Community Legal Assistance Society

Advancing Dignity, Equality and Justice Since 1971

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By E-mail

Rental Housing Task Force
Spencer Chandra Herbert, Chair
Ronna-Rae Leonard
Adam Olsen

Dear Mesdames/Sirs:

Re: Submission to the Rental Housing Task Force

Who We Are

For the last 47 years, CLAS has provided legal services to low income and other disadvantaged people living across the province, specializing in housing, income security, workers' rights, mental health and human rights. We provide both service work, such as legal advice and representation within all of our programs, as well as systemic work on broader legal issues and legal reform that will assist our clients. While we are thankful for this opportunity to provide our input on perceived priorities for change in the rental housing context, we would be remised if we did not emphasize the importance of continued, ongoing dialogue regarding housing priorities for tenants. Most importantly, for this dialogue to be meaningful, it must include the voices of indigenous communities and marginalized individuals—this is a vital component to ensuring the housing system operates inclusively, fairly, and effectively.

Priorities

For any meaningful change to occur in this context, tenant protections and housing security needs to be strengthened through a variety of loss prevention mechanisms, including, but not limited to, the prevention of

unjust, unmerited loss of individual housing and affordable housing stock as well as the creation of a fair and meaningful dispute resolution process. Above all, the housing needs and interests of marginalized people who are homeless or in danger of being homeless must be understood as an absolute top priority, as the impacts to their lives are particularly complex and significantly compound the barriers and challenges they may already be facing.

I. Eliminate Unjust Evictions

a. 2-Day Orders of Possession

When a tenancy ends, the *Residential Tenancy Act* (the "RTA") allows Arbitrators to grant orders of possession, which can be used by landlords to evict tenants and reclaim the rental unit. In issuing these orders, most Arbitrators unfairly default to orders of possession that are enforceable two days after they are served on the tenant, without considering the hardship such a short timeline will cause. Having to vacate a home in such a short period of time is difficult for most tenants, but for many low-income tenants or tenants who have special housing needs (including affordable market housing, subsidized housing, housing with accessibility requirements) the consequences are especially devastating and can include loss of dignity, habitability, basic supports and cultural adequacy, as well as a decline in health and safety and homelessness. Conversely, there is no countervailing hardship to landlords in this context.

Other Canadian Jurisdictions

Section 83 of Ontario's *Residential Tenancy Act* provides discretion for decision-makers to delay an eviction, and mandates decision-makers to consider all the circumstances, which <u>may</u> include fairness to each party.

Recommendation

We recommend a similar approach to the Ontario model noted above. However, unlike the Ontario model, we believe Arbitrators <u>must</u> consider fairness and equity in these circumstances.

b. Unpaid Rent

Another example of an unjust eviction occurs in the context of unpaid rent. If a tenant receives a notice to end tenancy for non-payment of rent or utilities, and then fails to either pay the outstanding rent or dispute the notice to end tenancy within a five-day period, they are conclusively presumed to have accepted that the tenancy is at an end. This is true even if the tenant demonstrates the ability to pay the full amount owed outside of the five-day period but within a reasonable amount of time without creating significant hardship for the landlord. Given the law as it is currently, Arbitrators are precluded from considering barriers or any

legitimate reason a tenant may have for being late with rent or utilities. We further recommend that the timeline to dispute a notice to end or pay the outstanding rent be extended from five days from the date the notice to end is received to 10 days.

Other Canadian Jurisdictions

Other Canadian jurisdictions have recognized a "fair and just" approach to unpaid rent evictions:

S 70 (6) of Saskatchewan's Residential Tenancy Act provides decision-makers with broad discretion to make any order that is "just and equitable" in such circumstances.

S 95.1(5) of Manitoba's Residential Tenancy Act allows a decision-maker to void the notice of termination if the tenant pays the total amount of arrears before an order of possession is granted.

Recommendation

We recommend an approach that is similar to the other Canadian jurisdictions noted above, and to provide Arbitrators with broad discretion to set aside or refuse to grant an order of possession to a landlord, if it is just and equitable to do so.

c. Eliminating the Direct Request Process for Non-Payment of Rent

Under the current RTA, if a tenant has not paid rent or disputed the eviction notice for non-payment of rent within the 5-day period, a landlord can apply to the Residential Tenancy Branch for a "direct request." This process allows Arbitrators to make decisions and/or grant orders without an in-person hearing and without the tenant's participation. Arbitrators also consistently apply a low evidentiary standard and are often satisfied that landlords have met their evidentiary burden through unsworn, written testimony.

Given the interests at stake and the general lack of procedural safeguards, tenants should be afforded every opportunity to be heard. The convenience of expediting the eviction process and securing a financial benefit to the landlord should not come at the expense of a tenant's housing security and safety.

II. Create a Fair and Effective Dispute Resolution Process

a. Grounds for Review

Under the current RTA, a party's ability to ask the Residential Tenancy Branch to internally review decisions and orders is limited to *only* three restricted situations including: the party was unable to attend the hearing; the party has new and relevant evidence; and the decision was obtained by fraud.

The RTA does not provide a statutory review or appeal process to address other kinds of serious errors such as procedural fairness, or obvious mistakes of law or fact. Therefore, if there is a serious error, and/or issue of procedural unfairness, the only recourse available to the parties is to file a judicial review in BC Supreme Court, which is a complex process that often requires a lawyer. It also exposes the parties to the risk of having to pay the other sides' court costs, which is a risk that many tenants are unwilling to take.

Other Canadian jurisdictions

S 21 (2) of Ontario's Statutory Procedures Act empowers the Landlord Tenant Board to review its own decisions and orders for "serious error." A serious error can include an error in jurisdiction, procedure, fact or law, or when a party was not able to participate in the Board process. If the review Board member finds a serious error, they can confirm, vary, suspend or cancel the original order. The party applying for review can also request a stay of the decision from the Board when the review is filed.

Recommendation

In addition to the current grounds for review, we also recommend incorporating similar grounds for review as the Ontario model, as well as issues of procedural fairness.

b. Timeline to File for Review Consideration

A tenant who receives a decision to terminate the tenancy only has two days from the date they receive the decision and/order to apply for review consideration with the Residential Tenancy Branch. An Arbitrator's decision to grant a review consideration hearing is entirely dependent on the written application and evidence of the parties. Accordingly, two days is not nearly enough time for a person to either obtain legal assistance or prepare comprehensive legal arguments on their own. This means that tenants with legitimate grounds for review consideration may be denied the opportunity to have a review consideration hearing because the short timeline to apply precluded them from being able to either secure legal assistance or prepare comprehensive legal arguments on their own.

Recommendation

Extend the timeline to apply for review consideration for decisions related to notices to end tenancy and/or orders of possession from two days to 10 days.

III. Rent Control

a. Tying Rent to the Rental Unit

The RTA allows landlords to increase rent between tenancies by any amount they desire. We believe that a landlord's ability to do so has not only contributed significantly to the housing crisis in BC but has also led to a rapid increase in unmerited, unjust evictions across BC. We are all familiar with cases in which landlords have notoriously exposed and abused "loopholes" within the law to end tenancies with current, often long-term tenants, for the purpose of entering into tenancy agreements with new tenants for exorbitantly higher amounts of rent. Not only does this process lead to loss of housing for individual tenants, but it also contributes to the gentrification of low income areas and the loss of affordable housing stock as well.

Other Canadian Jurisdictions

Quebec's housing tribunal, the Regie Du Longment, recognizes that rent control is necessary to foster the preservation and improvement of housing stock. Accordingly, Article 1896 of the Quebec Civil Code states that a landlord must inform a prospective tenant of the lowest monthly rate paid for the unit during the previous 12 months. Pursuant to Article 1950, if a new tenant's rent is higher than the lowest monthly rate, the tenant can apply to the court to have the rent adjusted.

Recommendation

We recommend an approach that is similar to the Quebec model, which ties the amount of rent to the unit.

b. Right of First Refusal Tied to the Same Rent

The new RTA amendments that have recently come into force include the option of "right of first refusal" for current tenants who are being evicted due to renovations. However, while the current amendment includes the "right of refusal" in name, in practice it will have little to no effect protecting tenants, and will in all likelihood simply maintain and preserve the status quo. Although the amendment will theoretically allow a tenant to move back into the rental unit once renovations are complete, it is not tied to rent control. This means that landlords will still be able to raise the rent to any amount they desire, which most tenants, especially low-income tenants, will not be able to afford.

Recommendation

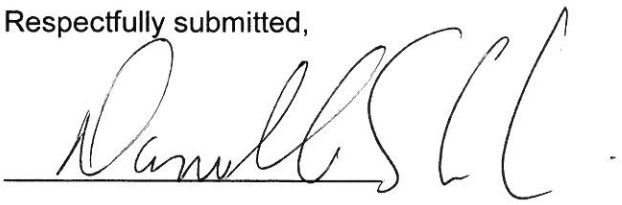
Similar to the Ontario model, we recommend that the recent inclusion of a right of first refusal into the RTA be amended so that tenants exercising their right of first refusal are able to do so at the same amount of rent they

paid for the unit prior to the renovations. We would also recommend that the tenant exercising the right of first refusal retain exclusive possession of the unit while renovations are being completed.

Conclusion

It is important to note that the housing crisis is a crisis for tenants, not landlords. This crisis is not just reflective of supply deficiency, it is also reflective of ineffective laws that do not protect tenants. For meaningful change to occur, we believe the primary focus should be on strengthening tenant protections and ensuring procedural safeguards are in place so that tenants, especially those that are low-income and marginalized, can feel safe and secure in their homes.

Respectfully submitted,



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Danielle Sabelli, Lawyer