



## The Right to Cool

### Roles, Jurisdiction, and Opportunities for Municipalities

FIRST UNITED is a direct service provider and advocacy organization that has been in operation for over 140 years. Since 2024, we have been advancing the right to cool for tenants across BC to protect human health and uphold equity. This document clarifies and summarizes the role, legal jurisdiction, and opportunities for municipal governments to advance the right to cool in their community.

If you have additional questions or would like to discuss the legal basis for this document, please contact:

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### What Municipalities can do to Uphold the Right to Cool

“Cooling” isn’t listed in the *Community Charter*, how do we know that municipalities can make bylaws in this area? Where do municipalities get their jurisdiction to make bylaws about cooling?

Municipalities governed by the *Community Charter* (i.e., not Vancouver) have broad powers to make bylaws, regulate and prohibit, and impose requirements in relation to:

- health and safety of persons or property, including in residential tenancy contexts,
- the protection and enhancement of the well-being of the community,
- public health, and

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- buildings and other structures.

(*Community Charter*, ss. 8(3)(g)-(i),(l), 63(f), and 64(b)).

Municipalities have enacted bylaws requiring heating systems in rental units based on those powers. Cooling regulations would fall under those same powers.

**Is cooling a municipal or provincial matter? Can municipalities make bylaws impacting rentals even though the *Residential Tenancy Act* applies? How will municipal cooling regulations interact with provincial law and building codes?**

Cooling in rentals falls under both provincial and municipal law. Generally, municipalities can make regulations on something even if it is already regulated by the province. In other words, municipalities have “concurrent jurisdiction.” Municipal standards can differ from provincial ones as long as it is not impossible to comply with both the municipal standard and a provincial Act or regulation (*Community Charter*, s. 10).

**How would a cooling bylaw interact with strata bylaws?**

A strata bylaw is not a provincial Act or regulation so municipalities can require that their bylaw take precedence over strata bylaws. For example, Vancouver’s Licence Bylaw says that its prohibition against portable air conditioning bans applies regardless of any strata bylaws that ban tenant use of portable air conditioners (s. 21.6).

**Didn’t a court case strike down a Vancouver bylaw that regulated tenancies, saying that it encroached on provincial jurisdiction?**

Vancouver is unique as it is governed by the *Vancouver Charter*, while other municipalities in BC are governed by the *Community Charter*. Vancouver attempted to introduce vacancy control by regulating rental licensees. In *Pender Lodge*, the court held that the wording of the *Vancouver Charter*, at the time, meant the City could not regulate rental licensees if they are already regulated by the Province through the *Residential Tenancy Act*. The court confirmed that this is not a problem under the *Community Charter*, given its broad wording that allows for concurrent jurisdiction. The *Vancouver Charter* has since been amended to address *Pender Lodge* with the goal of bringing it in line with the *Community Charter*.

## How Municipalities can get Involved

How can a municipality safeguard cooling rights? What are some examples of cooling-related bylaws?

Municipalities can set maximum temperatures. For example, Campbell River requires landlords to maintain a property to the “health, life safety and fire protection standards” of the BC Building Code (Public Nuisance Bylaw, s. 7.18). This likely means that the 1-room maximum temperature requirement of 26 degrees under the Building Code would apply to all rental units.

Many municipalities have provisions prohibiting landlord interference with portable air conditioner use:

- New Westminster requires landlords to maintain air conditioning systems if provided, and prohibit landlords from interfering with portable air conditioner use, unless the landlord applies for a 2-year exemption from a Building Official that must be renewed (Business Regulations and Licensing (Rental Units) Bylaw, s. 34(c) and (d)).
- Vancouver prohibits long-term rental landlords from preventing tenants from using portable air conditioners, unless they apply to the Licence Inspector for an exemption (Licence Bylaw, s. 21.6).
- Port Moody prohibits a landlord from *unreasonably* prohibiting or preventing a tenant from using portable air conditioners, (Standards of Maintenance Bylaw, s. 7.2).

## Enforcement

What kind of enforcement mechanism would be required for a cooling bylaw? Is a bylaw useful even if the municipality does not have enforcement mechanisms, or not enough capacity to enforce?

Yes. A cooling bylaw would be enforceable through the RTB in a repair or compensation claim. Under s. 32 of the *RTA*, a landlord’s maintenance responsibilities include maintaining the rental property in a state of decoration and repair that complies with “the health, safety and housing standards required by law.” A cooling bylaw would be such a standard. If a dispute is brought to the RTB, they have the authority to issue an order that requires the landlord to comply with the bylaw or compensate the tenant.

Cooling bylaws would still be important for residents that are not covered by the *RTA* and cannot

go through the RTB, such as those living in a roommate situation or in transitional housing. In general, having a clear standard is useful for health and safety because it gives tenants something they can show their landlord. A demand letter citing the bylaw provision breached is a powerful tool to ensure landlords fulfill their cooling obligations.

Some municipalities have a renters' office. We have heard from tenants that sending an email to their landlord, stating that a bylaw was violated, and copying a city department is often helpful to resolve issues, even if the municipality doesn't have the capacity to do further investigation or ensure compliance.

### **Can a municipality withhold or revoke a rental business license to address non-compliance?**

Yes. A municipality can establish terms and conditions for a license, permit, or approval, and suspend or cancel the license, permit, or approval for failing to comply with the term or condition or a bylaw (*Community Charter*, s. 15(1)(d) and (e)).

For example, in New Westminster, rental unit maintenance standards form part of its licensing bylaw. A rental license may be granted, refused, or suspended, or conditions imposed, based on whether a landlord complies with the prohibition against portable air conditioner bans. A license inspector, health inspector, or bylaw officer may order compliance with the provision.

### **Can municipalities impose a fine for non-compliance?**

Yes. For example, in Vancouver, landlords are subject to a \$1,000 if they unreasonably interfere with portable air conditioner use (Ticket Offences Bylaw).

### **How can cooling regulations be simplified for landlords?**

New Westminster, Vancouver, and Port Moody's portable air conditioner provisions all ensure that landlords are able to opt out in appropriate circumstances, by either allowing the landlord to apply for an exemption by demonstrating that it is necessary (New Westminster and Vancouver) or simply requiring that any prohibition against portable air conditioners use must be "reasonable" (Port Moody).

For maximum temperature requirements, municipalities might consider a phased approach to

implementation. For example, a requirement that rental units must be in accordance with the BC Building Code cooling requirements by 2030 would be less onerous for landlords instead of requiring it immediately.

**What if enforcement means the tenant has to move out of an “illegal” suite when a rental license is revoked?**

Municipalities can choose to use a education-based approach first to encourage a landlord to come into compliance. Alternatively, a municipality might choose to impose requirements that a landlord must assist or compensate the tenant in relocating to another location through its licensing power. If necessary, the tenant may be able to pursue compensation through the RTB. Failing to maintain a rental unit in accordance with applicable standards is a breach of the *RTA* and landlords are required to compensate for any monetary loss that results (*RTA*, ss. 7, 32, 67).