



BC's Residential Tenancy System

13 RECOMMENDATIONS FOR POSITIVE CHANGE

A JOINT REPORT BY
Active Manufactured Homeowners Association
BC Public Interest Advocacy Centre
Community Legal Assistance Society
Pivot Legal Society
TRAC Tenant Resource & Advisory Centre
West Coast LEAF

Introduction

We are a coalition of legal organizations working with people affected by residential tenancy issues. Together we have a wide breadth of knowledge of, and experience with BC's Residential Tenancy Act (RTA) and Residential Tenancy Branch (RTB), and how they are working for people across BC. We have come together in the lead-up to the 2013 election to develop recommendations to ensure the Residential Tenancy Act achieves its purpose of balancing the rights of tenants and landlords.

The current shortage of affordable housing in BC means that housing is costlier and less readily available. This makes tenants more vulnerable, and also increases the likelihood that tenants and landlords will find themselves in conflict. In this context, our landlord/tenant legislation needs to contain reasonable protections for tenants. Just as important, the RTB needs to be empowered to effectively administer the legislation. In our province, the RTB is the only forum that landlords and tenants can use to resolve their disputes. It is critical that this forum function as fairly and effectively as possible.

This paper presents a series of legislative and operational proposals to move BC in line with the rest of Canada. The proposals are modest, and many have been implemented in other jurisdictions. We believe these proposals are necessary, based on our extensive work and consultation with tenants across the province.

Our hope is that these recommendations will be a useful tool for considering ways to enhance the effectiveness, fairness and responsiveness of the province's residential tenancy framework.

If you have any questions please contact one of our point people:

Joyce Klein, *Secretary Treasurer*

Active Manufactured Homeowners Association
joyceklein@telus.net / 250 544-1456

Eugene Kung, *Staff Lawyer*

BC Public Interest Advocacy Centre
ekung@bcpiac.com / 604 687-3006

Jess Hadley, *Staff Lawyer*

Community Legal Assistance Society
jhadley@clasbc.net / 604 673-3136

Darcie Bennett, *Campaigns Director*

Pivot Legal Society
darcie@pivotlegal.org / 604 255-9700 ext. 102

Andrew Sakamoto, *Executive Director*

TRAC Tenant Resource & Advisory Centre
andrew@tenants.bc.ca / 604 255-3099 ext. 222

Laura Track, *Legal Director*

West Coast LEAF
legal@westcoastleaf.org / 604 684-8772 ext. 112

Summary of recommendations

The coalition's suggestions focus on 13 simple changes which would immediately and demonstrably improve the lives of BC's citizens.

- 1 **Toughen rent controls.**
- 2 **Minimize harsh and unnecessary evictions.**
- 3 **Empower the RTB for prevention and enforcement.**
- 4 **Prioritize administrative fairness under the RTA.**
- 5 **Protect subsidized tenants.**
- 6 **Prohibit application deposits.**
- 7 **Deter fraudulent evictions, illegal lockouts, and landlord retaliation.**
- 8 **Fairly compensate legitimate evictions.**
- 9 **Enforce landlords' duty to provide copy of tenancy agreement.**
- 10 **Require landlords to give written warning, and particulars, before issuing a notice to end tenancy.**
- 11 **Protect tenant safety.**
- 12 **Clarify the RTA's coverage.**
- 13 **Provide housing security for Mobile Home Park tenants.**

1. Toughen rent controls

Limit the annual rent increase. The permitted annual rent increase is set at the rate of inflation (12 month average percent change in the all-items Consumer Price Index for BC) plus 2%. Under this formula a \$1,000 rent in 2003 has been allowed to increase to \$1,443.41 in 2013 (a 44% increase). Such an increase relentlessly erodes tenants' standard of living, especially for those on fixed incomes and those earning minimum wage.

Legislative recommendation: Amend the legislation to reduce the allowable annual rent increase in one or both of the following ways:

Eliminate or lower the 2% base set out in section 22 (2) of the Regulation¹, so that the allowable rent increase equals inflation, rather than exceeding it,

OR

Keep a minimum base percentage (e.g. 1%), but cap the maximum allowable increase at 2.5%. (In Ontario, the allowable rent increase percentage is capped at 2.5%.)

While we recognize that landlords may face increasing costs such as higher insurance rates and need to cover these in order to remain financially viable, our proposal would not involve changing the existing regulation permitting landlords to apply for a rent increase where they can show an "extraordinary increase in operating costs", which is already available to take pressure off landlords in such situations (Residential Tenancy Regulation, s. 22(1)(c)).

Manage rent increases between tenancies.

When a tenant moves out, a landlord has the right to charge the new tenant whatever rent the market will bear. Currently, new tenants have no transparency about how their rent compares with that charged to the previous tenant.

Legislative recommendation: Landlords should be required to inform incoming tenants what rent was charged to the previous tenant. Formally requiring such information would serve to deter unwarranted, exponential increases in rent between tenancies.²

Limit rent increases between fixed-term tenancies.

The RTA currently allows landlords and tenants to sign fixed-term tenancies that expressly require tenants to move out at the end, unless both parties agree to an entirely new tenancy agreement (in which the landlord has complete freedom to charge a much higher rent). This is frequently used as a means of circumventing the RTA's rent controls.

Legislative recommendation: The RTA should be amended to provide that where the same parties renew a tenancy agreement for the same property, rent increases should be limited in the same manner as if the tenancy had continued uninterrupted.

Highlight tenants' right to seek rent abatement in appropriate cases, to offset annual rent increases.

Annual rent increases are justified to allow landlords to offset inflationary pressures on their properties' regular maintenance and upkeep. However, if a landlord is refusing to make repairs or otherwise neglecting their responsibilities under the RTA or MHPTA, the tenant has the right to seek rent abatement, which may offset or even exceed the amount of the annual increase. To flag this for tenants, and discourage landlords from neglecting their obligations under the legislation and tenancy agreement, the notice of annual rent increase form should note that the tenant can seek rent abatement if facilities and services are not being provided as required under the legislation and tenancy agreement.

Operational recommendation: Include a statement on the notice of annual rent increase form informing tenants that if their landlord is failing to meet its obligations under the RTA and tenancy agreement the tenant may apply for rent abatement.

2. Minimize harsh and unnecessary evictions

Factor in fairness and hardship when issuing orders of possession. Arbitrators currently have no obligation to consider the potentially harsh consequences of a short-fuse eviction order. In practice, the RTB commonly issues orders of possession effective in 48 hours, with no analysis of whether such a short timeline is necessary or appropriate. Arbitrators should be required to balance the factors affecting both tenant and landlord (length of tenancy; tenant's risk of homelessness; whether there are children who will be affected by the eviction; any risk to the property; whether the tenant can continue to pay rent, etc.), before determining the timeline on an order of possession.

***Legislative recommendation:** The RTA and MHPTA should mandate that arbitrators must set appropriate timelines that are fair and just in all the circumstances, when issuing orders of possession.*

Clarify when an order of possession is stayed. Currently, the RTA and MHPTA are ambiguous about whether or not an application to review an arbitrator's order (including an order of possession requiring a tenant to vacate their rental unit) puts that order on hold. This creates uncertainty between landlords and tenants, and a greater risk of sudden eviction and homelessness.

***Legislative recommendation:** The RTA and MHPTA should clearly state that an arbitrator's order (including an order of possession) is automatically stayed when a party seeks a review under the RTA). When an order of possession is upheld on review, the reviewing arbitrator should be able to set a new timeline appropriate to the circumstances, on the order of possession.*

Give arbitrators the power to consider equitable relief. Currently, if a tenant receives a notice to end tenancy for non-payment of rent or utilities, and then fails to (1) pay or (2) dispute the notice within a 5-day period, he or she is conclusively presumed to have accepted that the tenancy is at an end. This is true even if he or she can pay the full amount owed within a reasonable time without creating significant hardship for the landlord. Arbitrators are therefore precluded from considering many legitimate reasons tenants have for being late with rent or utilities. Barring arbitrators from relieving tenants from eviction in such situations inflicts needless distress on many tenants.

***Legislative recommendation:** the RTA and MHPTA should be amended to restore arbitrators' power to reinstate a tenancy, in appropriate cases, when a tenant has paid rent late (more than 5 days after receiving a notice to end tenancy for unpaid rent or utilities). This power existed in the 1998 version of the RTA, but was removed when the current RTA was enacted.*

Increase the grace period for late rent payment. Tenants can currently cancel a notice to end tenancy if they pay their rent within 5 days after receiving a notice to end tenancy for unpaid rent or utilities. This timeline is significantly shorter than in other provinces. For example, Ontario gives tenants a 14-day grace period.

***Legislative recommendation:** Increase the grace period in s. 46(4) of the RTA (and s. 39(4) of MHPTA) so that tenants may cancel an eviction notice if they pay all outstanding rent and utilities within 10 days after they receive a notice to end tenancy for unpaid rent or utilities. This recommendation would not interfere with landlords' right to seek eviction for repeated late payment of rent.*

3. Empower the RTB for prevention and enforcement

Administrative penalties. The RTA and MHPTA contain strong provisions allowing the RTB to investigate breaches of the RTA and impose administrative penalties on landlords. But to date, the RTB has scarcely exercised its investigation powers. Meanwhile, it has only ever issued one administrative penalty, which it has since waived. The RTB should be mandated to make more extensive use of financial penalties as a deterrent, especially against landlords who consistently defy the law.

Operational recommendation: Fund and mandate the RTB to fully exercise its investigation and administrative powers.

Legislative recommendation: Remove the provisions in s. 94.1(4), (5), (6) of the RTA that allow agreements in lieu of enforcement of administrative penalties.

Mandate RTB staff to intervene informally in disputes. Our clients and other stakeholders report that RTB information officers are generally unwilling to call landlords on behalf of tenants. Having an RTB staff person explain the law – for instance, the administrative penalties process – to a landlord would go a long way in deterring non-compliance and preventing problems before they escalate. This would be a relatively small operational change that would reduce the number of hearings needed, saving resources for parties and for the RTB. This change to the RTB’s mandate could also be of value to landlords seeking to resolve small concerns with tenants informally.

Operational recommendation: Increase early intervention efforts at the RTB.

CASE STUDY In 2007, the roof of a rental housing building collapsed, damaging or destroying several of the building’s units. The RTB found that the owners had known for years of water ingress into the roof structure, yet undertook no serious attempt to fix the problem. In 2010, one of the impacted tenants issued a complaint with the RTB. An arbitrator issued an order for an engineering report on the status of the building’s envelope. Later investigation revealed extreme problems with virtually every aspect of the building, including rot damage to the structure itself.

In 2012, after a two-year fight by the tenant, a low-income woman, the RTB imposed its first ever administrative penalty—a \$115,000 fine against the owners for failing to maintain the property and breaching previous RTB orders.

The RTB has since agreed to waive the fine provided the landlord does the repairs within a fixed timeline. Assuming the landlord does indeed complete the repairs, it will have escaped without any penalty after delaying for over 5 years on essential structural repairs required by law.

4. Prioritize administrative fairness under the RTA

Improve standards of decision-making. Since the Residential Tenancy Branch decides serious issues between landlords and tenants (such as evictions, monetary orders worth up to \$25,000, and tenants’ health and safety) it is imperative that its processes be held to a high standard in terms of independence, accessibility and administrative fairness

Operational recommendation: Demand higher levels of qualification for arbitrators; provide better training for arbitrators; provide arbitrators with sufficient time to conduct hearings effectively and to produce adequate written decisions; and develop better systems to assist arbitrators with proper decision-writing.

Create a meaningful review process. Currently the RTA and MHPTA contain very narrow review provisions and a limited power to correct or clarify arbitrators' decisions. As a result, a tenant faced with a breach of procedural fairness, or a decision that is unsupported given the law and the evidence, has no recourse other than an unaffordable, inaccessible judicial review in BC Supreme Court.

Legislative recommendation: *Amend the RTA to create a system where parties can apply to a well-qualified, independent review panel to challenge a decision that is unfair or exceeds the arbitrator's jurisdiction in any way.*

Increase RTB independence. Currently, arbitrators under the RTA and MHPTA are employees and contractors hired by the Ministry of Energy and Mines. To our knowledge, the RTB is the only administrative decision-maker in BC where important quasi-judicial decision-making is done by direct government employees as opposed to institutionally independent decision-makers. This compromises the independence (and public perception of independence) of the RTB's decision-making.

Legislative recommendation: *Amend the legislation to make the Director an appointee of Cabinet (not an employee of government under the Public Service Act), and to require that arbitrators be appointed by the Minister after consultation with the Director.*

Improve service for rural communities. Service BC centers function as an extension of the RTB in rural areas, but their staff have limited training in RTB issues. Meanwhile the public reports that wait times are often very lengthy for the RTB's telephone information system. Improving training for Service BC staff on how to assist clients to find information, reopening more regional offices for the RTB, and reducing phone wait times, are all essential to improve the accessibility of the RTB for rural communities.

Operational recommendation: *Open offices in more communities (more regional offices like in downtown Vancouver), improve training for Service BC staff, and reduce telephone wait times.*

In-person hearings. Since 2007 the RTB has implemented a teleconference system for its hearings. Today, nearly all RTB hearings are held via teleconference call. This approach to decision-making is inaccessible for tenants with disabilities and mental health problems, and often compromises litigants' perception that they have had a fair hearing. Indeed, the BC Supreme Court has commented on the problems with the teleconference system in a number of judicial reviews of RTB decisions.

Operational recommendation: *Give litigants the option of an in-person hearing. At the very least, provide an in-person hearing when necessary to ensure a fair and accessible hearing (e.g. language barrier, communication problems, mental health issues, high conflict cases).*

Operational recommendation: *Ensure litigants are aware of the option of requesting an in-person hearing, by including a statement to that effect on the Application for Dispute Resolution form.*

“the BC Supreme Court has commented on the problems with the teleconference system in a number of judicial reviews of RTB decisions”

“landlords sometimes ask for ‘application deposits’ as a way of circumventing the provision prohibiting ‘application and processing fees’”

5. Protect subsidized tenants

Enable the RTB to monitor some aspects of subsidy withdrawal cases. The RTA does not currently give the Director clear jurisdiction to ensure that landlords are acting fairly when determining whether a tenant is eligible for a subsidy. We accept that landlords need leeway to set eligibility criteria for subsidies, and do not suggest that the Director should have jurisdiction to examine these criteria. However, tenants do need to have an independent avenue of appeal when their subsidy is withdrawn for reasons they believe are out of step with the policy that their housing provider has set.

Legislative recommendation: *The RTA should protect subsidized tenants from unfair withdrawal of their subsidy by clearly granting the RTB jurisdiction to determine whether the withdrawal was procedurally fair and factually supported.*

Close the s. 49.1 loophole. Section 49.1 of the RTA provides that tenants are entitled to two months’ notice when evicted for ceasing to qualify for their rental unit. Instead of issuing this type of two month notice, however, some landlords pull tenants’ subsidies and then issue a ten day notice for non-payment of rent when the tenants are subsequently unable to pay the new market rent.

Legislative recommendation: *The RTA should clearly state that it is a landlord’s responsibility to issue a two-month notice, as opposed to a ten-day notice for non-payment of the higher rent, when evicting a tenant who no longer qualifies for a subsidized rental unit.*

6. Prohibit application deposits

Landlords sometimes ask for “application *deposits*” as a way of circumventing the provision prohibiting “application and processing *fees*”. For tenants whose applications are approved, this “deposit” is returned or applied to their tenancy. For tenants whose applications are unsuccessful, the “deposit” is supposed to be returned. Making tenants pay this sort of fee – which can be upwards of one month’s rent – for every potential rental unit they are applying for is unfair, especially for low-income tenants. There is also a danger that the landlord will refuse to return the money to unsuccessful applicants.

Legislative recommendation: *Change section 15 of the RTA to read as follows:*

Application and processing fees and deposits prohibited
15 (1) A landlord must not charge a person anything for
(a) accepting an application for a tenancy,
(b) processing the application,
(c) investigating the applicant’s suitability as a tenant, or
(d) accepting the person as a tenant.
(2) A landlord must not charge a person anything listed in subsection (1), even if the tenant is entitled to have the application or processing fee or deposit later returned or applied towards the tenancy.

CASE STUDY In late 2010 the residents of an apartment complex in Vancouver's West End were issued eviction notices by their property management company, which argued that the building was unsafe and required substantial renovations, necessitating that the building be vacant. This notice was issued less than two weeks after the RTB rejected the company's application to increase rents in the building by 73%. The tenants had justifiable doubts as to the required 'good faith' of the eviction notice.

Under the RTA, the onus was on the tenants to rebut the landlord's eviction notice. After two months of round-the-clock effort by the residents to compile an exhaustive body of evidence refuting the need for vacant possession—including letters from the former owner, contractors and tradespeople, and correspondence with the company—an arbitrator concurred with the tenants and quashed the eviction notice. The company sold the building shortly thereafter.

While a success for the residents, the effort required to save their homes raises serious questions about the RTA's current ability to protect tenants against deceitful eviction.

7. Deter fraudulent evictions, illegal lockouts, and landlord retaliation

Deter fraudulent evictions. A tenant can legitimately be evicted where a landlord intends to significantly renovate the rental unit or where the unit is to be used by the landlord or her family. Some landlords use these provisions in bad faith when they wish to evict tenants who would otherwise be entitled to stay. As the law currently stands, the tenant bears the onus of raising the issue of bad faith. This should be reversed to require landlords to prove in all cases they are acting in good faith before issuing notices to end tenancy for landlord's own use. As well, the penalty for landlords who issue bad faith eviction notices should be increased.

Legislative recommendation: Increase the monetary penalty for landlords who act in bad faith when purporting to evict for landlord's own use (s. 51(2) of the RTA). The penalty is currently 2 months' rent and needs to be increased to create a meaningful deterrent.

Legislative recommendation: The RTA and MHPTA should require landlords to apply to the RTB for leave to issue a notice to end tenancy for renovations or for landlord's own use, and to prove that they are acting in good faith. The burden should not be on the tenant to dispute the landlord's notice to end tenancy. For example, the section could read:

Circumstances where refusal required

- (1) The Residential Tenancy Branch shall refuse to grant the application where satisfied that,
 - (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;
 - (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.

Deter landlord retaliation. Tenants are currently provided no protection against landlord retaliation for exercising their rights, such as organizing tenant unions or demanding that repairs be completed.

Legislative recommendation: The RTA and MHPTA should expressly permit tenants who believe they are subject to retaliation from a landlord to apply for compensation at the RTB.

Operational recommendation: *The RTB should levy administrative penalties against landlords found to be using the RTB process to harass or intimidate a tenant.*

Deter illegal lockout of tenants. Where landlords bar tenants entry to their units without due process, tenants can be left homeless, often with tenants' possessions locked in the rental unit or having been disposed of by the landlord so that the tenant is unable to access money, medication, work materials, and other essentials. These sorts of lockouts can ruin tenants financially and emotionally, and they occur far too often.

Legislative recommendation: *The RTA should expressly provide that tenants can be compensated for monetary and non-pecuniary losses resulting from illegal lockouts.*

Operational recommendation: *The RTB should issue administrative penalties against landlords who engage in illegal lockouts. The RTB should issue compensation for illegal lockouts.*

8. Fairly compensate legitimate evictions

Implement a right of first refusal. Where tenants are evicted due to renovations (so-called "renovictions"), they should be afforded the first opportunity to return to their home, at the rent previously charged. This right of first refusal is currently enshrined in tenancy legislation in other Canadian jurisdictions, including Ontario.

Legislative recommendation: *Implement a right of first refusal for tenants in cases of renovictions.*

Increase the legislated amount of compensation. Currently, tenants impacted by evictions for landlord's own use are entitled to compensation in the amount of one month's rent. In other jurisdictions, such as Ontario, tenants are entitled to three months' rent as compensation in cases of repair, renovation, conversion or demolition. Increasing tenants' rights to compensation would serve as a deterrent to dishonest evictions and would more equitably compensate the harm that eviction causes for tenants.

Legislative recommendation: *In cases of eviction for repair, renovation, conversion or demolition, increase compensation to at least three months' rent.*

Legislative recommendation: *In cases of eviction for other forms of landlord's use, increase the compensation to two months' rent.*

Provide fair notice and compensation for eviction from an illegal or unsafe unit. When an illegal or unsafe suite gets shut down by order of a municipal, regional, provincial or federal authority, tenants are vulnerable to homelessness. Tenants should be entitled to reasonable notice (safety permitting), and compensation from the landlord to enable them to cover the costs of an unexpected move.

Legislative recommendation: *The RTA should provide that, barring serious and documented health and safety concerns, tenants should be entitled to two months' notice when their unit is shut down by order of a municipal, regional, provincial or federal authority. Tenants should also be entitled to a minimum of one month's rent as compensation.*

9. Enforce landlords' duty to provide copy of tenancy agreement

Currently, the RTA and MHPTA require that “[w]ithin 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.” For tenants it is vital to have a copy of the signed tenancy agreement, since the document lists their landlord’s legal name and contact information, and sets out their rights under the agreement. Tenants can currently apply to the RTB for a copy of their agreement (by seeking an order that the landlord comply with the RTA) but there is no penalty for landlords who delay complying with this duty.

Legislative recommendation: *The RTA and MHPTA should provide that when a landlord does not give his/her tenant a copy of the tenancy agreement within 21 days after entering into the agreement, the tenant is entitled to a nominal amount of monetary compensation.*

10. Require landlords to give written warning and particulars before issuing a notice to end tenancy

Written warning. Currently, there is no requirement that landlords give tenants a chance to rectify problems prior to issuing a notice to end tenancy for cause. This means that a notice to end tenancy is often the first thing a tenant hears about problems.

Legislative recommendation: *Amend the legislation to require landlords to issue a formal notice of problems with the tenancy, and to give tenants a reasonable chance to rectify the problems, before issuing a Notice to End Tenancy for Cause. (The legislation should allow a landlord to apply for an exception to this rule in situations where the landlord can provide evidence of a safety issue.)*

Operational recommendation: *Whether or not the legislation is amended, the RTB should issue a form for landlords to use for giving formal notice of problems with a tenancy. The RTB should also issue a guideline encouraging landlords to use this form.*

Particulars. A related difficulty is that the current Notice to End Tenancy Form only requires landlords to indicate what section of the RTA or MHPTA they are relying on. Because some sections of the legislation are very general, the tenant is often left guessing about exactly what the landlord thinks she did wrong, right up to the start of the hearing. This increases the chance the tenant will be unable to respond fully to the landlord’s allegations, thus diminishing procedural fairness.

Operational recommendation: *Change the Notice to End Tenancy for Cause form to require that landlords provide particulars.*

“a notice to end tenancy is often the first thing a tenant hears about problems”

11. Protect tenant safety

Protect survivors of domestic violence. Currently, tenants who flee domestic violence remain liable for the balance of a fixed-term tenancy if they must leave their residence for safety reasons before the lease expires. Women experiencing abuse should not be trapped in a fixed-term tenancy when they must leave to escape a violent situation. While domestic violence affects women at every income level, those with lower incomes are less likely to be able to find alternative accommodation, particularly if they are fleeing with their children. Both Manitoba and Nova Scotia have amended their residential tenancy legislation to make it easier for victims of domestic violence to end their leases early; British Columbia should follow suit.

***Legislative Recommendation:** Amend the RTA to allow victims of domestic violence to end their fixed-term tenancy early, without penalty, on one month's notice. The Province should work with women-serving organizations and the anti-violence sector to determine what evidence of abuse will be required for the purpose of the notice to end tenancy.*

Warn tenants about criminal activity. Currently, there is no onus on landlords to disclose potential safety risks and risks of criminal victimization to tenants as a result of the activities of previous tenants.

***Legislative Recommendation:** Amend the RTA to compel landlords to disclose potential safety and security threats, including recent criminal activity involving the property.*

“women experiencing abuse should not be trapped in a fixed-term tenancy”

Case Study. *The Palace and Wonder Rooms are two of the Downtown Eastside's most notorious SROs. Owned by a pharmacist who has since had his license revoked, tenants complained for years of harassment and exploitation, including illegal lockouts and evictions.*

In an egregious example of exploitation, the owner required residents, as a term of their tenancy, to have their methadone prescriptions filled at the pharmacy he owned—allowing him to collect in excess of \$6000 per tenant per year in dispensing fees. Tenants who refused to comply with his tactics were evicted.

The tenants challenged the evictions at the RTB, but the arbitrator found that the RTA did not apply because the owner had been providing 'therapeutic services.' Fortunately, the arbitrator's decision was set aside on judicial review and eventually there was a new RTB decision in favour of the tenants. However, judicial review is rarely accessible to people as marginalized as the residents of these hotels, and the problem needs to be avoided at the outset by clear legislation

12. Clarify the RTA's coverage

Section 4 of the RTA expressly excludes transition houses and accommodation made available in the course of providing rehabilitative or therapeutic treatment or services. However, there is no clarity on what forms of accommodation fall under these categories.

***Legislative recommendation:** The RTA should be amended to clarify the definition of 'transition houses' and 'accommodation made available in the course of providing rehabilitative or therapeutic treatment or services'. This should be done in consultation with transition houses and supportive housing providers. We also recommend that legislators consider whether selected sections of the RTA should apply for forms of accommodation where the application of the entire RTA would not be appropriate.*

While the RTA is clear that *Single Resident Occupancies (SROs)*, lodging houses, hotels, and other forms of accommodation relied upon by the most economically marginalized members of society fall under the RTA if they are occupied as a tenancy (a distinction clarified by *RTB Policy Guideline 27*) this is not always understood by landlords and tenants, resulting in breaches of tenants' rights. For example, some landlords impose guest fees on tenants'

visitors, in violation of section 30(1)(b) of the Act.

Legislative recommendation: Amend the RTA to expressly state that tenancies in Single Resident Occupancies (SROs), lodging houses and hotels fall under the Act where they meet the definition of a “tenancy” under the RTA.

Currently the RTA does not cover accommodation that is shared with the owner of the rental unit. It is important that the government consider a mechanism for ensuring that these residents’ rights are clearly articulated and there is some measure of consistency.

Legislative recommendation: Consider special provisions for those residing in these forms of accommodation. Alternatively, consider making certain sections of the RTA apply for these forms of accommodation, even if the entire RTA does not apply.

13. Provide housing security for Mobile Home Park tenants

Provide adequate compensation for evicted MHP tenants. In many smaller communities across British Columbia, mobile home parks provide an important source of low-income housing. It is not uncommon for low-income people to invest a significant amount of money into the purchase of a mobile home that sits on rented land. These homes are often very difficult or impossible to move. Yet currently, the law provides minimal protections and compensation (12 months’ notice and 12 months’ rent) for tenants whose landlord changes the use of the MHP (typically to rezone and develop the land). The 12 months’ rent is often shockingly inadequate compensation for evicted MHP tenants, who face high costs for moving their home or, even worse, who cannot move their home and thus lose their investment.

Legislative recommendation: Amend s. 44 of the MHPTA to significantly increase compensation for tenants evicted from their MHP for change of use.

Don’t require MHP tenants to cover landlords’ costs of doing business. Currently, MHP landlords are permitted (under the MHPTA and its Regulation) to apply for additional rent increases to cover costs of maintenance and upkeep even if these costs are reasonably foreseeable. MHP landlords are also permitted to build in a “proportional amount” to their annual rent increase to cover increased utility costs, even if those costs result from the landlord’s own failure to maintain infrastructure. All these costs should be considered part of landlords’ cost of doing business (as they are under the RTA) and should be borne by the landlord, not the tenant.

Legislative recommendation: Amend s. 32 of the Manufactured Home Park Tenancy Regulation to prevent landlords from charging a “proportional amount” for utility charges caused by the landlord’s failure to maintain. Amend the legislation to permit additional rent increases for maintenance and upkeep costs only when those costs are unforeseeable.

Notes

¹ This recommendation applies equally to s. 32(2) of the Manufactured Home Park Tenancy Regulation.

² This applies equally to the MHPTA