Rental Housing Task Force - Public Engagement

Submission by Together Against Poverty Society (TAPS)

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Together Against Poverty Society (TAPS) is a non-profit organization that provides free legal advocacy services to Greater Victoria and the Gulf Islands. The TAPS Tenant Legal Advocacy Project specializes in providing advice and representation services regarding the BC *Residential Tenancy Act* (*RTA*) and the *Mobile Home Park Tenancy Act* (*MHPTA*). Our perspective is informed by years of experience working alongside thousands of marginalized and low-income tenants, witnessing the impact of insufficient protection for tenants on a daily basis. The following document articulates a number of challenges we have observed in regards to the *RTA* and suggests corresponding policy proposals.

Subject 1: Rent Control

Issue #1: Vacancy control

The Allowable Rent Increase (ARI) limit only applies to existing tenancies. Therefore, landlords are incentivized to replace existing tenants with new tenants as there is no legislation governing the increase in rent from one tenant to another in the same unit. This disproportionately impacts long term tenants, often seniors, who have lived in a rental unit for many years, as landlords can realize a significant profit by replacing these tenants.

Between 2016 and 2017, the average rent in Greater Victoria and Kelowna increased by 7.7% and 8.6% respectively, more than double the ARI of 3.7% in 2017. The lack of vacancy control in the existing *RTA* is largely responsible for creating and perpetuating such a rampant increase of housing costs as it is the main mechanism by which rent control laws are sidestepped. This has led to the degradation of affordable housing stock, forced thousands of British Columbians to search for new housing in markets with almost 0% vacancy, and contributed to deepening social inequality as housing cost are increased significantly for renters and profit is increased significantly for property owners.

In this climate, “bad faith” eviction notices are common. Unfortunately, many tenants are not able to navigate the residential tenancy system and cannot challenge these evictions, ultimately leading to the end of their tenancies. Many others apply for Dispute Resolution and have their case heard by an arbitrator, diverting resources from other important tenancy disputes.

Vacancy control is utilized by the provinces of Manitoba, Quebec, and PEI. We recommend that a rent freeze is implemented while vacancy control legislation is developed in order to prevent evictions that may happen in anticipation of policy changes.

Policy proposals:

- Implement the form of rent control known as “vacancy control”. This term refers to the idea that rent can only be raised by the ARI in any given twelve month term, regardless of how many tenants occupy the rental unit in that period of time. This measure would eliminate the incentive for landlords to serve bad faith eviction notices, preserve affordable housing stock, protect existing tenants, and save valuable Residential Tenancy Branch resources.
- Immediately enact a 2 year-moratorium on rent increases while vacancy control policy is developed.

Issue #2: Calculation of ARI

The ARI is calculated by adding 2% to inflation in a given year. The rationale for adding 2% is unarticulated in residential tenancy legislation. Inflation is the measure by which the costs of goods and services is rising, and therefore captures increases in landlord operating costs. Adding 2% to this figure creates an expectation that landowners are entitled to an annual increase in profit without specific rationale for how this increase is calculated or why it is justified. This reinforces the idea of housing as a commodity rather than a basic human need.

The Annual Allowable Rent Increase in Manitoba, Ontario and Nova Scotia are all calculated using the Consumer Price Indexes for each respective province without adding any static percentage for the inclusion of landlord profit. In Quebec, a landlord is able to ask for a reasonable increase at the time of renewal of the lease. The tenant has the right to accept or refuse the proposal within a month of receipt of the notice. The Quebec government provides a number of resources to help tenants and landlords negotiate rent increases, such as an online worksheet entitled “How to Agree on the Rent”.

Policy Proposal:

- Calculate the ARI by using the value of the Consumer Price Index for British Columbia as published by Statistics Canada.

Issue #3: Unlimited Right to the Allowable Rent Increase

Current ARI legislation allows a landlord to increase the rent of a unit every 12 months. Landlords argue that this yearly increase is necessary in part to compensate for the cost of maintaining and repairing rental units, yet there is no legislation in place that ties the responsibility to repair and maintain the unit with the right to raise the rent every year. Landlords are able to increase the rent even when there are outstanding monetary orders and other orders to

comply made by RTB decision makers. As a result, landlords are able to reap the benefits of additional rental income even when they are failing to meet their obligations to maintain residential properties to health and safety standards, conduct repairs and upgrades, and adhere to other orders.

Policy proposal:

- Tie landlord rights to increase rent with obligations to maintain property and to comply with orders made by the RTB. This could be regulated by allowing tenants the opportunity to dispute ARI's in situations where there are outstanding issues and orders.

Subject 2: Displacement Protections

Issue #1: First right of refusal provisions

A number of legislative changes in regards to tenant displacement have been introduced under the leadership of this government. These changes are essential first steps towards providing much needed protection to renters who are at risk of losing their homes through the renovation and demolition of the properties they live in. While the new legislation allows tenants who live in a rental property of more than 5 units to give notice that they intend to move back into the unit after renovations have taken place, they would be starting a new tenancy at a rental rate determined by the landlord. Given that rental rates have increased by 30% in the last 10 years, many tenants will be unable to afford the new rent, essentially rendering the offer of first right of refusal useless for most British Columbian renters.

Policy proposal:

- Extend right of first refusal to tenants at same rent as was previously payable under the tenancy agreement. Extend processes to landowners allowing them to apply for additional rent increase as determined by an arbitrator.
- Extend right of first refusal to all tenants, not just those living in residential complexes of more than 5 units.

Issue #2: Tenant order of possession

When a tenant is illegally forced out of their unit, the only available legal remedy is to seek an Order of Possession through a formal Residential Tenancy Branch Dispute Resolution hearing. Lengthy wait times for these hearings mean that tenants are left without any effective legal recourse in an emergency situation. This is an insufficient response and can cause profoundly

negative long-term consequences for the tenant as they are left to fend for themselves for months without shelter or their belongings.

Policy proposal:

- Create a policy that allows tenants to apply for orders of possession via direct request, parallel to the direct request process that already exists for landlords.

Issue #3: Tenant's burden of action

While penalties for bad faith evictions are now far more severe, it remains the responsibility of the tenant to challenge an eviction under section 49 of the *RTA*, and for ultimately proving that a landlord has acted in bad faith if they believe that has been the case. Not surprisingly, this has placed a heavy burden on tenants, especially those who are most vulnerable to "renoviction" and bad faith eviction. We regularly see landlords issue an eviction notice under section 49 when no close family member intends to move in, or before applications for permits for have even been made, in the hopes that a tenant will comply with the notice and vacate. For many low-income and marginalized tenants who are then faced with the urgent need to find alternative accommodation in extremely difficult housing markets, gathering evidence that a landlord is acting in bad faith, or filing themselves to dispute the notice, is not a realistic option.

In these situations, a tenant is being evicted for reasons entirely beyond their control. Therefore, they should not have to bear the burden of initiating a dispute. By forcing landlords to bear the responsibility of providing proof, and by issuing mandatory hearings, we would significantly reduce bad faith evictions under this section. If a landlord does proceed to evict a tenant in bad faith, the strong penalties for bad faith eviction that were just introduced would be irrefutable.

Policy proposals:

- Require landlords to provide evidence that a close family member will be moving in, or that permits are in place, before notice of an eviction under section 49 can occur. After providing notice it should be the landlord's obligation to file for an order to evict the tenant, with a mandatory hearing in each of these cases.
- When evicting a tenant on the grounds that they themselves or a close family member intend to move in, require a landlord or the close family member to file a statutory declaration indicating their relationship to the landlord, and that they intend to occupy the unit for at least six months. This notice should be filed with the Residential Tenancy Branch, and a copy served on the tenant along with notice that they wish to evict the tenant. By forcing landlords to file a statutory declaration, or proof of permits, the Residential Tenancy Branch is then able to accurately track how many tenants are being

evicted for family use or renovation. This information is incredibly valuable given the current state of our housing market.

- When evicting a tenant on the grounds that a unit must be repaired, renovated, or converted in a manner which requires it to be vacated, require the landlord to file proof that permits have been issued by the responsible authority. This proof should be filed with the Residential Tenancy Branch, and a copy served on the tenant along with notice that they wish to evict the tenant.

Issue #4: Rules of procedure for evidence re: eviction notices

In all cases of eviction, tenants must apply for a hearing to challenge an eviction notice; however, the rules of procedure dictate that the applicant's evidence must be served before the respondent's evidence. Despite the reverse onus/burden of proof for eviction being on the landlord, the applicant tenant is required to collect and submit evidence, oftentimes before they know the alleged reasons for eviction. This creates an unfair disadvantage as it forces tenants to prepare for hearings without fully knowing the case that is being argued against them.

Policy proposal:

- In the case of eviction notices, reverse the current evidence procedure so that landlords are required to serve evidence first.

Issue #5: Eviction notices for cause

Generally, landlords are not legally obligated to give tenants warnings before serving eviction notices for cause. TAPS Tenant Advocates regularly witness situations where tenants are served eviction notices without having an opportunity to hear what the landlords concerns are, and, if legitimate, to rectify the issue in a timely and effective manner. We also see situations where tenants are forced to dispute unwarranted evictions because landlords have given notices before communicating their concerns with the tenant and taking the time to discover more about the context of the situation. If a landlord has an issue with the conduct of a tenant and/or their guests, a tenant should be given the opportunity to be made aware of the issue and a chance to rectify the problem and/or communicate their side of the story prior to receiving an eviction notice. This would promote the resolution of problems outside of the Residential Tenancy Branch, saving valuable RTB resources and creating greater efficiency within the Dispute Resolution system.

Policy proposal:

- Provide tenants the right to a warning before getting an eviction notice for cause.

Subject 3: Security of Tenure

Issue #1: Renters Insurance

The requirement to carry renters insurance is often a material term on tenancy agreements. As a result, tenants are receiving eviction notices for non-compliance with this term. RTB decisions in respect to whether renters insurance can be a material term have been inconsistent. The lack of clarity and inconsistency in decisions regarding renters insurance creates undue hardship particularly for low income tenants receiving provincial income assistance, as the *Employment and Assistance Act* and the *Employment and Assistance for Peoples with Disability Act* does not cover renters insurance.

Policy proposal:

- Clarify policy to articulate that renters insurance can be encouraged, but that a requirement to have it cannot be a material term.

Issue #2: Standards of Maintenance

Property maintenance standards are vital for tenants as they help to ensure that living environments are safe, secure, and appropriate. They are important for landlords and our communities as they promotes the protection of existing housing stock. The *RTA* and the *MHPTA* require landlords to repair and maintain residential properties in accordance with health and safety standards required by law. However, in jurisdictions where there is a lack of policies (eg. municipal bylaws, health authority regulations) that regulate the health and safety standards of residential properties, tenants lack the mechanisms by which to hold landlords accountable. Lack of local health and safety policies also mean that tenants cannot rely on professionals (eg. bylaw officers, health inspectors) to conduct necessary inspections and assessments. It is therefore challenging for tenants to provide documentation that can be used as evidence supporting the need for maintenance.

Policy proposals:

- Develop a property maintenance policy that outlines a breadth of health, safety and security standards.
- Create enforcement mechanisms with which to ensure that landlords are adhering to maintenance obligations.

Subject 4: Definitions

Issue #1: Definition of "housing based health facility"

Section 4 (g)(v) of the *RTA* states that "housing based health facilities" providing hospitality support services and personal health care are not under the jurisdiction of the *RTA*. While the recent BC Supreme Court case *PHS Community Service Society vs. Swait* included this issue, neither the original RTB decision nor the Supreme Court decision provided any insight to the types of features that distinguish a "housing based health facility" from other types of housing. Given the recent creation of a variety of non-profit housing projects with the inclusion of supportive services, it is extremely important to clarify this definition and the surrounding jurisdictional implications.

Policy proposal:

- Include a definition of the term "housing based health facility" in the definitions section of the *RTA* and instruct the RTB to develop a corresponding policy guideline.

Subject 5: RTB Authority to Act Proactively

Issue #1: RTB investigations and administrative penalties

The RTB is empowered to investigate a landlord or tenant when there has been a contravention of tenancy law, or a contravention of a decision or order made by an arbitrator. Despite having this authority, the RTB has rarely conducted investigations and/or levied administrative penalties. Lack of active and consistent use of these mechanisms has rendered this deterrent system ineffective. In our work, we encounter daily examples of consistently egregious landlord behaviour, including a total disregard for RTB decisions and orders, and cannot rely on the RTB to follow up. TAPS has never had an investigation request be accepted by the Branch because the criteria threshold for successful applications is too high. Similarly, tenants do not turn to this system because the complaint-based process is burdensome and the likelihood of success is low.

Policy proposals:

- Amend criteria and lower the threshold for accepting investigation requests.
- Introduce a wider breadth of penalties. For example, empower the RTB with the discretion to administer financial penalties on each separate *RTA* and/or *MHPTA* contravention that occurs.
- Impose penalties more often and consistently.
- Empower the RTB to proactively initiate investigations

- Widely advertise the possibility of administrative penalties.

Issue #2: Enforcement powers and mechanisms

The RTB is not able to enforce arbitrator decisions and orders. When tenants are waiting for monetary compensation, repairs, and possession of their unit after an arbitrator has made a legal determination of those entitlements, they cannot turn to the RTB to get a landlord to comply. They are instead forced to seek enforcement in the Provincial and Supreme Courts. These processes are lengthy and expensive, as well as extremely difficult for people to navigate without a lawyer. As a result, tenants are regularly forced to abandon their enforcement proceedings.

The consequences of not being able to enforce decisions and orders can be severe for tenants and landlords alike. For the low income and marginalized tenants that we work with, the lack of access to justice poses significant risks to health, safety, and security of tenure. When tenants are displaced and they cannot recover security deposits and other monies from their landlord, they may not have the financial means to secure a new place to live, leaving them homeless. When a landlord refuses to turn a tenant's power back on despite an order to do so, they are left cold and in the dark. Without intervention and third party support, their health and safety is left to the whim of the person who shut off the power in the first place.

Along with the benefits that it will have on individuals' health, safety and security of tenure, proactive enforcement can also act as a cost saving mechanism for the RTB, as it can unclog the hearing system and reduce the number of unnecessary arbitrations that are conducted. Finally, being able to rely on the RTB and experiencing timely and successful compliance may increase the public's faith in the administrative justice process at the RTB.

Policy proposal:

- Give the RTB power to enforce and collect on its own orders through both legislative changes and adequate resourcing. Enforcement mechanisms should include a breadth of interventions that facilitates compliance while upholding individual accountability.

Issue #3: Intervention

The RTB is empowered to intervene in landlord/tenant conflicts by phone, writing, and in person in their attempts to resolve matters outside of formal dispute resolution processes. Early intervention strategies such as these can serve as an effective method of resolution, while minimizing strain on both the RTB and the involved parties. While the RTB has historically conducted interventions, this is not a well known or regularly used mechanism, and there is no formal policy that sets out this system.

Policy proposals:

- Develop policy that further empowers the RTB to proactively engage in early interventions of landlord-tenant issues, including: phoning parties to advise them of their legal responsibilities, sending warning letters, and facilitating in-person meetings with the people/groups in question.
- Use this mechanism consistently and reliably.

Issue #4: Reliance on advocates

The RTB is a difficult system to navigate for tenants and landlords alike. Legislation and policies are difficult to interpret, and complicated hearing procedures require clarification. Over the years, cuts to funding and shifts in operational priorities has led to less in-person services, and subsequently, less public assistance. Consequently, non-profit organizations like TAPS bear the burden of serving ever-increasing public demands with no financial or logistical support from the province. Along with the additional workload of providing informational services, the demand for advocates to provide legal representation rises exponentially. Advocate involvement in hearings is valuable for the RTB because we are skilled at navigating the system efficiently and effectively, reducing the potential for drawn out procedural issues and misunderstandings. Ideally, we want to see the RTB provide a wider breadth of in-house support services (discussed below). However, in the absence of this, we urge the province to invest directly in Tenant Advocacy services such as those provided by TAPS.

Policy proposal:

- Invest in and provide support to community tenant legal advocacy services.

Subject 6: Access to Justice

Access to justice is a pervasive and ongoing issue in respect to the Residential Tenancy Branch. The following problems continue to stand in the way of proper provision of services to both tenants and landlords.

- ❑ **Cuts to RTB offices and in-person services:** The RTB office in Victoria was closed in July 2015 and has not been re-established. This has created a huge gap in service as tenants can no longer speak to an Information Officer in person, often creating unnecessary feelings of frustration, disempowerment, and anxiety when dealing with Residential Tenancy concerns. Service BC Staff are not trained specifically in tenancy matters, and we regularly hear from tenants that they have been referred to TAPS for

assistance answering questions by Service BC representatives, creating the unfair download of government responsibilities onto community non-profits. The closure of these offices disproportionately impacts low income and marginalized people who frequently need assistance navigating tenancy matters and often lack the resources to be able to access online or telephone based services.

- **Phone lines:** TAPS Advocates were recently informed by a RTB representative that there are only 70 phone lines available province wide, including on-hold spots. This means that callers are immediately disconnected and required to call again if the 70 lines are full, which they often are, presenting a further barrier to access to essential information and advice.
- **Translation services:** RTB written and oral services are only provided in English. There is no opportunity to request a hearing in a language other than English.
- **In-person hearings for English Language Learners:** In-person hearings are granted by the RTB on a case-by-case basis if a participant has a disability or health condition that prevents them from participating over the phone. Unfamiliarity with English is not currently a valid reason to request an in-person hearing. This places an English Language Learner tenant at a significant disadvantage as the individual cannot rely on body language and non-verbal cues in order to understand what is being communicated during a hearing.
- **Recording hearings:** The lack of record regarding exactly what transpired in a hearing creates confusion, unnecessary requests for reconsideration, and ongoing disagreement that can never be concretely resolved because of differences in individual's memories or perceptions of events. Recording hearings would also provide an increased level of accountability for Arbitrators regarding cultural and social sensitivity.
- **Procedural fairness at the reconsideration level:** Procedural unfairness is not currently a valid reason to request a reconsideration of an RTB decision. Judicial Review is not an accessible review mechanism for the average member of the public, forcing tenants to accept decisions that are potentially invalid due to procedural unfairness.
- **Lack of cultural and social sensitivity:** TAPS specializes in representing tenants living in poverty. Multiple social locations often intersect with our clients' experiences as a tenant. RTB information officers and arbitrators regularly demonstrate a profound lack of understanding and sensitivity towards these social locations, creating a damaging and disempowering experience for the tenant.

Policy proposals:

- Re-open in-person RTB offices in all regions of British Columbia.
- Increase the number of phone lines available province-wide and adequately resource them with RTB Information Officers.

- Provide written materials in a variety of languages and develop procedures allowing hearings to be conducted in languages other than English.
- Allow English Language Learners to request in-person hearings.
- Systematically record RTB hearings.
- Include procedural unfairness as a criteria for requesting a reconsideration of a decision.
- Require regular, ongoing cultural sensitivity training for all RTB staff including Information Officers and Arbitrators.