



Housing Justice Dialogue #2

The Residential Tenancy Act: Time for an Overhaul?

Monday, May 5, 2014

12:00 a.m. – 2:00 p.m.

World Arts Centre, SFU Woodward's

The Housing Justice Project is a three-year university/community research and action plan funded by the [Peter Wall Solutions Initiative](#) and based at the University of British Columbia. More information about the Housing Justice Project can be found at www.housingjustice.ca.

On May 5, 2014, a workshop was held to discuss possible changes to the *Residential Tenancy Act (RTA)*. The basis of the discussion was a series of documents released prior to the last provincial election by a number of local social justice organizations.¹ This workshop was an opportunity to discuss proposed changes to the *RTA* that could make the statute more responsive to the difficult housing market in Vancouver. Participants discussed what protections the *RTA* does and does not provide, and considered opportunities to engage in advocacy for legislative reform.

Issues with residential rental housing are a central piece of the current crisis in affordable and adequate housing across Metro Vancouver. The *RTA* is an important piece of legislation that lays out protections and dispute resolution processes for residential tenants and landlords in British Columbia.

Participants joined the workshop from diverse backgrounds, including community-based advocacy organizations, housing providers, and members of the Vancouver community. This document summarizes issues and ideas that were discussed during the workshop.

The workshop began with an overview of the *Residential Tenancy Act* and current issues requiring changes to the legislation. Group discussion was facilitated around the following topics:

1. *Residential Tenancy Act* coverage;
2. Procedures around initiating and terminating a tenancy;
3. Tenant protections during tenure;

¹ *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. Available from: http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/349/attachments/original/1367359069/BC_RTAReport%281%29.pdf?1367359069.

Milne, K., & Cooper, K. *Suggested Amendments to BC's Residential Tenancy Act*. Community Legal Assistance Society.

4. Dispute resolution;
5. The Way Forward: Strategy, Law, and Politics (small group discussion).

Summary of Key Themes and Issues

Vagueness of definitions in the Residential Tenancy Act makes effective implementation of provision challenging.

Participants discussed the implications of terminology and how precisely the *RTA* defines exemptions for different types of housing. Imprecision in definition has significant implications for due process in implementing the *RTA*, particularly regarding eviction processes. Participants indicated that definitions of exemptions to the *RTA* need to be made clearer, and that, if exemptions of certain types of housing are going to be made, then the definitions of those housing types need to be more carefully defined in the legislation. Section Two of the *RTA*, for example, exempts certain types of subsidized housing, but ambiguity around what falls under “subsidized housing” has created challenges for tenants and advocacy organizations. Consequently, some tenants find themselves stuck with no recourse to either provisions made in the *RTA* or processes within social housing organizations like BC Housing.

Participants indicated that the legislation would benefit from a comprehensive policy discussion about which exemptions should exist in the first place. Definitions in the *RTA* should be clarified accordingly. Special attention should be paid to housing that serves the most vulnerable in our communities.

The RTA does not sufficiently account for power imbalances between landlords and tenants.

Vancouver has a very challenging rental housing market with high average rents and a low vacancy rate. Long waiting lists for subsidized units and single room occupancy (SRO) hotels mean that prospective tenants do not have the ability to “shop around” for rental units. Consequently, an implicit power imbalance exists between landlords and tenants that is not adequately addressed in the *RTA*.

Participants discussed three particular examples of this imbalance.

1. Non-profit housing providers in Vancouver are now introducing five month fixed-lease agreements that function as a way of cycling through disruptive tenants and reducing wait lists for units. As a result, many hard-to-house tenants find themselves homeless after the termination of their lease.
2. Under the current *RTA* landlords have the right to issue eviction notices if rent has not been paid within five days of the date it is due. This is significantly less time than what is allowed in other provinces, which can range from 10 to 15 days. The *RTA* also fails to give adequate discretionary authority to account for the circumstances in which the rent was unpaid.

3. Housing advocacy organizations commonly hear that tenants paying lower rents are afraid to ask for maintenance because landlords can use this as an excuse to carry out unwarranted renovations, resulting in higher rents and/or eviction. Some landlords have been reported using intimidation techniques to discourage tenants from lodging maintenance complaints.

The RTA does not sufficiently require that landlords act in good faith towards tenants.

“Good faith” is a legal concept which assumes that parties to a contract will act honestly and fairly towards one another. Numerous court decisions in British Columbia have shown that good faith is not adequately addressed in or enforced by the *RTA*, and a number of tenants have lost cases on this ground. Landlords frequently use tactics like carrying out unnecessary renovations with the actual goal of raising rent and evicting tenants (termed “renovictions”). The current language of the *RTA* is not sufficiently strong to trigger disciplinary mechanisms for landlords acting on bad faith.

Disciplinary action for landlords acting improperly is not adequately addressed in the RTA.

Participants expressed concern about the lack of disciplinary procedures specified in the *RTA* for landlords who have a history of eviction. While there are provisions on unit and building maintenance in the legislation, they are not applied with consistency, and, in the absence of tools like rent abatement, there is no incentive for landlords to deal with maintenance orders. Processes are needed for administering penalties to landlords who consistently ignore or contravene orders that do not require going through the court system, which is an inaccessible and lengthy process. Given the significant implications for tenant comfort and safety and potential costs to the health care system of unhealthy living conditions (e.g. mold), addressing maintenance issues in rental units is critical.

Several participants discussed the importance of actively engaging landlords in municipal maintenance bylaws, which not all BC municipalities currently have in place. There was additional discussion about enabling city building inspectors to contribute evidence about unit condition to *RTA* hearings. This could be a way for municipalities to support tenants in an administrative capacity during *RTA* hearings. This strategy is however linked to the issue of power imbalances between landlords and tenants, who may fear landlord retribution for calling in city inspectors. With the exception of SRO hotels, enforcement of city bylaws is conducted on the basis of complaints, making this a critical barrier to the enforcement of maintenance bylaws.

Improving the training and resources of staff at the Residential Tenancy Branch could also improve enforcement of the *RTA*. One participant noted that the landlord industry is moving toward a greater number of “Mom and Pop” landlords renting suites in their homes. It is difficult to reach out to these landlords about *RTA* education and tenant’s rights because they do not necessarily want to spend time understanding and complying with the

legislation. Maintaining the City's "bad landlords" database was mentioned as one approach for penalizing landlords who abuse tenant's rights.

A domestic violence clause needs to be added to the RTA concerning fixed-lease agreements.

Discussion happened around a briefing note prepared by West Coast LEAF about amending the RTA to consider persons fleeing domestic violence. The note recommends that the BC government create an exemption on penalties for individuals needing to prematurely break leases as a result of domestic violence. Under the current legislation the tenant remains responsible for the remainder of the rent until a new tenant is found, which creates an additional barrier for women fleeing domestic violence. Women who break leases early can be blacklisted by social housing providers and are then unable to obtain new affordable housing, leading to homelessness and reliance on shelters.

The RTA dispute resolution process is complex and inaccessible, reinforcing the landlord-tenant power imbalance.

Participants discussed at length the layers of ambiguity in the mediation and arbitration process under the RTA. A major issue that emerged was the lack of distinction between the role of mediator and arbitrator, which are commonly performed by the same person. This can be attributed to resource limitations and heavy caseloads within the Residential Tenancy Office, but nonetheless results in poor conduct from staff. This ambiguity in mediation and arbitration processes also presents challenges for tenants who have brought cases to court and lost on the grounds that there was no separate mediation and arbitration process.

Additional issues with the dispute resolution process were identified, like the lack of availability of in person hearings and poor accessibility of translation services for individuals who do not speak English as their first language. Participants also noted that tenants sometimes lack the energy and/or confidence to attend hearings. Issues with administrative delays mean that it takes considerable time to get a hearing scheduled.

Better data collection is needed about frequency of evictions, disputes, and landlord behaviour.

Several participants noted the lack of data collection mechanisms for basic things like number of eviction notices downloaded per year or records of disputes and their outcomes. Without this information it is difficult to identify landlords with patterns of abuse. Participants suggested that a more transparent process around issuing notices and tracking disputes and hearings would help to better understand the current state of tenancies across the province. The City of Vancouver does maintain a "bad landlord" database, and it was noted that this is one important mechanism for making tenants aware of landlords with poor records.

Relationship-building, education, and outreach are crucial to addressing gaps in the RTA.

Participants discussed the role of public education in raising awareness about tenant's rights and rental housing problems in Vancouver. Participants recognized that different modes of communication are important to reach different groups of people, but that mobilizing voters to think about these issues and challenge their elected representatives to take action is a critical part of the effort to improve protections for renters. Building connections between advocacy organizations, non-profit service providers, academia, and citizens is important to foster a sense of cooperation and solidarity in addressing the full spectrum of housing needs.

Summary of Ideas Moving Forward

A number of proposals were made throughout the workshop on how to improve the *RTA* and other support mechanisms for tenants.

- Change the *RTA* to provide clearer definitions and more rational distinctions in exemptions, rather than just general categories.
- Amend the *RTA* to make clear that good faith applies to the entire Act.
- Give tenants the right of first refusal on units being renovated to help reduce the rate of “renovictions” happening across the City. Similar rights exist in other Canadian jurisdictions, including Ontario.
- Consider setting minimum year-long rental contracts to end the practice of five month trial tenancies in non-profit housing.
- Integrate more discretionary power into the *RTA* to take into account circumstances underlying delayed payment of rent.
- Extend the grace period for rent payment before issuance of eviction notices from five days to 10 days.
- Continue maintaining the City of Vancouver’s bad landlord database.
- Work with City inspection services to provide administrative support to tenants undergoing a dispute negotiation (e.g. in demonstrating poor unit or building maintenance).
- Provide better translation services at *RTA* hearings and make transcriptions available to all parties.
- Give tenants an option for in-person *RTA* hearings.
- Create a standard for certified rental buildings that demonstrates that landlords meet building codes and follow best practices.
- Work to bring concerns and experiences of tenants into the media so citizens can better understand how the *RTA* is implemented.
- Use a variety of communication approaches to reach different groups of people and

help them understand their rights and choices (e.g. printed materials, apps).

- Amend the *RTA* to include exemptions for individuals breaking fixed-leases for purposes of fleeing domestic violence.
- Tie rent increases to the room or unit and not to the tenant to minimize rent increases.
- Improve data collection by tracking the issuance of eviction notices and identify landlords who have a pattern of eviction.
- Encourage municipalities that do not already have standard maintenance bylaws in place to enact them.
- Create separate systems for mediation and arbitration of *RTA* disputes to improve transparency in the resolution process.

Participants

John Barbour
Janet Berry – First United
Fay Blaney – DTES Women’s Group
Abigail Bond – City of Vancouver
Ana Maria Bustamante – Gordon Neighbourhood House
Kevin Chan – University of British Columbia
Kaity Cooper – Community Legal Assistance Society
Irene Dawson
Genevieve Depelteau – BC Society of Transition Houses
Didi Dufresne – First United
Brenda Floyd – Residential Tenancy Board
Mark Godfrey – Gordon Neighbourhood House
Jeff Hayes – BC Landlords Association
Tamara Herman – Carnegie Community Action Project
Susan Henry – First United
Blair Hewitt – DTES United
Sharon Isaak – Renters at Risk
Eric Kowalski – West End Seniors Network
Carol Martin – DTES Women’s Centre
Celine Mauboules – City of Vancouver
Kendra Milne – Community Legal Assistance Society
Susan Moore – West End Seniors Network
Mabel Nipshank – DTES Women’s Centre
Shabbar Raza – Henriquez Partners Architects
Veronica Ren – Macdonald Realty
May So – Henriquez Partners Architects
Leslie Stern – BC Women’s Housing
Laura Track – West Coast LEAF
Eva Wadolna – Seniors Advisory Committee

Facilitators:

Penny Gurstein – School of Community and Regional Planning, UBC/Housing Justice Project
Margot Young – Faculty of Law, UBC/Housing Justice Project

Notetakers:

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