO 2006 c 17, s 67, which states "A landlord may give a tenant notice of termination of the tenancy if the number of persons occupying the rental unit on a continuing basis results in a contravention of health, safety or housing standards required by law."

a remedy because they can request an order from the RTB if there is a pet or security deposit owing, which is aligned with the RTB's compliance-based approach. Furthermore, most tenancies do not begin without a security and/or pet deposit, so this is not likely to arise frequently.

We therefore recommend that the following basis for eviction be *removed*:

> 47(1)(a) (the tenant did not pay a security or pet deposit on time)

2. Proportionality and making eviction a last resort

The concept of proportionality in housing law is simple: it means evictions are seen as a last resort, and should only be available as a remedy when truly necessary.

The Canadian Centre for Housing Rights gives the following three-point framework for proportionality:

- The eviction must have a legitimate objective.
- Eviction must be necessary to achieve the objective, and there must be no reasonable alternative.
- The consequences of eviction must be proportionate to the objective [23]

The CCHR elaborates on the role of adjudicators under a proportionality framework:

> The proportionality framework requires that an adjudicator consider all the circumstances of the case, and only order eviction if they are satisfied that all three of the above conditions have been met. The adjudicator must consider the interests of both the tenant and the landlord, but must come to their own objective conclusion as to whether eviction is really necessary.[24]

In Europe, domestic laws on tenancy must provide for proportionality as a matter of basic human rights, but in Canada it varies considerably between provinces and territories. In Canadian jurisdictions, Ontario, Saskatchewan, Quebec, and Northwest Territories give adjudicators the express discretion to consider alternatives to eviction, and courts or tribunals have confirmed that similar discretion exists for adjudicators in Alberta, New Brunswick, and Manitoba.

In contrast, British Columbia's laws are restrictive, allowing no consideration of options other than eviction, regardless of specific circumstances or proportionality.

In its current form, the *Residential Tenancy Act* makes eviction mandatory rather than treating it as one of many possible solutions. Section 55(1)(b) *requires* arbitrators to give the landlord an order of possession if the landlord's notice is upheld. This leaves no room for discretion on the part of arbitrators to fashion a proportionate remedy to resolve the underlying issue. Combined with short timelines and rigidity in the eviction provisions of the *Act*, this requirement to issue an order of possession means that eviction follows by necessity even after small and resolvable issues.

For example: a tenant is $100 short on their rent and they receive a notice to end tenancy for nonpayment of rent (s. 46) from their landlord. The tenant pays the outstanding amount after 7 days and files for dispute resolution. At the hearing, it is clear that they did not pay the

[23] Canadian Centre for Housing Rights, *Proportionality: A Legal Framework to Make Eviction A Last Resort in Canada* (July, 2023), online at: https://housingrightscanada.com/wp-content/uploads/2023/07/23.07.13-CCHR-Proportionality-making-eviction-a-last-resort-in-Canada.pdf, p 3.
[24] *Ibid*, p 4.

outstanding $100 within the 5 day period specified in the *Act*. The arbitrator **must** uphold the landlord's notice, as the tenant did not pay the full rent within the short timeline allowed by the *Act,* and the arbitrator **must** issue an order of possession, as they are required to do by operation of law under s. 55(1)(b), having upheld the landlord's notice. Eviction in such a case is unnecessary and disproportionate, but the present configuration of the *Act* makes it a certain outcome.

The RTB practice of issuing 48-hour orders of possession causes homelessness and must be eliminated

Another key factor contributing to homeless in BC is the RTB's institutional practice of issuing 48-hour orders of possession as a default.[25]

Based on RTB data, from March 2020 to May 2022, there were 3,901 orders of possession granted on *landlord* applications (i.e. where landlords have requested an order of possession), **and a vast majority of these (90%, N = 3,520) were 48-hour orders of possession**.[26] This gives a tenant who has lost a dispute 48 hours to find new housing.

The 48-hour order of possession is not mentioned in the *Act* or *Regulations*—it is a direct result of institutional practice at the RTB.

Arbitrators have the discretion not to make orders of possession on landlord applications under s. 55(2), and they certainly have the discretion not to make 48-hour orders in any case, but they persist in doing so.

While the RTB does not appear to specifically track orders of possession for the landlord that come about from *tenant* applications (e.g. where tenants dispute an eviction notice), we can use dismissals of tenant applications on eviction matters to estimate the number of orders of possession because orders of possession are issued as a matter of law when a tenant disputes a Notice to End Tenancy and loses, under s. 55 (1) of the *Act*.

[25] The RTB's Policy Guideline 54 on orders of possession provides a list of factors that arbitrators may consider in order to extend the date of an order of possession beyond the "usual" 48 hours, but in practice these are rarely applied. The guidelines is available at: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl54.pdf. This guideline refers to 48-hour notices as "the usual" timeline for orders of possession and cites the case of *Morse v. Crystal River Court ltd*. 2021 BCSC 1868 However, the court in that case did not make any finding on the level of discretion or the use of 48-hour orders as a default, but simply found that it was not patently unreasonable on the facts before it to grant a 48-hour order of possession.

[26] Combined spreadsheet comprised of spreadsheets from Freedom of Information Requests MAG-2022-20740 and MAG-2022-20808, data combined using RequestID column (unique case identifier). 4092 is the total number of results in which DisputeSubtype = Landlord, the DisputeIssueCode is one of (OPB, OPC, OPE, OPL, OPL-4M, OPM, OPN, OPQ, OPR, OPR-DR, OPR-DR-PP, OPR-PP, OPT, OPU, OPU-DR, OPU-DR-PP, OPU-PP) and the IssueResult column value is either "Possession Granted – 2 day", "Possession Granted – Other", and "Possession Granted – Specific Date." 3767 is the number of results in which the Issue Result column value is "Possession Granted – 2 day." Note that RTB data from this time period may include duplicate records, but we assume that duplicates are evenly distributed in the data, and therefore that the overall rate of 48-hour orders of possessions proportionate to the total number of orders of possession is reliably estimated.

From March 2020 to May 2022, RTB data show that 5,680 tenant applications disputing landlord Notices to End Tenancy were dismissed from January 2020-March 2022. Each of these would receive an order of possession by operation of law.[27]

The RTB does not appear to comprehensively track how many of these automatic orders of possession are issued as 48-hour orders. Regardless of the disparities in outcome tracking in RTB data, it is safe to assume that the 48-hour order of possession is treated as the default order in tenant applications just as it is in landlord applications.

Each year, thousands of tenant households were given two days to find a new place to live as a result of the RTB's practice of issuing 48-hour orders of possession. **This undoubtedly greatly contributes to homelessness after eviction**, as it is not realistic for anyone to find a new place to live in British Columbia with 48 hours' notice. Furthermore, the risk of a 48-hour order of possession serves as a formidable disincentive to using the dispute processes available under the *Act*—tenants should not be required to take on the risk of homelessness in order to pursue their rights. In our 2023 consultations, there was strong consensus among BC advocates working in this area that 48-hour notices should be removed as they are not giving people enough time to find somewhere to live.

After the time period described by the above datasets, in July 2022, the RTB issued a new policy guideline on 48-hour orders of possession. RTB Policy Guideline 54 states that arbitrators have the discretion to extend orders of possession "beyond the usual two days provided" and gives factors for the arbitrator to consider.[28]

Two subsequent datasets from the RTB show that **48-hour orders of possession remain extremely prevalent even after this guideline change.**

From July 2022-December 2022, 48-hour orders of possession appear even more prevalent than they were before the guideline change. In response to a further Freedom of Information request, the RTB disclosed a total of 845 orders of possession on landlord applications during this time period, of which **817 (97%) were 48-hour orders of possession.**[29]

For the same 6-month period, the RTB disclosed a total of 569 dismissals of tenant disputes of Notices to End tenancy from landlords. While orders of possession appear not to be tracked

[27] Combined spreadsheet comprised of spreadsheets from Freedom of Information Requests MAG-2022-20740 and MAG-2022-20808, data combined using RequestID column (unique case identifier). 5680 is the total number of results in which DisputeSubtype = Tenant, the value for DisputeIssueCode is one of the following (CNC, CNC-MT, CNE, CNE-MT, CNL, CNL-4M, CNL-4M-MT, CNLC, CNLC-MT, CNL, CNQ, CNQ-MT, CNR, CNR-MT) and the IssueResult column value is either "Dismissed – With Leave to Reapply" (N=2078) or "Dismissed – Without Leave to Reapply" (N = 3602). The RTB does appear to track some orders of possession that emanate from tenant applications under the "CNOP" code, but the total number of tracked CNOP is far lower than the number of failed tenant applications, which should result in OP by operation of law. It is therefore assumed that the CNOP values do not accurately represent the total number of orders of possession for landlords that result from tenant-initiated applications.

[28] BC Residential Tenancy Branch, "Guideline 54, Ending a Tenancy: Orders of Possession." Online: <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl54.pdf>

[29] Freedom of Information request HSG-2023-32893. For July 1-December 31, 2022, 845 is the total number of results in which DisputeSubtype = Landlord, the DisputeCode is one of (OPB, OPC, OPE, OPL, OPL-4M, OPM, OPN, OPQ, OPR, OPR-DR, OPR-DR-PP, OPR-PP, OPT, OPU, OPU-DR, OPU-DR-PP, OPU-PP) and the Outcome column value is either "Possession Granted – 2 day", "Possession Granted – Other", and "Possession Granted – Specific Date." 817 is the number of results in which the Issue Result column value is "Possession Granted – 2 day." Note that RTB data from this time period may include duplicate records, but we assume that duplicates are evenly distributed in the data, and therefore that the overall rate of 48-hour orders of possessions proportionate to the total number of orders of possession is reliably estimated.

comprehensively in tenant cases, these dismissals would have resulted in orders of possession, and **we assume that 48-hour orders were at least as prevalent** in these applications as they are in the landlord application data.[30]

In the most recent dataset disclosed by the RTB, covering the period from January 1, 2023-July 18, 2023, the RTB issued 1,738 orders of possession on landlord applications, of which **93% (N=1,616) were 48-hour orders of possession.**[31] The same dataset shows 1,178 orders of possession emanating from tenant applications, but does not provide information on how many of these were 48-hour orders of possession;[32] however, it is assumed that 48-hour orders of possession are as prevalent here as they are in all datasets in which are tracked.

We therefore recommend **that the *Act* be amended so that orders of possession must allow a reasonable time frame in which the tenant may find appropriate alternative housing.**

We have attached draft amending language in Appendix A.

Eviction must be treated as a last resort and decision makers should consider multiple factors prior to making an order that results in eviction

In *Senft*, a 2022 case, the BC Supreme Court framed the arbitrator's role as: "deciding whether an end to tenancy was *justified or necessary* in the context of the protective purposes of the RTA"[33] (emphasis ours). This finding signals a proportionality approach in which eviction is treated as a last resort, and we submit that the *Act* should be amended to align with this.

The Director's power to make orders under s. 62(3) already includes the power to make conditional orders. These could be used to fashion appropriate remedies short of eviction. Specific factors to be considered prior to granting an eviction order will make eviction a last resort, not a first solution.

Adding specific factors for the RTB to consider prior to eviction would operate in conjunction with the landlord's obligation to provide advance notice and an opportunity for the tenant to correct more minor issues and the requirement for applications to the RTB in order to end tenancies (both outlined above).

[30] Freedom of Information request HSG-2023-32893. 569 is the total number of results where the value for DisputeCode is one of the following (CNC, CNC-MT, CNE, CNE-MT, CNL, CNL-4M, CNL-4M-MT, CNLC, CNLC-MT, CNL, CNQ, CNQ-MT, CNR, CNR-MT) and the Outcome column value is either "Dismissed – With Leave to Reapply" (N=9) or "Dismissed – Without Leave to Reapply" (N = 56).
[31] Freedom of Information request HSG-2023-31880. For January 1-July 18 2023, 1738 is the total number of results in which the value for OP_Awarded = Yes and value for "Dispute Code where OP was awarded" is one of (OPB, OPC, OPE, OPL, OPL-4M, OPM, OPN, OPQ, OPR, OPR-DR, OPR-DR-PP, OPR-PP, OPT, OPU, OPU-DR, OPU-DR-PP, OPU-PP) and the Outcome column value is either "Possession Granted – 2 day", "Possession Granted – Other", and "Possession Granted – Specific Date." 1616 is the number of results in which the Issue Result column value is "Possession Granted – 2 day." This dataset from the RTB appears to use a new method in which there are no duplicates reported.
[32] Freedom of Information request HSG-2023-31880. For January 1-July 18 2023. 1178 is the total number of cases in which the value for OP_Awarded = Yes and the value for "Dispute Code where OP was awarded" is one of: (CNC, CNC-MT, CNE, CNE-MT, CNL, CNL-4M, CNL-4M-MT, CNLC, CNLC-MT, CNL, CNQ, CNQ-MT, CNR, CNR-MT)
[33] *Senft v Society For Christian Care of the Elderly*, 2022 BCSC 744, at para 39.

This amendment would also be in line with existing jurisprudence recognizing that the overall purpose of the *Act* is to confer a benefit or protection on tenants.[34]

We therefore recommend that the *Act* be amended to require the RTB to treat eviction as a last resort, and to consider multiple factors in approving or declining a landlord's application to end the tenancy, namely:

> **(a) The impacts of the decision on the parties, including economic, health, social, and cultural impacts;**
>
> **(b) The risk to the tenant of homelessness or community displacement if an eviction order is granted;**
>
> **(c) Any specific vulnerabilities that may put the tenant at risk of negative outcomes from eviction, including but not limited to: Indigenous identity, gender, sexual orientation and gender identity, family status, disability status, immigration status, being a person over the age of 65, and being a recipient of income assistance or otherwise of low income.**
>
> **(d) The best interests of any child directly affected;**
>
> **(e) Any relevant obligations under treaty or domestic and international human rights law, including those governing relationships between government and Indigenous peoples; and**
>
> **(f) the overall purposes of the *Act*.**

We have provided draft amending language in Appendix A.

[34] *Senft v Society For Christian Care of the Elderly*, 2022 BCSC 744, *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257 at paras 11 and 27; *McLintock v British Columbia Housing Commission,* 2021 BCSC 1972 at paras 56-57; *Labrie v Liu*, 2021 BCSC 2486 at para 33; *Blaouin v Stamp*, 2021 BCSC 411 at para 60.

3. Improving Procedural Fairness and Appeal Rights

Procedural fairness and the RTB

When a person's housing is at stake, and when homelessness and displacement often follow, eviction decisions must be made in a fair way that allows tenants an opportunity to know the issues and to respond. At law, the duty of procedural fairness is higher where there is a significant impact on individuals.[35] If tenants are evicted after an unfair RTB process, it is extremely onerous and costly for them to obtain judicial review and a stay of the order of possession. Realistically, this is not accessible for most tenants, and it is likely that the vast majority of hearings that follow unfair processes see no remedy at all.

BC courts have repeatedly found that there is a high degree of procedural fairness owed to tenants in the dispute resolution process under the *Act*,[36] but in a report assessing procedural fairness at the RTB, the Community Legal Assistance Society of BC noted that the RTB itself did not appear to take relevant jurisprudence into account in "any meaningful way."[37]

Procedural fairness has been a persistent problem for the RTB. In the same report, CLAS BC found that 59% of judicial reviews of the RTB's decisions were successful. This is an extremely high grant rate, especially given the *Act*'s strong privative clause. The authors also conducted a review of a sample of RTB decisions and found that 71% of sampled decisions lacked key indicators of fairness, such as using the correct legal test or making findings that the test was met.

In a recent example of procedural fairness problems at the RTB, the BC Supreme Court found that an arbitrator had inappropriately used their decision-making powers to put "intense" pressure on parties. The arbitrator repeatedly referenced the possibility of a 48-hour order of possession should the tenants not decide to settle (although no assessment of the merits had yet been made). The court noted that the arbitrator implied to tenants that by choosing not to settle, they "were somehow in breach of their affirmation to tell the truth."[38]

In another recent BC Supreme Court review of an RTB decision, the court found that there was a breach of procedural fairness when the arbitrator cut off the hearing, preventing the tenant from being able to fully present their case (but after the landlord had been able to present theirs), finding:

> [35] The Ruling imposed an inflexible time limit without notice and effectively after the fact. The Tenant had no opportunity to plan and organize his case to fit. There were no known set parameters to fit it within. The Ruling was made without any exploration or consideration of the additional time that might be required or the significance of the testimony being truncated. Finally, the Ruling introduced a

[35] *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), para 25.
[36] *Shaikh v Brar*, 2023 BCSC 1285 at para 88, citing the court's summary of jurisprudence on procedural fairness in the RTB context in *Bedwell Bay Construction v Ball*, 2022 BCSC 559 at paras 55-58.
[37] Community Legal Assistance Society, *On Shaky Ground: Fairness at the Residential Tenancy Branch* (2013), online at: https://clasbc.net/resources/reports-and-publications at p. 24.
[38] *Ibid* at para 100.

> time limit on direct examination that applied to only one party—the Landlord's case in chief was already in.[39]

These cases describe fundamental failures of procedural fairness in a decision-making context where the outcomes have an enormous impact on people's lives.

Making fairness part of the *Act*

Procedural fairness in tenancy arbitration is specifically mentioned in the legislation of Nova Scotia,[40] Nunavut, NWT, and the Yukon.[41]

Ontario's legislation specifies that its Board shall adopt:

> "the most expeditious method of determining the questions…that affords to all person directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter."[42]

Similar language already exists in s. 87.3(2) of BC's *Act*, confirming that a party subject to enforcement action will be given "an opportunity to be heard" and could readily be added to the parts of the *Act* dealing with RTB hearings as well.

Adding a similar section does not create additional obligations for the RTB, but rather makes clear that the fundamental tenets of procedural fairness apply to it. Of course, the duty of procedural fairness applies whether or not it is stated in governing legislation, but to include it will signal its importance to both participants and decision makers.

We therefore recommend amending the *Act* to include a provision stating that in each case, the RTB shall adopt a procedure which affords to all persons directly affected by the proceeding an adequate opportunity to know the issues, prepare their case, and be heard on the matter.

Allowing tenants to know the case to be met and to respond to it

Right now, tenants frequently have to make a case against eviction without seeing any of the landlord's evidence in favour of eviction. This is the seemingly absurd result of the tenant being treated as the "applicant" on a landlord's eviction because they bear the burden of disputing it,

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[39] *Al-Sudani* v *Ghavami*, 2023 BCSC 2280.
[40] In reference to the tenancy appeals jurisdiction of the Small Claims Court, in which it will "give full opportunity for the parties to present evidence and make submissions."
Residential Tenancies Act, RSNS 1989, c 401 s 17C(5).
[41] In reference to a decisionmaker's power to consider new evidence if they inform parties of new information and give them "an opportunity to explain or refute it." (*Residential Tenancies Act*, RSNWT (Nu) 1988, c R-5 s 82, *Residential Tenancies Act*, RSNWT 1988, c R-5 s 82, and *Residential Landlord and Tenant Act*, SY 2012, c 20 s 78(2))
[42] *Residential Tenancies Act, 2006*, SO 2006, c 17, s 183.

plus the RTB's rules requiring the "applicant" to give their evidence first.[43] Tenants being evicted have to guess at what the landlord's evidence might be, rather than knowing the case to be met. **This profoundly undermines procedural fairness.**

This procedural fairness shortfall may well be resolved by the amendment above (Section 1) requiring landlord application and evidence in advance of eviction. Whether or not that amendment is implemented, the *Act* should make clear that a landlord seeking eviction must provide evidence first so that the tenant can know the case to be met, which would afford basic procedural fairness to tenants facing eviction.

We therefore recommend amending the *Act* to include a provision stating that if a landlord is seeking to end a tenancy, the dispute resolution procedure adopted by the RTB shall afford the tenant an opportunity to review the landlord's grounds for ending the tenancy, and all available evidence, prior to requiring the tenant to provide evidence on issues raised by the landlord.

Substantive internal review of RTB decisions

Given the high volume of errors in first-level decision making at the RTB (based on the high rate of judicial intervention[44]) and the nature of these errors, we further recommend an amendment to the *Act* to expand the present internal review grounds and to extend the timeline for submitting a review to at least 10 days (at present, it is 2 days after receiving a decision in most cases).[45]

In addition to the ongoing procedural fairness issues at the RTB, there is an increasing burden on the Supreme Court to deal with judicial reviews of arbitrators' decisions. Over the past ten years, the number of full judicial reviews of arbitrators has increased more than fourfold (23 reported cases in 2023 vs. 5 reported cases in 2013).[46]

Enabling internal review on the basis of errors in fact or law or failure to observe the principles of natural justice in the original decision would assist the RTB in improving overall decision-making quality, promote more efficient resolution for all parties, and reduce the use of court resources to

[43] RTB Rules of Procedure, Rules 3.13-3.15, online: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf.
[44] See Community Legal Assistance Society, *supra* note 37.
[45] *Residential Tenancy Act*, SBC 2002, c 78 ss 79-80.
[46]

Year	Full judicial reviews arising from matters under the *RTA*
2023	23
2022	20
2021	19
2020	9
2019	11
2018	8
2017	9
2016	7
2015	5
2014	5
2013	5

address initial decision errors. Whether constituted as a tribunal or otherwise, those responsible for hearing reviews must be professionally qualified in the conduct of hearings, administrative law, and analysis of evidence.

Broadening the scope of review in this way would bring the *Act* in line with other laws that directly impact the lives of individuals, including the *Employment Standards Act* and the *Employment and Assistance Act*.

We therefore recommend that the grounds for review of decisions or orders of the RTB be amended to include a) where the decision or order is wrong in law or fact or mixed law and fact, and b) a principle of natural justice has not been observed.

Making statutory timelines for review feasible for applicants

The statutory deadlines for filing a review of an RTB decision are extremely short: 2 days for decisions on orders of possession and non-payment, and 5 days for other grounds of eviction where there is no order of possession at play. Due to the operation of s. 55(1) (which mandates an order of possession where the tenant has disputed a notice and loses), **the 2-day review deadline applies in the vast majority of eviction cases.**

Given the enormous impact of eviction decisions, and the prevalence of homelessness and displacement following eviction, the timeline should be extended to allow applicants sufficient time to obtain counsel and file their applications. In our submission, fifteen days would be a more appropriate statutory timeline to submit review applications of all RTB decisions and orders. Using a single time limit for all types of orders also makes the *Act* more accessible for self-represented review applicants.

In addition to allowing applicants sufficient time to file for review, **we anticipate that amending the timeline would reduce the overall volume of review files before the RTB,** as applicants would have the opportunity to obtain counsel on the merits of their request (rather than simply filing because they need more time to determine their options), therefore reducing the number of unmeritorious review applications.

We therefore recommend that the *Act* be amended to change the time limit to apply for review from 2 days to 15 days.

We have provided draft amending language in Appendix A.

4. Protecting Tenants from Illegal Conduct

The data from the BC Eviction Survey make clear that many tenants are living in fear of homelessness and displacement, and that this fear is realistic. There is an enormous power imbalance in favour of landlords. This imbalance is inherent in the landlord-tenant relationship and it arises because the risks to tenants (of homelessness and displacement, but also severe financial, health, and social consequences) are of a different nature than the risks to small or large landlords (a financial cost associated with a property they own and choose to rent in order to enjoy the benefit of passive income).

Even for those who can afford it, finding a new rental home is extremely difficult—bidding wars have become a regular part of the rental landscape and landlords report receiving hundreds of applications for rental units.[47]

In the escalating housing crisis, the power imbalance between landlords and tenants has become more pronounced. It is clear from our data that fear of eviction is a deterrent for tenants who would otherwise make an application or complaint to the RTB or CEU (see Section 1A, above).

A complaint-based system, however well-resourced, is limited in its capacity to address harmful landlord conduct if tenants fear complaining. It is well established that complaint-based regulatory enforcement is ineffective in the employment context, which has a similar power dynamic.[48] However, in conjunction with the recommendations set out above to limit unnecessary evictions and require evidence, the system would be strengthened both by **clarifying prohibited landlord actions** and by **creating meaningfully deterrent consequences** for landlords who engage in prohibited behaviours.

Prohibiting landlord harassment and coercion

The BC Eviction Survey data show numerous instances of landlord harassment during tenancies and as a method of eviction. Examples include: physical intimidation and entering tenants' homes without notice, entering at night without notice, turning off heat and hydro, threats of eviction when tenants had guests over, allowing violent dogs to harass tenants, threatening to "move in" if tenants did not agree to illegally high rent increases, and scheduling unnecessary

[47] See, e.g. https://vancouversun.com/business/real-estate/bidding-wars-cutthroat-viewings-renting-in-the-suburbs-is-no-longer-cheap-and-easy,
https://www.reddit.com/r/vancouver/comments/18hs2zh/recent_experience_from_a_smalltime_landlord/

[48] See, e.g., Fine, Janice, et al. "Wage theft in a recession: Unemployment, labour violations, and enforcement strategies for difficult times." *International Journal of Comparative Labour Law and Industrial Relations* 37.2/3 (2021); Vosko, Leah F., and Rebecca Casey. "Enforcing employment standards for temporary migrant agricultural workers in Ontario, Canada: Exposing underexplored layers of vulnerability." *International Journal of Comparative Labour Law and Industrial Relations* 35.2 (2019); Mirchandani, Kiran, Mary Jean Hande, and Shelley Condratto. "Complaints-Based Entrepreneurialism: Worker Experiences of the Employment Standards Complaints Process in Ontario, Canada." *Canadian Review of Sociology/Revue canadienne de sociologie* 56.3 (2019): 347-367.

and frequent realtor showings as an intimidation tactic. As documented in the BC Eviction Survey data, fear of landlord harassment also served to discourage tenants from using the Residential Tenancy Branch (see Section 1A, above).

While the offence provisions of the *Act* do refer to certain forms of landlord harassment, these provisions have never been used and do not function as a deterrent. Including a general prohibition of harassment and coercion would bring harassment and similar behaviour within the ambit of the administrative penalties under s. 87.3, and they could then readily be addressed within the existing compliance and enforcement mechanisms (Compliance and Enforcement Unit).

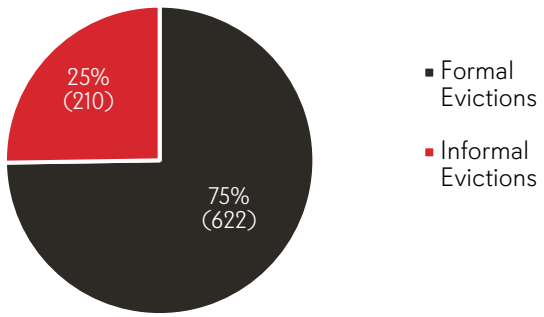
Ontario's legislation already includes a prohibition of harassment by landlords.[49] In Newfoundland, landlord harassment of tenants is likewise prohibited specifically when it is done to retaliate or deter tenants from asserting rights under the legislation.[50] Yukon's legislation has similar language.[51] In Quebec, harassment by landlords carries the potential for punitive damages.[52]

We therefore recommend that the *Act* be amended to prohibit landlords from harassing, obstructing, coercing, threatening, or interfering with a tenant and to prohibit retaliatory eviction.

Prohibiting landlords from inducing tenants to leave

The BC Eviction Survey data show that evictions are often effected informally and illegally. Landlords use verbal or texted eviction, informal letters, threats, withholding of maintenance, or locking tenants out instead of formal notice as required under the *Act*.

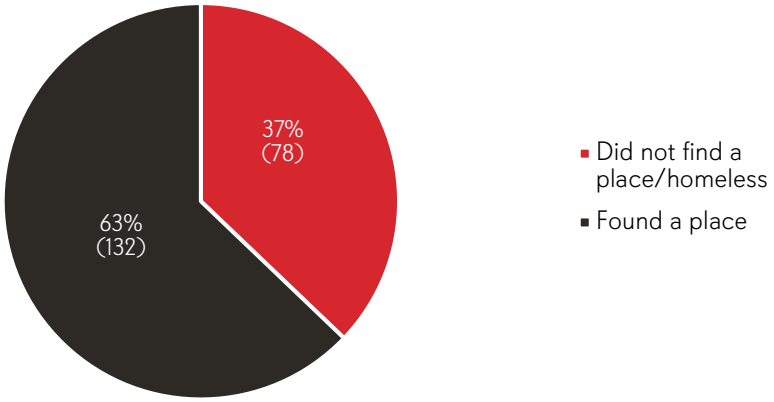
Fig. 4.1 Prevalence of Informal Evictions - Overall



[49] S 23 states: "a landlord must not harass, obstruct, coerce, threaten, or interfere with a tenant." (*Residential Tenancies Act, 2006,* SO 2006, s 23)
[50] S 29 states: (1) A landlord shall not
(a) terminate or give notice to terminate a rental agreement; or
(b) directly or indirectly coerce, threaten, intimidate or harass a tenant or a member of a tenant's family,'
in retaliation for, or for the purpose of deterring the tenant from, making or intervening in a complaint or application in relation to a residential premises. (Residential Tenancies Act, 2018, SNL 2018, c R-14.2, s 29)
[51] *Residential Landlord and Tenant Act*, SY 2012, c 20 s 112(2).
[52] *Civil Code of Québec*, CQLR c CCQ-1991 s. 1902.

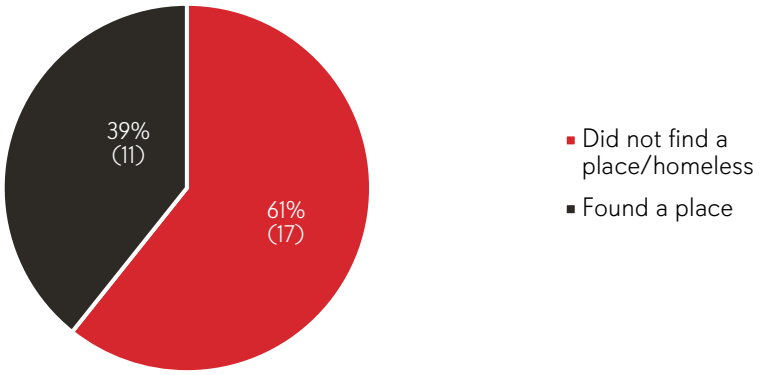
About 25% of reported evictions were informal in this dataset. Informal eviction is associated with a greater risk of homelessness. The overall rate of homelessness subsequent to eviction in informal evictions was 37%, compared to the overall rate of homelessness after eviction (25%, see Fig. 1A.1).

Fig. 4.2 Informal Evictions Leading to Homelessness



Indigenous tenants face significantly higher risks of homelessness after informal eviction—the rate of homelessness after informal eviction for Indigenous tenants is 61% (compared to 37% overall and 34% for non-Indigenous respondents).

Fig. 4.3 Informal Evictions Leading to Homelessness - Indigenous



The most common methods of informal/illegal evictions were as follows:

- the landlord told tenants over the phone or in person that they had to leave, 42% (N=88)
- landlord's neglect of maintenance rendered the unit unlivable due to health or safety concerns, 12% (N=26)
- the landlord wrote an informal letter telling the tenant to leave, 11% (N=23)
- the landlord was entering the tenant's home without consent, 10% (N=20)
- the landlord changed the locks, 8% (N=16)

Preventing informal evictions is crucial to preventing homelessness, and in particular, Indigenous homelessness.

We therefore recommend that the *Act* be amended to prohibit landlords from inducing tenants to vacate a rental unit except in accordance with the processes specified in the *Act*.

In order to make this change effective**, we further recommend that the *Act* be amended to provide for compensation in the amount of 12 months' rent where tenants have been induced to leave a unit in breach of this provision.** This would be similar to s 51(2), which provides for tenant compensation in cases of bad faith "landlord's use" evictions. Landlords in breach of this new section would also be subject to administrative penalties existing sections the *Act*.[53]

Effective and meaningful enforcement of the Act – procedural consequences

In addition to tenant compensation for unlawful evictions and existing administrative penalty and prosecution, we recommend that all RTB processes, including applications for eviction and rent increases, be made unavailable to landlords where they are in breach of the *Act*, the eviction is retaliatory, there is an enforcement action ongoing, or similar reasons. This will strengthen the *Act*'s protections without adding burden to the existing caseload of the Compliance and Enforcement Unit.

Similar provisions already exist in Ontario, in which decision makers must refuse an eviction application under the following circumstances:

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
(b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;
(c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;

[53] *Residential Tenancy Act,* SBC 2002, c 78, s. 87.3.

(d) the reason for the application being brought is that the tenant is a member of a tenants' association or is attempting to organize such an association; or
(e) the reason for the application being brought is that the rental unit is occupied by children and the occupation by the children does not constitute overcrowding.[54]

Legislation in the Yukon includes the discretion to refuse a landlord's application for an order of possession if the landlord's application was made as retaliation for the tenant seeking to uphold their rights or make a health and safety complaint.[55]

Right now, the only place in the BC *Act* that prohibits retaliation is in the offence provisions, and those provisions have never been used. Furthermore, even if they had been used, offence provisions are a costly and unwieldy method of integrating basic enforcement due to the cost, time, and procedural requirements of following through with prosecution.

In contrast, procedural consequences (such as restricting access to eviction orders for non-compliant landlords) are cost-effective and easy to implement with coordination between the Compliance and Enforcement Unit and the RTB.

We therefore recommend that the *Act* be amended to require the director to refuse to grant an order of possession or monetary order to a landlord if the landlord is in breach of their responsibilities or a material term, if the application is retaliatory, if the landlord owes a fine, is subject to investigation, or is otherwise noncompliant with the Director's orders.

Effective and meaningful enforcement of the *Act* – financial consequences

Residential tenancy matters can create opportunities for landlords to profit significantly from breaching the *Act*—such as through unlawful eviction and subsequent long-term rent increases—and penalties need to be high enough to incentivize compliance in both the administrative penalty provisions and the offence provisions. In our 2023 consultations, there was strong consensus on this issue from advocates across BC. They noted specifically that penalties must be sufficient to deter, and more than what the landlord will make from higher rent if they evict a tenant unlawfully.

The practice of a higher penalty limit for corporations is consistent with regulatory penalties in other BC legislation, such as the *Business Practices and Consumer Protection Act*, and the maximum corporate penalty we propose is in line with recent amendments to the maximum penalties in the offence provisions of Ontario's legislation.[56] In British Columbia, the offence

[54] *Residential Tenancies Act*, 2006, SO 2006, c 17, s 83(3).
[55] *Residential Landlord and Tenant Act*, SY 2012, c 20, s. 61.
[56] *Residential Tenancies Act*, 2006, SO 2006, c 17, s 238.

provisions of the *Act* are never used, and administrative penalties are used, but both should be subject to updated maximum amounts.

We therefore recommend that the maximum administrative penalty under section 87.4 and under the offence provisions in s. 95 be increased to $100,000 for landlords who are individuals, and to $500,000 for all corporations.

Draft amending language has been included in Appendix A.

5. Diversity and Inclusion in Housing

Everyone has the right to adequate, safe, and secure housing. People's ability to find or stay in a rental home must not be dependent on their family composition or co-living situation, nor should it be restricted to able-bodied persons. Right now, BC's *Act* creates housing barriers for certain groups of tenants by giving landlords the ability to insert material terms, raise costs, or end tenancies in specific circumstances that are unacceptable given the ongoing housing crisis in BC.

The *Act* already specifies certain kinds of terms that are unenforceable in a tenancy agreement, specifically acceleration provisions (where the landlord can ask for extra rent if a term is breached) and unconscionable terms (terms that exploit or are oppressive to one party). In other words, the *Act* already recognizes that certain terms should not be allowed because they are too unfair. It is in a similar spirit that the following small amendments would improve housing security and accessibility by limiting specific barriers to secure and stable tenancies.

The following changes represent simple ways to limit unfair terms and improve housing accessibility.

Prohibit increased rent for additional occupants

Landlords should not be able to prohibit additional occupants, or charge for additional occupants. Landlords already have the right to evict for "unreasonable number of occupants" (which we have argued above should be clarified, but maintained, in amendments). At present, the *Act* allows landlords to include lease terms charging extra when another "occupant" joins the household, including when a new baby is born to a family.[57] This penalizes families and others cohabiting out of necessity and creates barriers to housing.

This change should not be limited to the case in which existing tenants have children: the law should also recognize diverse family and co-living situations.

We therefore recommend that the *Act* be amended to state that terms prohibiting additional occupants, or charging extra for additional occupants, are void and unenforceable.

Prohibit restrictions on cooling equipment

Landlords are responsible for maintaining rental units in a state suitable for occupation,[58] but despite this, adequate cooling is often not provided. Hot conditions in undercooled apartments

[57] See, e.g. https://globalnews.ca/news/9493397/vancouver-couple-rent-increase-newborn-baby/, https://globalnews.ca/video/10163609/expecting-couple-facing-600-rent-hike-for-baby/.
[58] *Residential Tenancy Act*, SBC 2002, c 78, s 32.

cause death and health problems, especially to seniors and other vulnerable tenants.[59] If tenants wish to install their own cooling devices or participate in a government program providing cooling devices, landlords should not be permitted to interfere with this. Ontario has recently made amendments to its tenancy legislation to prohibit landlords from interfering with cooling devices, alongside a requirement that such devices be safely installed.[60]

We therefore recommend that the *Act* be amended to prohibit landlords from interfering with tenants' installation of cooling equipment.

Our July, 2023 submissions to the Minister's office on this issue are attached as Appendix C.

Prohibit pet restrictions

Landlords should not be allowed to prohibit pets in rental units. Allowing landlords to do so simply adds a barrier to housing and risk of homelessness and displacement for households with pets.

Data from the BC Eviction Survey documented many instances of housing barriers for those with pets due to landlord restrictions, as well as people living homeless with their pets subsequent to eviction. The bond between people and companion animals is deep and important: for some of the most vulnerable people in society, including seniors living alone, people with mental health issues, and homeless youth, pet ownership confers health and resilience benefits.[61] Being disallowed from having pets has been documented as a cause of homelessness for Indigenous people.[62] Furthermore, homelessness and displacement affect animal welfare directly: according to the Society for the Prevention of Cruelty to Animals (SPCA), housing issues are the primary reason that healthy adult pets are surrendered in British Columbia.[63]

Landlords in BC already have the power to require an extra pet deposit, and in the case of any damage, they have the right to compensation (as with any other form of damage during the

[59] BC Coroners Service Death Review Panel, *Extreme Heat and Human Mortality: A Review of Heat-Related Deaths in BC in Summer 2021* (2022), online: https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/death-review-panel/extreme_heat_death_review_panel_report.pdf.
[60] Bill 97, *Helping Homebuyers, Protecting Tenants Act,* 2023 (Royal Assent received, SO 2023, c 10), online: https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-97 (*Residential Tenancies Act*, 2006, SO 2006, c 17, s. 36.1)
[61] See, e.g. Rhoades, Harmony, Hailey Winetrobe, and Eric Rice. "Pet ownership among homeless youth: Associations with mental health, service utilization and housing status." *Child Psychiatry & Human Development* 46 (2015): 237-244; Powell, Lauren, et al. "Companion dog acquisition and mental well-being: A community-based three-arm controlled study." *BMC Public Health* 19 (2019): 1-10; Brooks, Helen Louise, et al. "The power of support from companion animals for people living with mental health problems: A systematic review and narrative synthesis of the evidence." *BMC psychiatry* 18.1 (2018): 1-12; Stanley, Ian H., et al. "Pet ownership may attenuate loneliness among older adult primary care patients who live alone." *Aging & mental health* 18.3 (2014): 394-399.

[62] Aboriginal Housing Management Association, *Indigenous Homelessness Data Framework: Engagement Snapshot* (2022), online: https://www.ahma-bc.org/bcindigenoushomelessness, p. 19.
[63] West Coast Veterinarian, "BC's Housing Crisis: A Crisis for Pets, too", online: https://spca.bc.ca/wp-content/uploads/2023/09/west-coast-veterinarian-magazine-WCV-pet-friendly-housing-article.pdf

tenancy, beyond wear and tear). Ontario already prohibits "no pets" clauses in residential tenancies.[64]

We therefore recommend that the *Act* be amended to state that terms prohibiting pets, or charging extra rent for having pets, are void and unenforceable.

Allow right of first refusal to co-tenants when one tenant leaves

At present, the RTB treats co-tenants as jointly and severally liable to landlords. However, if one co-tenant gives notice to end the tenancy under the *Act*, the tenancy is ended for all co-tenants, even if they wish to stay, and the landlord has no obligation to the remaining tenant.[65] This arises commonly in the case of roommates, but would apply equally to partner or family situations. One example of the effect of this is the housing risk to women who have experienced intimate partner violence and their children—if the abuser ends the tenancy, the victims of violence have no option to continue the tenancy. The landlord has no obligation to offer a continuation of the tenancy to the remaining co-tenants and they would be required to leave the tenancy.

We therefore recommend that the *Act* be amended to provide a right of continuation on the existing terms of a tenancy to remaining co-tenants in the event that one co-tenant gives notice to end the tenancy. (With the exception of fixed-term tenancies described in s. 45.1 in which the tenant is giving notice due to family violence or long-term care).

Right to assignment of tenancies for all tenants

At present, **British Columbia's legislation is among the most restrictive in Canada** on this issue and does not give meaningful rights to tenants. In most other provinces and territories, tenants have the right to assign their leases subject to landlord consent, but landlord consent cannot be unreasonably withheld.[66]

BC tenants only have this right if their if their lease is for a fixed term, which means **most tenancies are excluded.** In other words, BC is among the minority of jurisdictions in Canada in which landlords are allowed to unreasonably withhold consent for assignment of standard (periodic) tenancies. By way of example, Alberta's legislation requires landlord consent for assignment, but also says "a landlord shall not refuse consent to an assignment or sublease

[64] *Residential Tenancies Act*, 2006, SO 2006, c 17, s. 14.
[65] See RTB Guideline 13, online: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl13.pdf.
[66] See, e.g., *Residential Tenancies Act*, SA 2004, c R-17.1, s 22; *Residential Tenancies Act*, 2006, SS 2006, c R-22.0001, s 50; *The Residential Tenancies Act* CCSM c R119, ss 42-43; *Residential Tenancies Act*, RSNS 1989, c 401, s 9B; *Residential Tenancy Act*, RSPEI 1988, c R-13-11, s 30; *Residential Tenancies Act* 2018 SNL 2018 R-14.2 s 10(1); *Residential Tenancies Act*, RSNWT 1988, c R-5, s 22; *Residential Landlord and Tenant Act* SY 2012, c. 20, s 34, *Civil Code of Québec*, CQLR c CCQ-1991, ss. 1870-1871.

unless there are reasonable grounds for the refusal."[67] This strikes a balance that BC's *Act* lacks right now.

Right now, tenant turnover allows landlords to increase the rent by an unlimited amount, and rent gouging is common. Providing the right to assign will help stabilize housing costs for tenants by allowing tenants to transfer leases to other tenants rather than forcing a change in tenancy and the associated extreme rent increases.

We therefore recommend that the *Act* be amended to give tenants the right to assign their tenancies.

Prevent landlord abuse of sublease provisions

At present, the *Act* allows tenants to sublet their tenancies with landlord permission, which cannot be unreasonably withheld in the case of certain fixed-term tenancies. Unlike an assignee, a subtenant does not enjoy all of the rights of a tenant. In particular, a subtenant must leave at the end of the period of the sublease.

This provision was designed for tenants to be able to sublet their rental units. However, it is sometimes abused by landlords in order to circumvent the requirements of the *Act*; specifically, it can be used to allow landlords to create subtenancies with fewer rights than normal tenancies (notably, missing the right to an ongoing tenancy) using a fake tenant. This lets landlords do what they would not legally be allowed to do under the *Act*: create short-term tenancies with no chance of renewal.

Landlords can abuse the sublease provision to circumvent the requirements of the *Act* by setting up a fake "tenant", such as a family member, who does not actually occupy the unit in the long term, but instead "sublets" the unit for short periods of time to other tenants (who are then treated as subtenants, with fewer rights). **This enables the landlord to completely avoid the requirement to maintain an ongoing tenancy.** A fake "tenancy" arrangement would also allow a landlord to skirt the new short-term rental accommodation laws because it would create the impression that there was a real "tenant" listing their normal principal residence on AirBnB, as has been documented in Vancouver.[68]

We therefore recommend that the *Act* be amended to make clear that a sublease does not include an agreement entered into solely or partially for the purpose of avoiding the requirements of the *Act*.

We have provided draft amending language in Appendix A.

[67] *Residential Tenancies Act*, SA 2004, c R-17.1, s 22 (2).
[68] See, e.g., https://dailyhive.com/vancouver/subletter-cleared-from-house-airbnb.

6. Vacancy Control in British Columbia: Stopping Rent Gouging and Disincentivizing Illegal Evictions

Rent is out of control, but it doesn't have to be

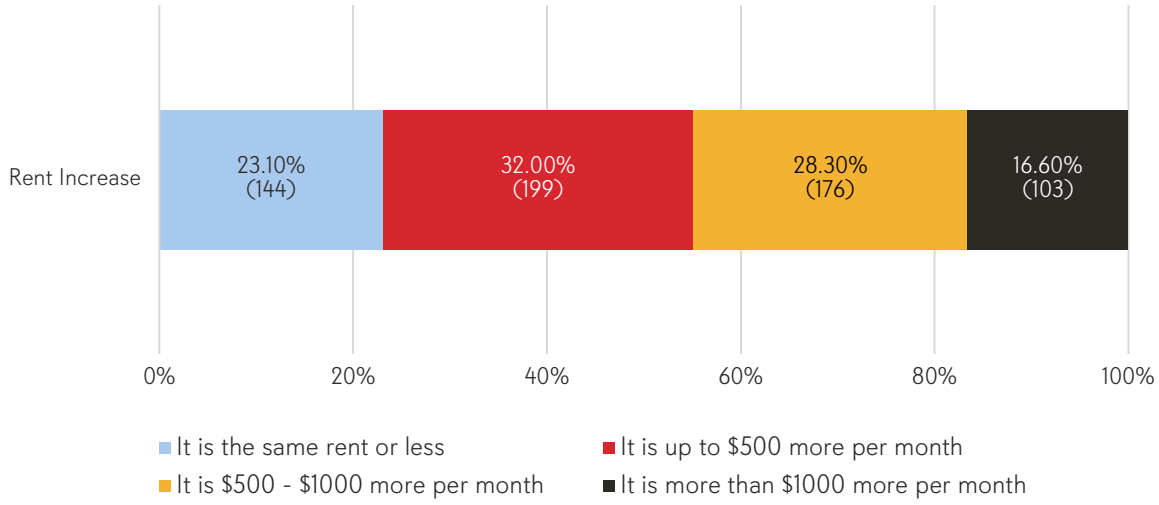
Right now, **landlords are strongly incentivized to evade rent control** by forcing tenant turnover through eviction, lawful or otherwise.

The BC Eviction Mapping Project shows that subsequent to eviction, tenants faced rent increases far in excess of either inflation or wage increases when they moved. The risk to tenants of uncontrolled rent increases is immense: as rent rises much faster than income and inflation, landlords profit while renter households are increasingly forced into inadequate or unsafe housing, forced to choose between food and rent, or simply unable to pay and forced into homelessness. The consequences are dire for those individuals and for society.

In its most recent report on the Poverty Reduction strategy, BC's Ministry of Social Development and Poverty Reduction identified housing as an urgent concern, and specifically named vacancy control as a policy option that affected communities were requesting in order to prevent landlords from "dramatically increasing rents."[69]

In the BC Eviction Mapping project, most tenants did face dramatic rent increases far in excess of inflation after eviction, with about 45% of those who found a place facing increases of $500 or more per month.

Fig. 6.1 Rent Increases for those who who did find a new place



[69] Government of British Columbia, *What we Heard: Engagement Summary Report* (2023), online at: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/initiatives-plans-strategies/poverty-reduction-strategy/what-we-heard.pdf, p. 17.

**Note: Fig. 6.1 only includes tenants who found a place to live after eviction. As shown in Fig. 1A.1, 25% of tenants who had been evicted did not find a place to live.*

Concurrently with these rent increases, data from the BC Eviction Mapping Project show that a large majority (73%) of reported evictions are for claimed "landlord's use." This is an easy way for landlords to evict tenants under the present *Act*, as they simply need to allege a "good faith" plan for themselves, a family member, or a buyer to occupy the property.[70] Under the present *Act,* **the absence of vacancy control plus the ready availability of "landlord's use" evictions provide an easy way for landlords to avoid rent increase regulations and raise the rent by an unlimited amount.**

Escalating rent means escalating homelessness

As landlords continue to increase their asking rent with no limitations, the median asking rent increases. As the median asking rent increases, the rate of homelessness increases. In a 2020 study, the US Government Accountability Office was able to quantify this: **for each $100 increase in median rent, there was a 9% increase in the estimated homelessness rate.**[71] Other American research has found that homelessness increased 15% to 39% per $100 median rent increase.[72]

According to CMHC, the average asking rent "soared" in Vancouver in 2022, with asking rent for vacant units a staggering 43% higher ($2,373/month) than rent for ongoing tenancies ($1,658/month). Applying even the findings of the American research would predict that this $715 increase in asking rent would result in an increase in homelessness ranging from 64% to 278%. Homelessness data in British Columbia are suboptimal, but by way of example, the point-in-time 2023 homelessness count in Metro Vancouver showed a 32% increase since 2020.[73]

The same CMHC report highlights the impact of tenant turnover without vacancy control, noting that "rent growth accelerates with turnover of units to new tenants" with an example of 2-bedroom units: those in which there was tenant turnover were rented at a rate 23.9% higher, on average, than those with continuous tenants.[74]

Our present *Act* permits the exploitation of housing scarcity. **A landlord who increases rent for a small one-bedroom apartment from $1,500 to $2,800 is not "covering their costs" or even**

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[70] *Supra* note 2.
[71] U.S. Government Accountability Office, *How Covid-19 Could Aggravate the Homelessness* Crisis(2020), online: https://www.gao.gov/blog/how-covid-19-could-aggravate-homelessness-crisis. For further research in the American context, see also: Pew Charitable Trusts, "How Housing Costs Drive Levels of Homelessness" (2023) online: https://www.pewtrusts.org/en/research-and-analysis/articles/2023/08/22/how-housing-costs-drive-levels-of-homelessness; National Alliance to End Homelessness, "Rising Rents and Inflation Are Likely Increasing Low-Income Families' Risk of Homelessness" (2022) online: https://endhomelessness.org/blog/rising-rents-and-inflation-are-likely-increasing-low-income-families-risk-of-homelessness.
[72] Byrne, Thomas, et al. "New perspectives on community-level determinants of homelessness." *Journal of Urban Affairs* 35.5 (2013): 607-625.
[73] Homelessness Services Association of British Columbia, *2023 Homelessness Count in Greater Vancouver*, online: https://hsa-bc.ca/_Library/2023_HC/2023_Homeless_Count_for_Greater_Vancouver.pdf.
[74] Canada Mortgage and Housing Corporation, *Rental Market Report* (2022), online: https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/market-reports/rental-market-reports-major-centres, p. 13.

maintaining a reasonable profit margin—they are engaging in price gouging and profiteering, and they are doing so at the expense of housing stability for the large proportion of British Columbians who rent their homes.

Using vacancy control would address this problem by removing the incentive for unlawful eviction, and as detailed below, there is strong evidence to show that vacancy control **will not have a negative effect on supply**, contrary to the statements of the landlord lobby.

BC's present *Act* – Rent control with enormous loopholes

British Columbia maintains rent control where there is no change in tenant by way of annual rent increase limits, and the policy reasons behind this are obvious. Controlling the amount by which landlords may increase the rent increases housing stability for the hundreds of thousands of BC households that rely on rental housing, but it also places financial responsibility for investment properties on landlords, who reap the benefits of owning real estate as an investment and must also assume its risks.

In addition to the benefits and financial security inherent in owning investment property, **landlords already benefit from extra protection against financial risk under the *Act*,** which allows for additional rent increases. Specifically, increases are available where the landlord has incurred a financial loss due to increases in operating expenses or due to unforeseen financing costs, or when the landlord needs to fund certain capital expenditures to maintain their investment property.[75]

While the *Act* does offer compensation of one year's rent to tenants where the landlord cannot establish that their "landlord's use" eviction was in good faith, this has not served as a disincentive, and one can easily see why: **given the opportunity for unlimited rent increases, even the risk of 12-month compensation for a bad faith eviction is outweighed by the available profit.**

In the example given above (eviction of a tenant paying $1,500 and increasing the rent to $2,800 for a subsequent tenant), if the landlord evicted the tenant in bad faith, they might face a penalty of $18,000. But it would take only 14 months for the landlord to recoup the costs of this penalty, after which they would enjoy an effective rent increase of 86% that year, instead of 3.5%.

In the five-year period following the potential eviction date, a landlord who did not evict the tenant would receive a total of $102,919 in rent, but a landlord who evicted the tenant would receive $180,168 in rent. In this scenario, evicting the tenant is worth an extra $77,249 to the landlord over five years (if they are not subject to a penalty), or $59,249 (if they are subject to the maximum 12-month rent penalty).[76] Either way, without vacancy control, **at present the financial incentive for landlords to evict by any possible means is very strong.** This analysis

[75] *Residential Tenancy Regulation*, BC Reg 477/2003 ss 23-23.4.
[76] Assuming an annual permitted rent increase of 3.5% applied every 12 months, and not including interest.

was echoed very strongly by representatives of legal advocacy organizations across BC in our 2023 consultations.

The 2018 Rental Housing Task Force

The provincial government's current position on vacancy control refers back to the 2018 BC Rental Housing Task Force report. At the time, considering vacancy control as a policy option to help end wrongful evictions, the Task Force recommended not to proceed with vacancy control on the basis of the following premises:

- at the time, the Task Force expressed optimism that supply would be sufficiently increased through existing initiatives to help improve housing security and therefore stronger rent controls would not be needed.
- landlords' advocates stated that landlords would divest from rental housing (either through selling, or through failure to build) if stronger rent control policies (such as vacancy control) were implemented.

Given the enormous social and economic cost of housing insecurity, homelessness, and displacement, as well as the detrimental economic impact of allowing excessive disposable income to be captured by landlords, these premises must be examined carefully. The Task Force recommendations relied on submissions from multiple identified stakeholders, including those representing developers, landlords, and tenants. These submissions are useful to understand the perspectives and desires of multiple constituent groups, but they do not take an evidence-based approach.

For the reasons we set out below, **the main premises underlying the Task Force's recommendation not to implement vacancy control in 2018 cannot stand and must be revisited using an evidence-based approach.**

Supply-side initiatives did not improve housing stability from 2018-2023

Contrary to the expectations of the Task Force, in the five years since this report, it is patently clear that supply-based initiatives alone have not improved rental housing security or affordability. To the contrary, average rents for renter households in British Columbia increased by 22% from 2018-2022[77] (2023 data not yet available from CMHC, but will certainly show a large average rent increase) and it is beyond question that the housing crisis in BC has deepened significantly since then.

Many supply-side initiatives are still being pursued, and they represent a critical part of the answer. But **the effective regulation of rental increases is equally critical**, and vacancy control to prevent rent gouging and reduce incentives to unlawful evictions is a necessary part of this.

[77] CMHC Housing Market Information Portal, online: https://www03.cmhc-schl.gc.ca/hmip-pimh/en/Profile?geoId=59&t=2&a=6#TableMapChart/59/2/British%20Columbia.

Debunking development industry myths: rent control (including vacancy control) does not reduce supply, and its removal does not increase supply

In her comprehensive examination of the literature and methodological approaches to vacancy control, Professor Dani Aiello considers the claim of negative impact on supply in detail, including evidence specific to Canada and BC. Here, we highlight the evidence and conclusions in her report that are most relevant to the idea that vacancy control will reduce housing supply.[78] Aiello uses peer-reviewed and evidence-based research to conclude as follows:

- rent control is not a major factor in determining new housing supply (as it is more affected by local economic and housing stock characteristics and government investment/disinvestment in rental housing)[79];
- across various jurisdictions, second generation rent controls have had "very little short- or long-term impact on construction rates"[80];
- the *removal* of rent controls has little effect on supply and did not lead to supply booms[81];
- most landlord profits are generated through increases in property value appreciation, not from monthly rent,[82] although both rent and profitability are very high in British Columbia right now, making development profitable even with vacancy control[83];
- in some cases, owners and developers respond to rent control with condo conversion or demolition. Aiello suggests that this is not an indictment of rent control per se, but rather evidence of the need for stronger policy to reduce reactionary measures by owners and developers (for example, limiting condo conversion or designation of rental tenure)[84]; and,
- rent control is generally cost-neutral or cost-effective in its implementation.

With regard to the impact of vacancy control in Canadian jurisdictions specifically, the report documents the following:

- British Columbia **has used vacancy control to stabilize rent (early 1970's), and contrary to developer assertions, when it (and all rent control) was removed by the Social Credit party in 1984, this did not have a positive impact on rental supply** (which continued to decline due to other factors).[85] A detailed evidence-

[78] Aiello, Dani, *Flipping the Script on Vacancy Control: A Critical Reevaluation of Rent Control Literature and Policy in the Struggle for Housing Security in BC* (2023) online: https://www.affordablebc.ca/vacancycontrolreport.
[79] *Ibid* at p 22.
[80] *Ibid* at p 23.
[81] *Ibid*.
[82] *Ibid*.
[83] *Ibid* at p 24.
[84] *Ibid* at p 25. In terms of rental tenure designation, see, e.g. *V.I.T. Estates Ltd. v. New Westminster (City)*, 2023 BCCA 183 (upholding the designation through city bylaw of certain strata properties as rental tenure).
[85] *Ibid at* p 43.

based study of this time period showed **no relationship between the presence or absence of rent control and the supply of rental housing, the likelihood of demolition of rental stock, or the likelihood of conversion of rental stock to condominiums.**[86]

- In Ontario, results were similar—looking at data for 20 years after the removal of vacancy control, there was **no evidence that rental supply improved as a result, and supply continued to decline due to other factors.**[87]
- Manitoba has used a slightly different version of rent and vacancy control (inflation-tied rent increase caps for sitting tenants, with rent changes between tenancies tied to comparable units, and the ability to dispute increases). Studies showed **that rental construction was not negatively affected by this version of vacancy control,** and Winnipeg continues to have lower average rents than most urban centres in Canada.[88]

Although landlords have raised the spectre of making rental stock disappear if their rental profit margins are capped through vacancy control, an evidence-based approach shows otherwise—**supply does not appear to be reduced by rent control or vacancy control policies.** Exemptions from vacancy control provisions for new construction are common, as well. As Aiello notes:

> The argument that vacancy control specifically would universally discourage new construction completely ignores the fact that new rental stock is not likely to be subject to any type of controls, and free to set market or even above-market rates. That BC's current market rates are at such unprecedented highs indicates that there is indeed strong incentive to continue building.[89]

Unpacking the threat of reduced supply

In addition to the research discussed above, there are multiple reasons to see the threat of supply reduction as an empty one. Firstly, one can assume that a landlord with a financially viable investment property (whether a separate unit or a suite within their home), it would be more rational to rent it at controlled rates than not to rent it at all. It is worth recalling that real estate investments accrue profit primarily through appreciation of value over time, with rental income as an added bonus.

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[86] Lazzarin, Celia C. *Rent control and rent decontrol in British Columbia: a case study of the Vancouver rental market, 1974 to 1989*. Diss. University of British Columbia, 1990, p 147-152. Available online: https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/831/items/1.0098573. This dissertation also provides a detailed overview of the progression of policy changes in the area of rental housing in British Columbia.
[87] *Supra* note 43 at p 45.
[88] *Supra* note 43 at p 46.
[89] *Ibid* at p 24.

Secondly, if a landlord faces actual operating costs or financing troubles as described in the *Act,* they already have the right to apply for an above-guideline increase to respond to it. And while some landlords are smaller than others, none of them are poor—the narrative of a suffering "Mom and Pop" landlord is less compelling when the reality of their wealth is evident—even in 2019, the average net worth of multiple-property-owning families was $1.7 million (exclusive of mortgage debt) and this has undoubtedly increased in the last five years.[90] Owning investment properties, or owning a home with a suite or two, is a privileged financial position whose risks cannot be compared with those of tenants.

Finally, if the landlord's financial situation is truly so dire that above-guideline increases are not enough, and they cannot maintain the property without relying on tenant eviction and extreme rent increases, then it is unlikely the landlord is able to provide a suitable contribution to the rental housing market in any case. For this type of landlord, it may well be a better outcome for them to sell the unit as another unit of supply in the ownership market. **Tenants cannot be expected to absorb all of the landlord's financial risk through extreme rent increases (paid, in most cases, from earned wages) when it is the landlord alone who benefits from property ownership and appreciation of value.**

Conversion to short-term and vacation rental has likely negatively impacted long-term rental supply in British Columbia. The easy availability of the option to increase profits provided some weight to landlords' threats of removing rental units from the market, should the government regulate rents between tenancies through vacancy control.

However, with the new short-term rental legislation coming into force in 2024, this threat has little substance. It is no longer a rational option for landlords to withhold investment properties from the long-term rental market, because they will sit empty and they will be taxed through existing policies (which can also be adjusted as needed).

Another argument often raised by landlords' agents, and developers in particular, is that if rent increases are limited, new rental buildings are not financially desirable relative to (for example) private condominium developments.

We are not providing specific recommendations on matters beyond the scope of the *Residential Tenancy Act*. But governments can invest in, incentivize, or limit certain types of development (such as pausing condominium approvals or investing in non-profit housing) or specify available tenure in land (such as rental-only tenure). These tools can influence supply and they are well within the power of government through taxation, permitting processes, and coordination of multiple levels of government toward the common goal of rental housing security.

We recommend that the *Act* be amended so that the allowable annual rent increase applies regardless of a change of landlord or tenant.

Draft amending language has been included in Appendix A.

[90] Tranjan, Ricardo, "Debunking the Myth of the 'mom-and-pop' landlord" (2023), Canadian Dimension, online: https://canadiandimension.com/articles/view/debunking-the-myth-of-the-mom-and-pop-landlord.

Appendix A: *Residential Tenancy Act* Amending Language

Note: additions to the text of the legislation are designated by the use of underlining, and removals are designated by the use of strikethrough. Where an entire section is removed or added, this will be indicated.

1. Preventing Unnecessary Evictions to Reduce Homelessness and Displacement

Addressing the following objectives:

(a) Require Landlord Application to End Tenancy
(b) Provide a Meaningful Opportunity to Resolve Issues Prior to Landlord's Application to End Tenancy
(c) Revise or Remove Disproportionate Grounds for Eviction

Section 44 should be amended as follows:

How a Tenancy Ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) A landlord applies to the director to end a tenancy in accordance with the Act and the director orders that the tenancy is ended.

(b) Before making an order ending a tenancy, the director must take into account the following factors:

(i) The impacts of the order on the parties, including economic, health, social, and cultural impacts;

(ii) The risk to the tenant of homelessness or community displacement if an order is granted;

(iii) Any specific factors that may put the tenant at risk of negative outcomes from the order, including but not limited to: Indigenous identity, gender, sexual orientation and gender identity, family status, disability status, immigration status, being a person over the age of 65, and being a recipient of income assistance or otherwise of low income.

(iv) The best interests of any child directly affected;

(v) Any relevant obligations under treaty or domestic and international human rights law, including those governing relationships between government and Indigenous peoples.

(vi) The overall purposes of the Act;

~~(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:~~

~~(i) section 45 *[tenant's notice];*~~

~~(i.1) section 45.1 *[tenant's notice: family violence or long-term care];*~~

~~(ii) section 46 *[landlord's notice: non-payment of rent];*~~

~~(iii) section 47 *[landlord's notice: cause];*~~

~~(iv) section 48 *[landlord's notice: end of employment];*~~

~~(v) section 49 *[landlord's notice: landlord's use of property];*~~

~~(vi) section 49.1 *[landlord's notice: tenant ceases to qualify];*~~

~~(vii) section 50 *[tenant may end tenancy early];*~~

(c) a tenant gives notice to end the tenancy in accordance with one of the following:

(i) section 45 *[tenant's notice];*

(i.1) section 45.1 *[tenant's notice: family violence or long-term care];*

(ii.) section 50 *[tenant may end tenancy early]*

(d) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(e) the landlord and tenant agree in writing to end the tenancy, and the agreement was not reached as a result of coercion, undue influence, or misrepresentation.

(f) the tenant vacates or abandons the rental unit;

(g) the tenancy agreement is frustrated;

~~(f) the director orders that the tenancy is ended;~~

(h) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 46 (*Landlord's notice: non-payment of rent*) should be removed and replaced by the following:

Landlord's advance notice: non-payment of rent

46 (1) A landlord may give advance notice of nonpayment of rent to a tenant if rent lawfully owing under a tenancy agreement is unpaid on any day after the day it is due.

(2) In order to be valid, nonpayment notice given under this section must use the prescribed form.

(3) The nonpayment notice is void if, before the first day on which the landlord may apply for an eviction order under s. 46.1, the tenant pays the amount lawfully owning.

(4) A nonpayment notice may not be issued with regard to any service or utility unless that service or utility is expressly included in exchange for rent in a written residential tenancy agreement.

The following new sections should be added:

Landlord's application to end tenancy: non-payment of rent

46.1 (1) A landlord may make an application for dispute resolution requesting an order ending a tenancy and an order of possession if:

(a) The landlord has given a nonpayment notice to the tenant under section 46.1; and

(b) The tenant has not paid the amount owing within 15 calendar days of receiving the nonpayment notice.

(2) An application under subsection (1) is void if, before the date of the hearing, the tenant pays the amount owing.

(3) Upon receipt of proof of payment by the tenant, the director must cancel the landlord's application and provide notice to all parties.

(4) In addition to the requirements under section 44(1)(b), the Director may not grant an order ending a tenancy for nonpayment of rent or utilities unless the landlord establishes, on a balance of probabilities:

(a) That the landlord gave advance notice under subsection (1) and

(b) That the tenant has not paid the amount owing before the date of hearing.

(5) The director may not make an order ending a tenancy under this section without assessing alternatives to eviction, including but not limited to:

(a) making an order for the tenant to pay the arrears in full by a specified date

(b) making an order for the tenant to pay the arrears by way of a payment plan

Landlord's order of possession - nonpayment of rent

46.2 (1) If the director makes an order ending a tenancy under section 46.1, the director may grant an order of possession to the landlord.

(2) An order of possession granted under subsection (1) may be effective no earlier than 10 calendar days from day the order is made.

(3) An order of possession issued under this section is void and unenforceable if, before the effective date of the order, the tenant pays the amount owing.

(4) Upon receipt of proof of payment by the tenant, the director must cancel the order of possession and provide notice to all parties.

Section 47 (Landlord's notice: cause) should be removed and replaced by the following:

Landlord's advance notice: cause

47 (1) A landlord may give advance notice of cause to a tenant in the following circumstances

(a) the tenant is repeatedly late paying rent;

(b) the number of persons occupying the rental unit on a continuing basis results in a contravention of health, safety or housing standards required by law.

(c) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(d) the tenant does not repair damage to the rental unit or other residential property, as required under section 32(3) *[obligations to repair and maintain]*, within a reasonable time;

(2) In order to be valid, advance notice of cause given under this section must use the prescribed form and must provide particulars.

(3) The advance notice of cause is void if, before the first day on which the landlord may apply for an order ending the tenancy under section 47.1, the tenant remedies the situation identified in the advance notice for cause.

The following new sections should be added after section 47:

Landlord's application to end tenancy: cause

47.1 (1) A landlord may make an application for dispute resolution requesting an order ending a tenancy and an order of possession if:

(a) The landlord has given an advance notice of cause to the tenant under section 47, and

(b) The tenant has not remedied the situation within 15 calendar days of receiving the advance notice of cause

(2) A landlord may make an application for dispute resolution requesting an order ending a tenancy and an order of possession without providing advance notice of cause if:

(a) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(b) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(c) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so

(d) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(e) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property

(f) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(g) the tenant has not complied with an order of the direction within 30 days of the later of the following dates:

(i) the date the tenant receives the order;

(ii) the date specified in the order for the tenant to comply with the order

Landlord's order of possession - cause

47.2 (1) If the director makes an order ending a tenancy under section 47.1, the director may grant an order of possession to the landlord.

(2) An order of possession granted under subsection (1) may be effective no earlier than 1 month from the date the order is made and must be effective the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 48 (Landlord's notice: end of employment with the landlord) should be removed and replaced by the following:

Landlord's application to end tenancy: end of employment with the landlord

48 (1) A landlord may make an application for dispute resolution requesting an order ending a tenancy and an order of possession with regard to a person employed as a caretaker, manager, or superintendent, if:

(a) the rental unit was rented or provided to the tenant for the term of the tenant's employment,

(b) the tenant's employment as a caretaker, manager or superintendent has ended, and

(c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

(2) A landlord who is also an employer may make an application to end the tenancy of an employee in respect of a rental unit provided by the landlord to that employee to occupy during the term of employment, if the employment has ended.

The following new sections should be added after section 48:

Landlord's order of possession – end of employment with the landlord

48.1 (1) If the director makes an order ending a tenancy under section 48, the director may grant an order of possession to the landlord.

(2) An order of possession granted under subsection (1) may be effective no earlier than 1 month from the date the order is made and must be effective the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 49 (Landlord's notice: landlord's use of property) should be amended, as follows:

Landlord's application to end tenancy: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

(a) one individual, or

(b) one individual plus one or more of that individual's siblings or close family members;

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

~~"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.~~

(2) A landlord may make an application for dispute resolution requesting an order ending a tenancy and an order of possession if the landlord or a close family member intends in good faith to occupy the rental unit full-time for a continual period of at least 12 months.

(3) A landlord that is a family corporation may make an application for dispute resolution requesting an order ending a tenancy and an order of possession in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit full-time for a continual period of at least 12 months

(4) A landlord may make an application for dispute resolution requesting an order ending a tenancy and an order of possession if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) convert the residential property to strata lots under the *Strata Property Act*;

(d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property, only if there is no viable alternative accommodation available for the caretaker, manager, or superintendent.

(f) convert the rental unit to a non-residential use.

The following new section should be added after section 49:

Landlord's order of possession – landlord's use of property

49.1 (1) If the director makes an order ending a tenancy under section 49, the director may grant an order of possession to the landlord.

(2) An order of possession granted under subsection (1) pursuant to section 49(2) and 49(3) may be effective no earlier than 2 months from the date the order is made and must be effective the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) An order of possession granted under subsection (1) pursuant to section 49(4) and 49(3) may be effective no earlier than 4 months from the date the order is made and must be effective the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

Section 55 should be amended, as follows:

Landlord's order of possession, other circumstances

55 (1) ~~If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if~~

~~(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and~~

~~(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.~~

~~(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.~~

(1) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

~~(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;~~

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the tenancy agreement is a sublease agreement;

(d) the landlord and tenant have agreed in writing that the tenancy is ended and the agreement was not reached as a result of coercion, undue influence, or misrepresentation.

~~(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.~~

~~(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,~~

~~(a) grant an order of possession, and~~

~~(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.~~

Section 56 should be amended, as follows:

Application for order ending tenancy early

56 (1) A landlord may make an application for dispute resolution requesting:

(a) an order ending a tenancy on a date that is earlier than the tenancy would end if ~~notice to end the tenancy were given~~ an order of possession was made under section 47.2 *[landlord's order of possession: cause]*, and

(b) an order granting the landlord possession of the rental unit.

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

~~(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:~~

~~(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;~~

~~(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;~~

~~(iii) put the landlord's property at significant risk;~~

(a) that the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or

(b) that the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property; or

(c) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority; and

~~(iv) engaged in illegal activity that~~

~~(A) has caused or is likely to cause damage to the landlord's property,~~

~~(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or~~

~~(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;~~

~~(v) caused extraordinary damage to the residential property~~

(3) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for an order of possession under section 47.2 *[landlord's order of possession: cause]* to take effect.

~~(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.~~

A new section should be added to Part 4, Division 1, as follows:

Circumstances where applications for orders of possession and monetary orders must be refused

[XX] The director shall refuse to grant an order of possession or monetary order to a landlord where it is satisfied that:

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material term in the tenancy agreement;

(b) the landlord is bringing the application because tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;

(c) the landlord is bringing the application in retaliation for a tenant's action in attempting to secure or enforce their legal rights;

(d) the landlord is subject to administrative penalties under this Act and has not paid a fine owing;

(e) the landlord is subject to an ongoing investigation or prosecution under this Act; or

(f) the landlord is noncompliant with the director's orders with regard to any tenancy to which the landlord is party.

Should these changes be adopted, incidental changes to multiple sections of the *Act* would also be required, including ss. 50-54.

We recommend that tenant compensation of one month's rent be maintained for landlord's use evictions with incidental changes to language.

2. Proportionality and making eviction a last resort

Proportionality and making eviction a last resort are addressed through the following amendments in the above section:

- requiring the director to consider the factors included in the amended s. 44(1)(b) prior to making an order ending a tenancy.
- in the case of nonpayment evictions, requiring the director to consider alternatives to eviction including orders to pay and payment plans (s. 46.1).

3. Improving Procedural Fairness and Appeal Rights

Section 62 should be amended as follows:

Director's authority respecting dispute resolution proceedings

62 (1) Subject to section 58, the director has authority to determine

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

(4) The director may dismiss all or part of an application for dispute resolution if

(a) there are no reasonable grounds for the application or part,

(b) the application or part does not disclose a dispute that may be determined under this Part, or

(c) the application or part is frivolous or an abuse of the dispute resolution process.

(5) [Repealed 2006-35-86.]

(6) In all dispute resolution proceedings, the director shall adopt a procedure which affords to all persons directly affected by the proceeding an adequate opportunity to know the issues, prepare their case, and be heard on the matter.

(7) For clarity, if a landlord applies to end a tenancy, the procedure adopted by the RTB shall afford the tenant an opportunity to review the landlord's grounds for ending the tenancy, and all available evidence, prior to requiring the tenant to provide evidence on issues raised by the landlord.

Section 79 should be amended as follows:

Application for review of director's decision or order

79 (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.

(2) A decision or an order of the director may be reviewed only on one or more of the following grounds:

(a) the decision or order is wrong in law or fact or mixed law and fact;

(b) a principle of natural justice has not been observed;

(c) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;

(d) a party has new and relevant evidence that was not available at the time of the original hearing;

(e) a party has evidence that the director's decision or order was obtained by fraud.

Section 80 should be amended as follows:

Time limit to apply for a review

80 A party must make an application for review of a decision or order of the director within 10 days after a copy of the decision or order is received by the party.

~~(a) within 2 days after a copy of the decision or order is received by the party, if the decision or order relates to~~

~~(i) the unreasonable withholding of consent, contrary to section 34 (2) *[assignment and subletting]*, by a landlord to an assignment or subletting,~~

~~(ii) a notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, or~~

~~(iii) an order of possession under section 54 *[order of possession for the tenant]*, 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]*;~~

~~(b) within 5 days after a copy of the decision or order is received by the party, if the decision or order relates to~~

~~(i) repairs or maintenance under section 32 *[obligations to repair and maintain]*,~~

~~(ii) services or facilities under section 27 *[terminating or restricting services or facilities]*, or~~

~~(iii) a notice to end a tenancy agreement other than under section 46 *[landlord's notice: non-payment of rent]*;~~

~~(c) within 15 days after a copy of the decision or order is received by the party, for a matter not referred to in paragraph (a) or (b).~~

Should these changes be adopted, incidental changes to multiple sections of the *Act* would also be required.

4. Protecting Tenants from Illegal Conduct

The following sections should be added to Part 1, Division 1 – General

Prohibitions on harassment, etc.

[XX] A landlord shall not harass, obstruct, coerce, threaten, or interfere with a tenant.

Prohibitions on including tenants to vacate (informal eviction)

[XX] A landlord shall not induce a tenant to vacate a rental unit or end a residential tenancy except in accordance with processes specified in this Act.

Section 87.4 should be amended as follows:

87.4 (1) If a penalty is applied to a landlord, who is not a corporation, under section 87.3, the penalty may not exceed ~~$5000~~ $100,000.

(2) If a penalty is applied to a tenant, who is not a corporation, under section 87.3 the penalty may not exceed $5,000.

(3) If a penalty is applied to a corporation under section 87.3, the penalty may not exceed ~~$5000~~ $500,000.

~~(2) If a contravention or failure referred to in section 87.3 occurs over more than one day or continues for more than one day, separate monetary penalties, each not exceeding the maximum under subsection (1) of this section, may be imposed for each day the contravention or failure continues.~~

Section 95 should be amended as follows:

Offences and penalties

95 (1) A person is guilty of an offence if the person contravenes any of the following:

(a) section 13 (1), (2) or (3) *[requirements for tenancy agreements]*;

(a.1) section 15 *[no application or processing fees]*;

(b) section 19 (1) *[limits on amount of deposits]*;

(c) section 20 (a), (b), (c), (d) or (e) *[landlord prohibitions respecting deposits]*;

(d) section 26 (3) *[seizing or interfering with access to tenant's property]*;

(e) section 27 (1) *[terminating or restricting services or facilities]*;

(f) section 29 *[landlord's right to enter a rental unit restricted]*;

(g) section 30 (1) or (2) *[tenant's right of access protected]*;

(h) section 31 (1) or (1.1) *[prohibitions on changes to locks]*;

(i) section 34 (3) *[assignment and subletting]*;

(j) section 38 (1) *[return of security deposit and pet damage deposit]*;

(k) section 42 (1) or (2) *[timing and notice of rent increases]*;

(l) section 43 (1) *[amount of rent increase]*;

(m) section 57 (2) *[what happens if a tenant does not leave when tenancy ended]*.

(2) A person who coerces, threatens, intimidates or harasses a tenant or landlord

(a) in order to deter the tenant or landlord from making an application under this Act, or

(b) in retaliation for seeking or obtaining a remedy under this Act

commits an offence. ~~and is liable on conviction to a fine of not more than $~~5,000

(3) A person who contravenes or fails to comply with a decision or an order made by the director commits an offence. ~~and is liable on conviction to a fine of not more than $~~5,000

(4) A person who gives false or misleading information in a proceeding under this Act commits an offence. ~~and is liable on conviction to a fine of not more than $~~5,000~~~~.

(5) A tenant, or a person permitted on residential property by a tenant, who intentionally, recklessly or negligently causes damage to the residential property commits an offence. ~~and is liable on conviction to a fine of not more than $~~5,000~~~~

(6) If a person convicted of an offence under this Act has failed to comply with or contravened this Act, the court, in addition to imposing a fine, may order the person to comply with or to cease contravening this Act.

(7) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Maximum penalties

95.1 (1) A landlord, other than a corporation, who is guilty of an offence under this Act is liable on conviction to a fine of not more than $100,000.

(2) A tenant, other than a corporation, who is guilty of an offence under this Act is liable on conviction to a fine of not more than $5,000.

(3) A corporation that is guilty of an offence under this Act is liable on conviction to a fine of not more than $500,000.

5. Ending Vacancy Decontrol in British Columbia: Stopping Rent Gouging and Disincentivizing Illegal Evictions

Section 42 should be amended as follows:

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if ~~the tenant's~~ rent has not previously been increased, the date on which ~~the tenant's~~ rent was first payable for the rental unit;

(b) if ~~the tenant's~~ rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

(5) This section applies regardless of a change of landlord or tenant.

6. Diversity and Inclusion in Housing

Part 1, Division 1, section 1 (Definitions) should be amended as follows:

Definitions

In this Act

...

"sublease agreement" means a tenancy agreement

(a) under which

(i)the tenant of a rental unit transfers the tenant's rights under the tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and

(ii)the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement, and

(b)that specifies the date on which the tenancy under the sublease agreement ends;

but does not include an agreement entered into solely or partially for the purpose of avoiding the requirements of this Act.

The following sections should be added after section 6 (Enforcing rights and obligations of landlords and tenants):

"No pet" and pet fee provisions not enforceable

6.1 A term of a tenancy agreement is not enforceable if it purports to prohibit pets in a rental unit, or to charge a fee for having pets in a rental unit, other than a pet damage deposit as allowed by this Act.

Terms prohibiting cooling devices and fees for cooling devices not enforceable

6.2 A term of a tenancy agreement is not enforceable if it purports to

(1) prohibit a tenant's use or installation of a window or portable air conditioner or fan, or

(2) charge a fee for a tenant's use or installation of a window or portable air conditioner or fan in a rental unit for which the landlord does not supply air conditioning.

Terms purporting to limit number of occupants or charge extra fees prohibited

6.3 A term of a tenancy agreement is not enforceable if it purports to

(1) limit the number of persons who may reside in the rental unit, except insofar as such a limit is required to ensure the number of persons occupying the rental unit on a continuing basis does not result in a contravention of health, safety or housing standards required by law, or

(2) charge a fee for additional persons residing in the rental unit.

The following section should be added after section 45 (tenant's notice):

Termination by one of a group of tenants – periodic tenancy

45(1) If a periodic tenancy is ended under section 45 *[tenant's notice]* by one of 2 or more tenants who are subject to the same tenancy agreement, the periodic tenancy continues between the landlord and the remaining tenant or tenants.

Section 34 should be amended as follows:

Assignment and subletting

34 (1) Subject to subsection (4), a tenant must not assign a tenancy agreement or sublet a rental unit without the written consent of the landlord.

~~(2) If a fixed term tenancy agreement has 6 months or more remaining in the term the,~~ A landlord must not unreasonably withhold the consent required under subsection (1).

(3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

(4) If a landlord does not respond to a request for a consent within 14 calendar days after receiving the request, the landlord is deemed to have given consent.

(5) A landlord who refuses to give consent shall provide the tenant who requested consent with written reasons for the refusal.

Appendix B: Previous Submissions on Landlord Use

Honourable Ravi Kahlon
Minister of Housing

July 7, 2023

By email to HOUS.minister@gov.bc.ca

Re: Urgent Action on Landlord Use Evictions

Summary

We write to propose an amendment to the *Residential Tenancy Act* requiring landlords to make an advance application to the RTB for an order of possession in cases of "Landlord Use" evictions (replacing s. 49 of the Act).

We recommend language similar to the highly effective 2021 amendment to "Landlord Use – Renovation" (presently s. 49.2 of the Act, replaced prior s. 49(2)). This would have an immediate effect by preventing misuse of s. 49, which is a major contributor to homelessness, displacement, and housing unaffordability and which has a disproportionate impact on Indigenous people and other vulnerable groups.

We make this targeted proposal in response to the request for quick, effective changes, and we anticipate providing detailed submissions in support of further evidence-based amendments, including alternatives to eviction, proportionality, removing 48-hour possession orders, and requiring hearings and evidence in advance of all evictions.

Background

First United comes to this work with decades of experience in legal advocacy and frontline services in the Downtown Eastside, where we see firsthand the devastating impacts of homelessness and displacement. Providing legal services to tenants facing eviction under the *Residential Tenancy Act* is a longstanding pillar of our advocacy program, and we often prevent homelessness by contesting bad faith or baseless evictions.

In response to the complex issues underlying B.C.'s intensifying housing crisis, we have expanded our legal program to include evidence-based systems change work under the leadership of Dr. Sarah Marsden, who brings extensive experience in academic research, publication, and systemic advocacy in law and policy. In 2022, Dr. Marsden's team launched the

B.C. Eviction Mapping project, documenting the mechanisms and impacts of eviction across the province and providing new data to support policy reform.

Methodology and Dataset

The project used a 26-question survey tool developed in line with academic research standards. Closed questions identified the mechanism of eviction using grounds under the *Residential Tenancy Act,* as well as data on use of the RTB process, rent differential, community displacement, and homelessness. We used an open question format to gather information about the impacts of eviction. The sample size at the time of writing is 595 and the project is ongoing.

The dataset is geographically diverse, including data from urban and rural locations across British Columbia, and is representative (or over-representative) of Indigenous people, women and gender diverse people, and people with disabilities. It includes responses from across the spectrums of age, family composition, and family income.

Prevalence and Impacts of "Landlord Use" Evictions

"Landlord Use" (s. 49) evictions form a large majority of evictions in B.C., making up 64% of formal evictions in our dataset. For comparison, evictions for tenant nonpayment of rent (s. 46) comprise only 8% of formal evictions. This is corroborated by a recent large-scale quantitative analysis using the Statistics Canada CHS data, which also identifies Landlord Use evictions as the reason B.C.'s eviction rate is the highest in Canada and suggests that landlords are likely to be financially motivated to evict using this mechanism.[91]

From our data:

-72% of Landlord Use evictions resulted in displacement from home communities.
-For Indigenous respondents, 83% of Landlord Use evictions resulted in homelessness.

-42% of Landlord Use evictions resulted in rent increases of at least $500 per month, and 15% resulted in rent increases of at least $1,000 per month.
-For Indigenous respondents, 57% of Landlord Use evictions resulted in rent increases of at least $500 per month, and 25% resulted in rent increases of at least $1,000 per month.

-14% of Landlord Use evictions resulted in homelessness.
-For Indigenous respondents, 26% of Landlord Use evictions resulted in homelessness.

Drawing on What Worked for Renovictions

[91] Xuereb, S. and Jones, C., *Estimating No-fault Evictions in Canada: Understanding BC's Disproportionate Eviction Rate in the 2021 Canadian Housing Survey* (UBC, 2023). Online: https://housingresearch.ubc.ca/sites/default/files/2023-05/estimating_no-fault_evictions_in_canada_0_2.pdf

"Stopping Renovictions" was the first recommendation in the BC government's 2018 Task Force Report on Rental Housing.[92] The government acted on this by amending the *Act* to require landlords to make an application to the RTB, provide proof that they met the requirements of the *Act,* and removing landlords' ability to unilaterally end tenancies by stating they had intentions to renovate.

This was extremely effective. After coming into force in 2021, renovictions slowed to a trickle. From November 2021-June 2022, only 21 applications were made under this section, and of these, only three were granted by the RTB.[93] Our data corroborate this: since 2021, renovictions comprise only 1% of formal evictions.

Stopping Misuse of Landlord Use Evictions by Requiring Advance Applications

We propose an amendment to bring Landlord Use (s. 49) evictions in line with the highly effective changes to renovictions by replacing s. 49 with a section (like s. 49.2) requiring landlords to apply to the RTB for an order of possession and to show that they meet the requirements of the *Act*. This is a quick and straightforward amendment that will reduce homelessness and displacement, and contribute to housing stability, and **it will respond directly to an eviction mechanism that has a disproportionate and harmful impact on Indigenous people**.

This amendment will not affect landlords' ability to use properties that they own; it will simply require them to show that they meet the requirements of the *Act* before a tenant can be evicted. We expect that this process will deter misuse of s. 49, as was the case with the renovictions amendment. Compensation for bad faith evictions has clearly not been sufficient to deter the misuse of s. 49 or to restore housing stability after bad faith evictions. In Ontario, advance applications are already required for all evictions under its *Residential Tenancies Act*, and the proposed amendment is one step for B.C. in the direction of protecting housing stability and preventing homelessness in a housing crisis.

In partnership with the Canadian Centre for Housing Rights, we convened representatives from tenant-serving organizations across B.C. and they are strongly in support of this amendment.

As with the renovictions amendment, we anticipate that this amendment will reduce RTB hearing caseload, which is beneficial for the timely resolution of disputes and the efficient use of resources.

[92] BC Rental Housing Task Force, *Recommendations and Findings* (2018). Online: https://engage.gov.bc.ca/app/uploads/sites/121/2018/12/RHTF-Recommendations-and-WWH-Report_Dec2018_FINAL.pdf
[93] Freedom of Information request FOI MAG-2022-21620 (RTB), available online: https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/completed-foi-requests.

By preventing misuse of eviction provisions of the Act, this amendment aligns with the province's mandate to prevent homelessness, address housing issues impacting Indigenous people, and promote housing stability.

Respectfully,

Amanda Burrows, MA CFRE
Interim Executive Director

Appendix C: Previous Submissions on cooling

Honourable Ravi Kahlon
Minister of Housing

July 27, 2023

Honourable Adrian Dix
Minister of Health

By email to HOUS.minister@gov.bc.ca, HLTH.Minister@gov.bc.ca

Re: Urgent Action on Adequate Cooling in Residential Tenancies

Summary

We write to propose an amendment to the *Residential Tenancy Act* 1) affirming tenants' right to install and use air conditioners to maintain tolerable temperatures in their homes and prevent unnecessary deaths due to overheating, and 2) to render void and unenforceable any existing term in a tenancy agreement that purports to prohibit tenants from installing or using air conditioners for this purpose.

If it is possible to achieve the same ends through a regulatory change in the interim, we urge you to consider this as an immediate response alongside a legislative amendment.

The Ontario legislature has recently approved an amendment to its *Residential Tenancies Act* on this subject which affirms tenants' rights and includes conditions (safety, notification requirements) as well as a provision for landlords to recapture excess electricity costs, but not to derive profit from the use of air conditioners. The relevant sections of the Ontario amendments are attached to this letter.

Background and Justification

In light of increasing summer temperatures and resultant risk to life and health, it is critical for tenants to have access to air conditioners in their homes. The B.C. government has recognized this through its program to provide portable air conditioners free of cost to low-income and heat-vulnerable households.

Tenants have faced specific barriers to accessing this program, and to installing air conditioning generally. In some cases, landlords are refusing to sign the required consent form from BC Hydro (and at present they have no legal obligation to provide consent). In others, landlords are

embedding material terms in rental agreements that prohibit the use of air conditioners, or intimidating tenants by letting them know that they will be seen as breaking their contract if they install or use an air conditioner. In the present housing climate, tenants fear eviction and homelessness and the landlord-tenant power differential is extreme. Tenants are forced to balance the risks of living in dangerously hot units with the risks of provoking an eviction or rent increase, and their rights to adequate cooling are unclear.

The proposed amendment is consistent with landlords' general obligations under s. 32 of the Act to maintain residential property in a state of repair that "makes it suitable for occupation by a tenant."

It is possible to draft the changes such as to allow landlords to recoup any demonstrated actual costs where they cover electricity, but not to allow rental increases or profits (as is the case in Ontario). However, given the extreme costs already borne by tenants in B.C. and landlords' existing recourse for additional rent increases under the *Act*, we do not recommend allowing landlords to recoup costs associated with the electricity required to run an air conditioner.

We anticipate that this amendment will prevent unnecessary deaths from heat exposure in rental units, which is aligned with the mandates of both the Minister of Health and the Minister of Housing.

Respectfully,

Amanda Burrows, MA CFRE
Interim Executive Director

Encl. Schedule 7 to the *Helping Homeowners, Protecting Tenants Act* (S.O. 2023, c. 10 – Bill 97)
Online version available at: https://www.ontario.ca/laws/statute/s23010

Appendix D: Charts and Findings

Fig. 1A.3 People with Disabilities - Homelessness

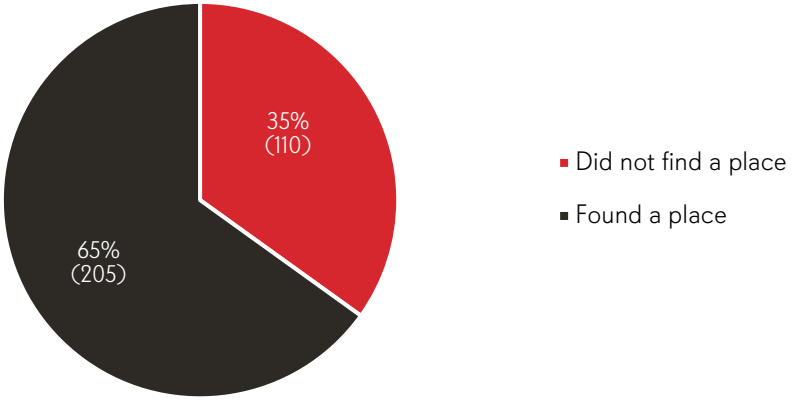


Fig. 1A.4 Women and Nonbinary - Homelessness

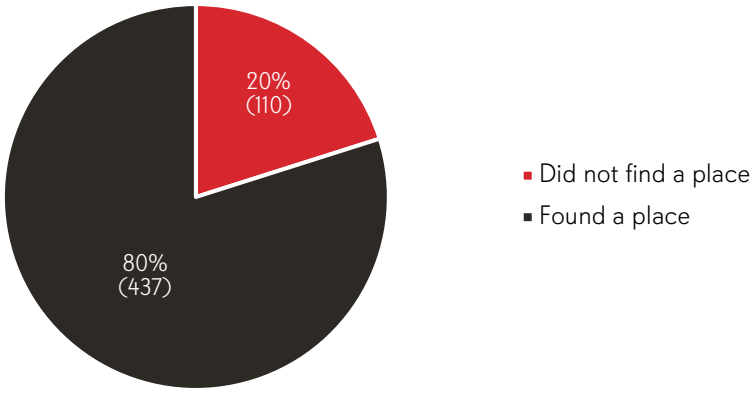


Fig. 1A.5 People of Colour - Homelessness

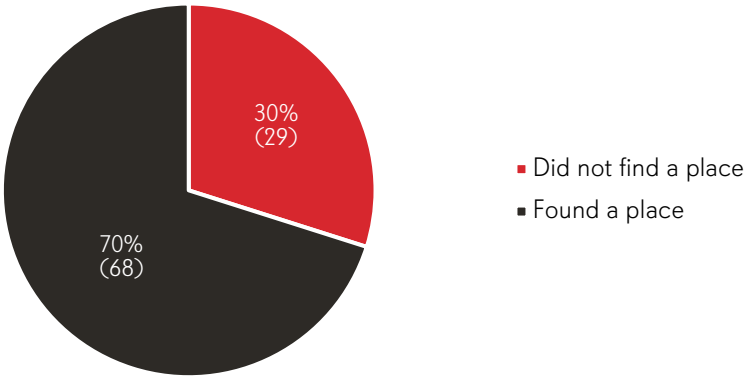


Fig. 1A.6 SOGI Minority - Homelessness

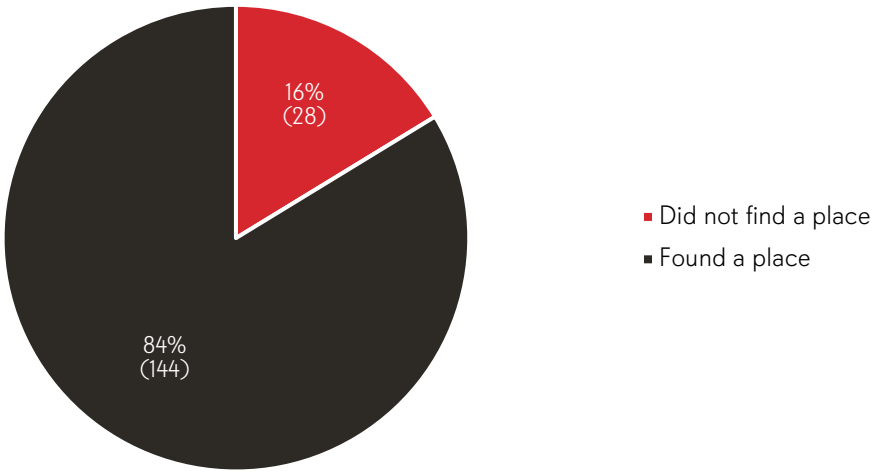


Fig. 1A.7 All Respondents - Displacement

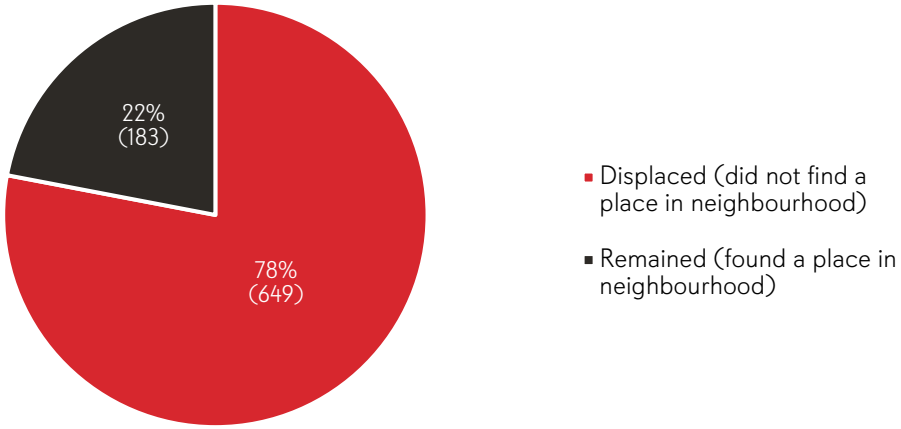


Fig. 1A.8 Indigenous Respondents - Displacement

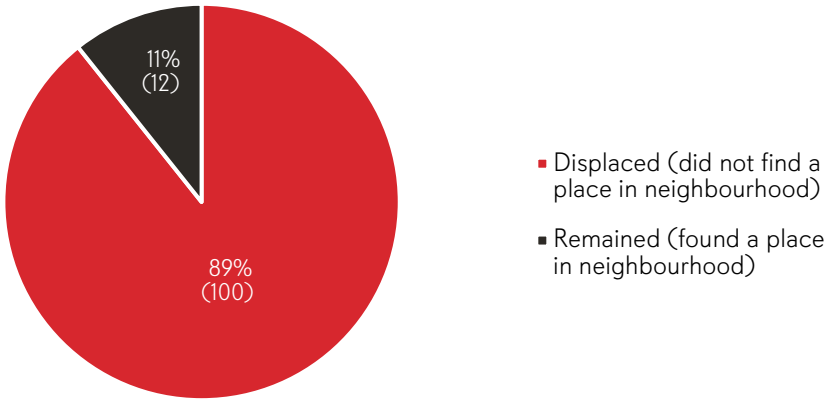


Fig. 1A.9 People with Disabilities - Displacement

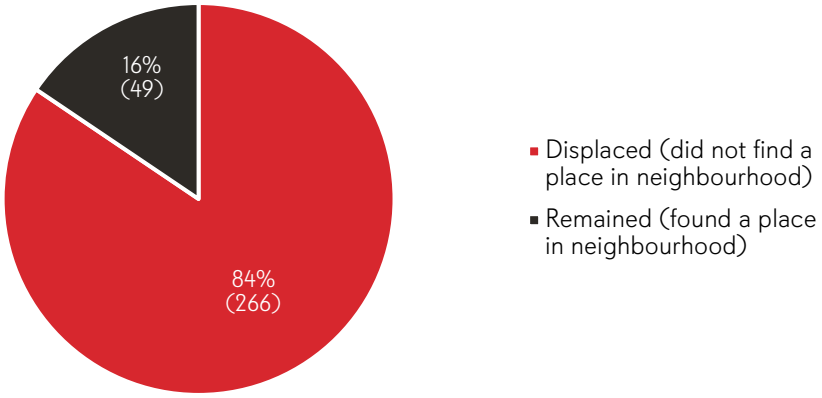


Fig. 1A.10 Women and Nonbinary - Displacement

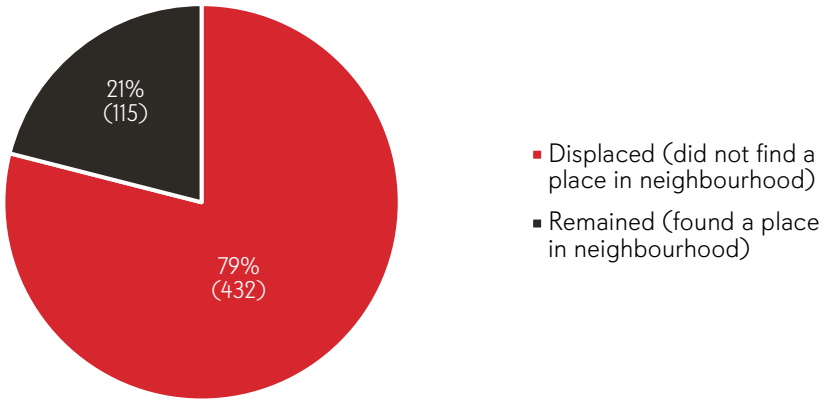


Fig. 1A.11 People of Colour - Displacement

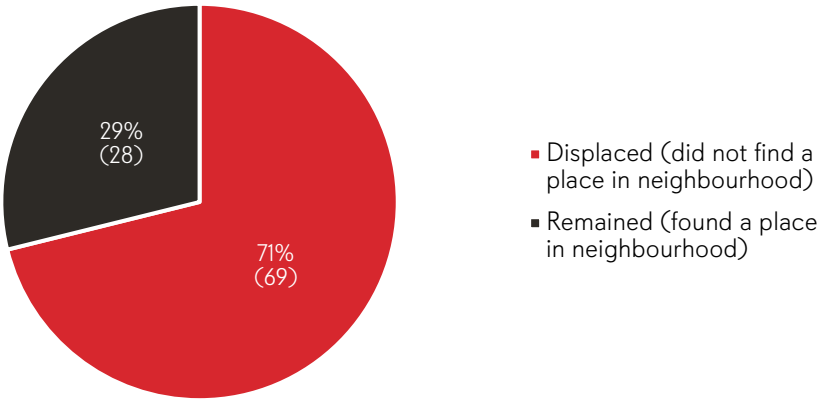


Fig. 1A.12 SOGI Minority - Displacement

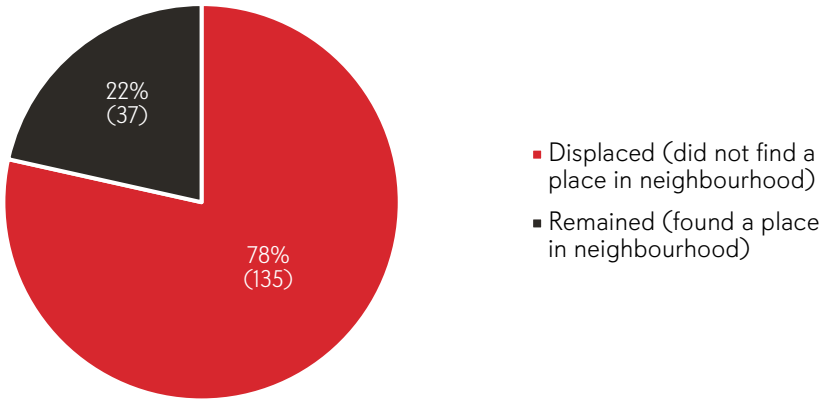
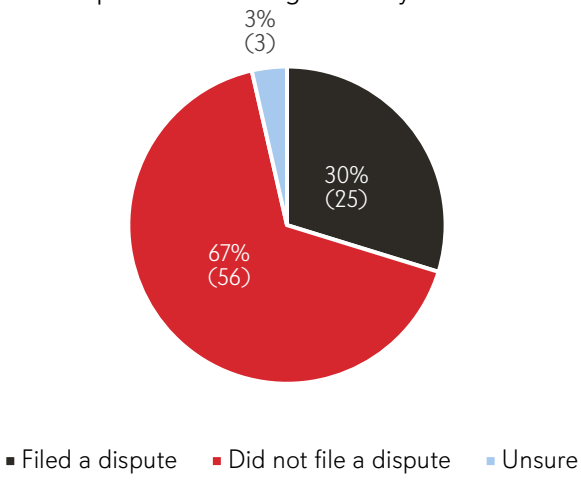


Fig. 1A.14 Proportion of Indigenous tenants who filed a dispute after being formally evicted



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