TRAC
TENANT RESOURCE & ADVISORY CENTRE

July 4, 2018

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

Re: TRAC Submission to the Rental Housing Task Force

Introduction

The Tenant Resource & Advisory Centre (TRAC) promotes the legal protection of residential tenants across BC by providing information, education, support, and research on residential tenancy matters. As a provincial leader in tenants' rights since 1984, TRAC speaks to tens of thousands of tenants and advocates each year and is well-positioned to comment on rental housing in BC. This document outlines TRAC's official recommendations to the Rental Housing Task Force for legislative change to the *Residential Tenancy Act* (RTA) / *Residential Tenancy Regulation* (RTR), and operational change to the Residential Tenancy Branch (RTB).

TRAC urges the Rental Housing Task Force to remember that, although the ultimate goal should be balanced legislation, there is currently a power imbalance between tenants and landlords; BC's rental housing crisis is a crisis for tenants – not landlords. The Minister of Municipal Affairs and Housing has the been instructed to strengthen legal protections for the roughly 1.5 million tenants living in BC. It is TRAC's hope that the recommendations outlined in this document help form the blueprint for achieving that goal.

Residential Tenancy Act (RTA) and Residential Tenancy Regulation (RTR) Recommendations

1. Strengthen Protections Against "Landlord's Use" Evictions

Although the recent RTA amendments related to "landlord's use" evictions were a step in the right direction, more significant change is still needed in the area. TRAC receives more questions about eviction than any other topic, and strengthening protections against "landlord's use" evictions is our top priority for RTA reform.

It is TRAC's recommendation that all "landlord's use" evictions have a four-month notice period and 30-day dispute period. In terms of compensation, landlords should be required to pay four months rent for evictions under section 49 (6), and two months rent for all other landlord's use evictions. (Section 49.1 of the RTA would remain the one exception to this rule.) Unlike evictions for non-payment of rent or cause, "landlord's use" evictions displace tenants at no fault of their own, and for the benefit of the landlord. Tenants deserve security of tenure and, when a landlord decides to uproot a tenant from their home, they should be compensated fairly.

When serving a tenant with an eviction notice for renovations or demolition, landlords should be required to include any permits required by law, as well as a detailed description of the work that demands vacant

possession of the unit. Without knowing the nature and extent of the work, it can be challenging for a tenant to seek information about permit requirements from their municipality. The above amendments will allow tenants to more effectively challenge "bad faith" eviction notices, or at least compete for new rental housing in BC's ultra-competitive market.

For "renovictions" in particular, tenants should have the right to choose between either:

1. four months rent as compensation; or
2. the "right of first refusal" to return to their renovated unit at the same rent, as is the case in Ontario.

The "right of first refusal" in its current form offers almost no benefit to tenants being renovicted. Until post-renovation rent increases are prohibited, or at least limited, this tenant "right" will remain unused. Under the current legislation, the vast majority of renovated units will be priced outside of displaced tenants' budgets and re-rented to new tenants. As a result, renovictions will continue to be used to squeeze out tenants and drive up rents all across BC.

If the above recommendations are approved, TRAC would be open to amending section 23 (1) of the RTR to loosen and expand the grounds on which landlords can apply for additional rent increases. However, these additional increases should also be capped at 8% – after which a standard rent increase could not take effect for 12 months.

2. Strengthen Rent Control

For years, the "vacate clause" loophole contradicted the spirit and intent of the RTA. Landlords were able to avoid rent control and diminish security of tenure for far too long, and the effects of the loophole will still be felt for years to come. The RTA amendments made earlier this year cannot reverse the fact that countless tenants were arbitrarily evicted from their homes, or forced to consent to excessive rent increases in order to stay.

To address BC's artificially inflated rents caused by the previous government's unwillingness to close the vacate clause loophole, it is TRAC's recommendation that two measures be implemented:

1. a four-year moratorium on all standard rent increases; and
2. the permanent elimination of the 2% minimum rent increase under section 22 (2) of the RTR.

Even without the vacate clause loophole, tenants are still facing a standard rent increase of 4% for 2018 – the largest since 2012. The RTA is consumer-protection legislation that is intended to confer a benefit on tenants. It should not provide landlords with a guaranteed minimum rent increase percentage above inflation – especially during a time of crisis for tenants. Assuming this change is implemented, TRAC would be open to amending section 23 (1) of the RTR. Landlords should occasionally have the right to raise rent above the annual limit but only after proving their case to an arbitrator.

3. Eliminate All Fixed Term Tenancies with "Vacate Clauses"

Although TRAC was generally supportive of the RTA amendments that mostly closed the "vacate clause" loophole, more significant change is still needed in the area. It is TRAC's recommendation that section 13.1 of the RTR be removed. There is no reason a landlord should be allowed to rely on a vacate clause agreement when wanting to move in to a rental unit, or when wanting to move a close family member into a unit,

considering section 49 deals with that exact situation. The same outcome can be achieved using either of these approaches; the only difference is that, by using a vacate clause agreement rather than a landlord's use eviction notice, the landlord is relieved of their responsibility to compensate the tenant. Landlords should not have the right to avoid paying compensation when wanting to reclaim a rental unit for their own use. If this recommendation is approved, TRAC would be open to expanding the definition of "close family" so that landlords can move in additional types of family members with a landlord's use eviction notice.

There will undoubtedly be pressure from landlord groups to add vacate clause exemptions under section 13.1 of the RTR. TRAC has worked with the RTB in the past to respond to arguments for adding further exemptions and would appreciate the opportunity to similarly respond to such recommendations to the Rental Housing Task Force.

With vacate clauses mostly eliminated, TRAC has begun seeing a trend of landlords using conditional "Mutual Agreement to End Tenancy" forms as a substitute. This practice involves requiring a tenant to agree to a pre-determined move-out date in writing before offering a fixed term tenancy agreement. Although this practice could be found to be unconscionable and/or an attempt to avoid the law under the current legislation, it is TRAC's recommendation that the RTA explicitly state that it is illegal. Tenants and landlords should be allowed to mutually agree to end tenancies but only after a tenancy has been established.

4. Strengthen Protections Against Non-Payment of Rent Evictions

When deciding whether to grant an order of possession for non-payment of rent, arbitrators have little freedom to extend the 5-day deadline to pay rent or apply for dispute resolution – even if a tenant has a legitimate reason for not performing either of those actions on time.

Under the current legislation, an arbitrator can extend the timeline for applying for dispute resolution, but not beyond the effective date of the eviction notice, and only in "exceptional" circumstances. This topic is covered in Policy Guideline #36, which sets the bar extremely high for exceptional circumstances by only listing one example: "the party was in the hospital at all material times". Furthermore, this right to an extension based on exceptional circumstances only applies to dispute resolution application deadlines – not the late payment of rent deadline. According to section 66 (2) of the RTA, an arbitrator can only extend the deadline for a tenant to pay rent in two circumstances:

1. the extension is agreed to by the landlord;
2. the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

It is TRAC's recommendation that, when granting orders of possession, arbitrators be given broader discretion to consider the factors that contributed to the tenant's failure to pay rent or dispute a related eviction notice on time. In Saskatchewan, decision-makers have the right to make any order related to possession of a rental unit that they find just and equitable. Similarly, in Manitoba, an eviction notice for non-payment of rent can be deemed void if the tenant has paid the amount owing before an order of possession has been granted.

BC arbitrators should have the discretion to decide – based on several factors, including tenant barriers, landlord hardship, and length of tenancy – whether to grant or deny an order of possession. This would allow arbitrators to still uphold eviction notices in cases where the tenant is clearly at fault, yet also give them more freedom to extend deadlines and reinstate tenancies in circumstances where that decision would not cause significant hardship on the landlord.

TRAC also recommends that non-payment of rent evictions have a 20-day notice period and 10-day dispute period. In Ontario, tenants have 14 days to pay late rent to cancel an eviction notice for non-payment of rent. It should be noted that tenants would still not have the right to pay their rent late too often, as section 47 (1) (b) allows landlords to serve an eviction notice for repeated late payment of rent.

5. Require Fair Order of Possession Move-Out Deadlines

Arbitrators often default to a two-day move-out deadline when granting orders of possession. Finding and moving into adequate housing on such short notice, which is challenging for any tenant, becomes nearly impossible for those with disabilities, low incomes, children, or other barriers. Homelessness is the likely outcome when vulnerable tenants are forced to move on two days notice. It is TRAC's recommendation that arbitrators be required to consider fairness and equity, for both parties, when setting order of possession deadlines. Two days is an unnecessarily short time to move, particularly in situations where a longer deadline would not cause significant hardship on the landlord.

Short move-out deadlines can also have the effect of bogging down the legal system. Desperate tenants with no place to move often turn to the RTB or BC Supreme Court appeal processes. Despite having little to no chance of success, tenants will apply for a Review Consideration or Stay of Proceedings in order to stall the eviction while they search for housing.

6. Increase the Deadlines and Expand the Grounds for RTB Review Considerations

The current two- and five-day deadlines to apply for a Review Consideration are unreasonably short and often prevent tenants, particularly those with disabilities and other barriers, from having their dispute resolution decisions reviewed. It is TRAC's recommendation that both application deadlines, listed in section 80 (a) and (b) of the RTA, be extended to 10 days to provide tenants with a more realistic chance to seek legal advice, prepare arguments, and gather evidence before applying for a Review Consideration. The 15-day deadline, listed in section 80 (c) of the RTA, can remain the same.

TRAC also recommends adding procedural fairness as a ground for a Review Consideration under section 79 (2) of the RTA. Under the current legislation, if a tenant has concerns about procedural fairness at a dispute resolution hearing, they must apply to the BC Supreme Court to have those concerns adjudicated. Unfortunately, the BC Supreme Court is significantly more onerous and costly to access, which acts as a deterrent for many parties with legitimate procedural fairness concerns.

The matter of whether RTB arbitrators should consider procedural fairness at Review Consideration hearings was recently addressed in a BC Supreme Court decision, *Stelmack v. Amaruso*. The Honourable Mr. Justice Abrioux stated:

> *The issue of procedural fairness is one which all arbitrators, I presume, are aware of and the fact that the form filled out by Ms. Stelmack does not have a box for procedural fairness does not absolve an arbitrator from considering that particular issue and, again, based on the Review, it does not appear this occurred.*

Although this decision calls into question whether arbitrators must consider procedural fairness under the current legislation, TRAC and other legal advocacy organizations have not yet seen this happen in practice.

The RTB needs a more accessible and robust process to review its own decisions. In addition to extending application deadlines, the RTA should be explicitly amended to require arbitrators to consider issues of procedural fairness at Review Consideration hearings.

7. Require a Written Warning Requirement for Evictions for Cause

It is TRAC's recommendation that landlords always be required to provide a written warning before issuing an eviction notice for cause under section 47 (1) of the RTA. In practice, many arbitrators consider whether a written warning was provided and, in cases where it was not, cancel the eviction notice. Since this is already a common occurrence, a written warning requirement should be explicitly added to section 47 (1). This would help reduce the number of wasted hearings where arbitrators quickly dismiss applications for having no written warning as part of the submitted evidence.

The one exception under the current legislation where no written warning should be required is section 47 (1) (k): "the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority", which should be moved to section 49 of the RTA. This ground for eviction is most commonly used when a municipality orders that an illegal suite be shut down. In these situations, it is only fair that the landlord take responsibility for the illegality of the suite and pay the displaced tenant compensation under section 49. Given the scarcity of BC's rental housing, tenants should not be punished for renting an illegal suite by being forced to move on short notice with no compensation.

8. Allow Pets Under Reasonable Circumstances

Most pet owners care for their pets in ways that prevent damage to property and limit unreasonable disturbances. And yet, the RTA allows landlords to prohibit pets, despite also allowing them to collect both a pet damage deposit and security deposit, and evict tenants for bad pet behaviour. In addition, RTB Policy Guideline #1 requires any tenant with a pet to steam clean or shampoo the carpets before moving out.

It is TRAC's recommendation that landlords be obligated to permit pets under reasonable circumstances. In Ontario, a term prohibiting the presence of animals is void. The answer to careless pet owners is to provide landlords with a more efficient process for removing those tenants and recovering related costs – not punishing responsible pet owners by prohibiting pets in all situations.

9. Reinstate "Occupants/Roommates" as "Tenants" Under the RTA

According to Policy Guideline #19, the RTB denies jurisdiction over living accommodation where a head-tenant rents out a portion of their rental unit to an "occupant/roommate". This decision to deny jurisdiction was a fairly recent one; arbitrators could and would accept jurisdiction in such circumstances prior to the amending of Policy Guideline #19 in July of 2016.

The decision to amend the Policy Guideline was based on a shift in the RTB's interpretation of the definition of "landlord" – part of which defines the term as "a person, other than a tenant occupying the rental unit." It was previously reasoned that a head-tenant renting an entire rental unit could also rent out smaller rental units, such as a bedroom or loft area, within the larger premises. As long as exclusive possession was provided, a head-tenant and roommate could be found to have entered into a tenancy agreement under the RTA. This meant it was possible for a head-tenant to simultaneously be the tenant of the owner and landlord of their roommate(s).

By denying jurisdiction over this type of living accommodation, the RTB has left some of the province's most vulnerable tenants – particularly young people and others with limited incomes – unprotected by the RTA as "occupants/roommates". It is TRAC's recommendation that the RTA and Policy Guideline #19 be amended to

ensure that the RTB takes jurisdiction in situations where a head-tenant rents out a portion of their rental unit with exclusive possession to a roommate, as was previously the case.

10. Add a Definition for "rehabilitative or therapeutic treatment or services"

For years, some landlords attempted to avoid the RTA by claiming they were renting out "transitional housing" – a type of living accommodation excluded by the RTA under section 4. Fortunately, a definition was added to section 1 of the RTR to provide some clarity on the matter. With "transitional housing" now defined, some landlords have begun claiming that their housing fits another type of living accommodation listed in section 4 of the RTA. For the same reason "transitional housing" needed a definition, the meaning of "rehabilitative or therapeutic treatment or services" needs to be defined. Adding a definition for this type of housing will help clarify that some of our province's most vulnerable tenants are protected by the RTA.

Residential Tenancy Branch (RTB) Recommendations

1. Record All Dispute Resolution Hearings and List Arbitrators' Names on Public Decisions

TRAC has received an inordinate number of complaints over the years about procedural fairness at dispute resolution. Experienced advocates and first-time tenants have raised serious concerns about arbitrator behaviour related to unprofessionalism, landlord bias, pressure to settle cases, and a lack of opportunity to present or respond to evidence. Recording RTB hearings would go a long way towards promoting arbitrator transparency, consistency, and accountability at dispute resolution. Several other Canadian jurisdictions, including Alberta, Ontario, and Quebec, allow tenants to obtain a recording of their hearing. Although there will be a cost associated with storing audio files of hearings, it should not be prohibitive given the government's commitment to properly fund the RTB.

The RTB should also list arbitrators' names on public dispute resolution hearing decisions, and make all of their decisions searchable by arbitrator name through their online database. TRAC is not aware of any other administrative tribunals that redact the names of decision-makers from public decisions.

2. Reverse the Order of Evidence Submission for Eviction Hearings

At almost all dispute resolution hearings, the burden is on the applicant to prove their case. The one exception to this rule is eviction hearings, where the respondent landlord must show why the applicant tenant should be forced to move. And yet, despite the burden of proof being reversed in these types of hearings, the order of evidence submission has not been reversed. According to the current Dispute Resolution Rules of Procedure, the applicant tenant must provide their evidence to the landlord and RTB 14 days in advance of the hearing, while the landlord can provide their evidence 7 days in advance. From a procedural fairness standpoint, this does not give the tenant a fair chance to know the case against them and submit evidence in their defence. Tenants are often served with eviction notices for cause with limited details included, and then required to submit evidence ahead of the landlord without understanding the full scope of their alleged behaviour.

The RTB has rightfully made an exception to their Dispute Resolution Rules of Procedure by making the respondent landlord prove their case in eviction hearings. By that same logic, the landlord should also have to

submit their evidence first, to ensure the tenant has a fair chance to know the case against them and respond accordingly.

3. Increase Investigations and Administrative Penalties

TRAC understands that the RTB has plans to implement a mechanism for investigating contraventions of the RTA. The RTB has the authority to investigate complaints but only recently obtained the necessary resources to carry out those investigations in a meaningful way. For years, there has been no clear process for tenants and landlords to make complaints and, even if a party did figure out how to make a complaint, it was not clear if or how that complaint was handled. TRAC has heard from numerous tenants who wanted to make complaints but were completely discouraged by the opacity of the process, if one currently exists, and by the fact that the RTB has, up until now, showed little interest in exercising its investigative power.

On a broad level, it is TRAC's recommendation that the RTB:

- implement a clear process for parties to make complaints related to contraventions of the RTA;
- investigate such complaints and communicate the findings;
- levy administrative penalties against parties, where appropriate; and
- actively enforce those penalties, if they go unpaid.

More specifically, its is TRAC's recommendation that the RTB focus on two key areas:

- retaliation by a respondent after an applicant applies for dispute resolution; and
- illegal lockouts where a tenant has been made homeless.

TRAC frequently hears from tenants who wish to make an application for dispute resolution but reasonably fear retaliation from their landlords, as well as tenants who are experiencing retaliation from landlords after filing for dispute resolution and feel there is no recourse. A clear process for retaliation complaints would not only alleviate such fears for parties considering filing for dispute resolution, but also serve as a deterrent to a respondent who may otherwise take retaliatory actions.

The most serious issue a tenant can face is being illegally locked out of their rental unit. This is a disproportionately common experience for some of our province's most vulnerable tenants living in SROs or rooming houses. These tenants, already facing multiple barriers, are then placed at a further disadvantage by being denied their money, medication, work tools, personal identification, and other necessities. When faced with complaints about illegal lockouts, TRAC informs tenants that their only option through the RTB is to apply for a tenant's order of possession and monetary compensation. Not even the police intervene in illegal lockouts, as it is their general policy to not become involved in residential tenancy disputes.

Once a tenant has been made homeless, it is not usually a viable option to apply for, prepare for, and participate in a dispute resolution hearing. Even if a tenant is able to file an application, they must wait weeks for their hearing. A process through which the RTB could investigate complaints in a timely manner and penalize landlords, where appropriate, would go a long way towards alleviating this problem. Until a more effective process is in place, some landlords will continue to "evict" tenants in this manner knowing there are unlikely to be any consequences.

Conclusion

TRAC is sincerely grateful for the opportunity to meet with the Rental Housing Task Force and submit recommendations on how to improve the lives of tenants across BC. In the coming weeks and months, TRAC hopes to be part of further consultations as the Task Force deliberates the many submissions it will surely receive.

Please do not hesitate to contact TRAC with any questions or concerns about our recommendations, or those submitted by other rental housing stakeholders.

Sincerely,

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