Recommendations of the Vancouver Tenants Union to the BC Rental Housing Task Force

Prepared by the Vancouver Tenants Union Policy Team

The Vancouver Tenants Union (VTU) is a grassroots, volunteer-led, democratically structured group of tenants seeking to provide an organized voice for tenants in the City of Vancouver and to create power to advocate for stronger tenant protections provincially. These proposals reflect the diversity of perspectives and first-hand experiences of VTU members and have been democratically approved by our membership.

INTRODUCTION

The *Residential Tenancy Act* (RTA) has not been updated since the early 2000s, and does not reflect the reality of the housing market. Housing market conditions have over time shifting more powers from tenants to landlords within a relationship which at its very foundation one of unequal bargaining power. The first core value in the VTU's Constitution is that housing is a human right, and in order for legislation to reflect this, our provincial government needs to be concerned with providing and preserving affordable, safe and secure rental housing. Our position is that the *Residential Tenancy Act* in its current iteration does not reflect this value.

A housing strategy that is primarily concerned with avenues towards middle class home ownership ignores the people who are most negatively affected by climbing property values and the speculative market. Low income renters experience the housing crisis by living in fear of losing their homes and their communities. These recommendations are rooted in the belief that if we protect people's homes and their rights we can make a huge impact on poverty and the quality of life in this province.

The VTU wants a clear, fair and easily-applied RTA. We are proposing amendments which will more substantively protect tenants and critically examine the ease with which landlords can use the current system to evict people in order to charge higher rents. We have made vacancy control our first policy priority because it will disincentivize evictions issued for a profit motive, slow the destruction of low-income rentals, lower RTB caseloads and facilitate positive, good-faith relationships between landlords and tenants. More importantly, it is the biggest step we believe the Provincial Government can take to stabilize rents and ensure that there is effective action on affordability and poverty alleviation throughout the province. Without this step, tenants access to secure housing will remain at the mercy of B.C.'s inflated housing market.

Our recommendations aim to keep cases out of the RTB process wherever possible in order to streamline the process, make tenant and landlord obligations clear and improve the caseload for RTB arbitrators and administrative staff. We want an RTA which promotes a clear decision making process for arbitrators. We also believe that data collection on evictions and the regulation of existing "grey-area" practices such as tenant buyouts are essential to craft future policy. Amendments to the RTA are an integral component of any serious strategy to end the housing crisis. As the evidence shows, we cannot simply rely on new rental construction to get out of this situation. Building rental housing at rates that are out of line with what low income people is at best a twenty year solution and there are no guarantees that housing built now will age into becoming affordable rental stock.

Serious action on the housing crisis includes looking at housing options that are outside of the market. We believe there is an opportunity for the government to act on this with older rental buildings that are entering the end of their life as profitable rental operations. A program should be put in place to support the creation of cooperatives and social housing rather than standing by as long-term tenants are renovicted and affordable housing supply is lost.

Improved protections for renters will temper the speculative cycle that prompts predatory investors to buy up older, affordable housing stock and displace the occupants to house higher-income residents. New York has responded to this problem with a *Predatory Equity Bill*. Such acquisitions are explicitly referred to as predatory because they displace low income people and the profits generated come directly out of the pockets of low-income people, with additional costs being imposed onto the public by increased homelessness and reliance on social services.

KEY RECOMMENDATIONS

1. **Re-implement vacancy control in BC by limiting rent increases to once every 12 months, regardless of whether there has been a change of tenant.** Rental rates should remain the same for a subsequent tenant, unless the landlord can demonstrate increased operating costs or expenses that require a rent increase to recoup these costs within a reasonable period of years. Landlords should be able to apply to the RTB for rent increases, which must be supported by documented increases in operating costs. BC used to have a vacancy control system as part of the 1974 Landlord and Tenant Act, which functioned by limiting rent increases to once every 12 months, regardless of whether a change in tenant or landlord had occurred. Responding to a 0.5% Vacancy rate in the 1975 provincial election, both major parties campaigned on maintaining this legislation. Vacancy control is a simple and fair solution to many of the existing abuses of the Act. Vacancy control will also reduce the number of cases that have to come before RTB arbitrators and serve an important wider policy goal of progressively improving rental affordability in Vancouver and the province. The VTU is currently petitioning on this issue and expects to present it to the BC Legislature this fall.

Vacancy control is simple. Vacancy control would remove the financial incentive to evict tenants paying less than market rate. The lack of vacancy control has been the primary motivation for abuses of other areas of the *Act* – such as 'renovictions,' dubious fault-based evictions and fraudulent claims of caretaker or owner use of a rental unit. Instituting a regime of vacancy control would be a simple means of entirely disincentivizing these abuses as well as mitigating the necessity to exhaustively re-work other aspects of the *Residential Tenancy Act*.

The only legislative change required would be to limit rent increases to once every 12 months, regardless of a change in tenancy. The VTU believes that BC's former 1974 approach to have been a simple and robust policy in comparison to the form of vacancy control that currently exists in Quebec, where tenants are required to inquire as to previous rent and apply for a reduction if they feel the increase was not supported by improvements to the premises. Despite this complexity, Quebec enjoys some of the lowest rental rates in the country and landlords are still able to make a reasonable profit. Manitoba and PEI are other provinces that have a form of vacancy control. Studies in Manitoba have shown that this has no negative effect on vacancy rate or construction [1]. Rent controls are frequently accused of having negative effects, however B.C.'s own experience with vacancy control from 1974 to 1984 showed no discernable impact on new rental construction, nor did it incentivize the neglect of buildings [2].

Vacancy control will make for a more straightforward RTA that is easy for tenants and landlords to understand and apply to their interactions. A complex web of exceptions, potential fines and liabilities could be removed from the *Act* in favour of a simple solution that promotes clarity, fairness and positive, good-faith landlord tenant relationships.

Vacancy control is fair. By removing the primary incentive for abuses of the *Act*, tenants will face a fairer process while the rights of landlords to legitimately end tenancies will be preserved. The right of landlords to apply for rent increases proportionate to real increases in operating expenses or improvements to a unit would be preserved, and could even be simplified. Landlords could make applications for additional rent increases based on documented expenses for necessary repairs or renovations, or increased operating expenses or property taxes. The VTU would propose that the current language used in the *Act* for additional rent increases be kept and that any such increases not exceed 3%, as in Ontario.

The implementation of vacancy control would not penalize developers of private rental housing because it would by definition not place any rental cap on units as they first enter the market. There having never been a previous tenant in the unit, the initial rent could be set at whatever the market will bear. As a result, we believe the implementation of vacancy control will have no negative impact on rental construction. High market rents will continue to provide a strong incentive for market rental to be built in British Columbia. Vacancy control will not result in prospective landlords choosing not to rent their units. Existing high market rental rates in Vancouver will continue to be a strong incentive for British Columbians to rent their properties. We would also propose that owner-occupied rental properties with less than two rental units be exempt from vacancy control.

Implementing vacancy control would require a return to rent reporting in British Columbia, a former legal requirement for landlords in the 1970s. With the ease of offering online reporting tools, this system could easily be rolled out within a year, and could, in combination with penalties for inaccurate or non-reporting, provide an important and accurate dataset guiding future policy. Accuracy could be ensured with reference to recent tenancy agreements for the unit or verification with current tenants, with the reported rates posted online for reference by future tenants.

The Residential Tenancy Regulation currently provides landlords with a number of mechanisms to raise rents and, in fact, protects landlords from ever running a loss. A vacancy control system would not change this. In light of this remarkable protection, there needs to be some obligation incumbent on landlords to recognize that even private rental housing is part of the wider public good of housing provision. Vacancy control supports wider policy goals of addressing the housing crisis and protecting the most vulnerable tenants

Any serious strategy to address the housing crisis is going to have to take measures to preserve affordability where it still exists. A Vacancy Control system would be complementary to efforts to protect and retain affordable housing supply, along with increasing the purchasing power of working tenants in Vancouver. Too many renters are paying 30 and even 50% of their income in rent. It is the best way to stabilize rents which have risen by more than the allowable rent increase for the last several years [3]. This burden falls largely on low income families and seniors who have never been able to buy, who have integrated into their neighbourhoods and have no other housing options at their income level. Studies have shown that without this, increases to government aid including welfare and disability rates will be eaten up entirely by rising rents in low income areas [4]. This policy would have a profound impact on poverty in B.C. while costing no money to taxpayers. Vacancy control will not solve the affordability crisis alone, but it will prevent mass displacement and save affordable housing stock.

Vacancy control will reduce the caseload of the Residential Tenancy Branch and ensure that only genuine cases end up before arbitrators. The implementation of Vacancy Control will vastly reduce the number of matters that appear before the Residential Tenancy Branch. Proceedings will also be simplified due to a reduced necessity to consider bad-faith motives for evictions.

As our central policy proposal, the VTU is preparing another document outlining the benefits of a vacancy control system to be released this summer, which includes examples from other jurisdictions, and responses to common criticisms that are raised to this proposal. We will also be provide a petition in support of our recommended vacancy control position in the fall of this year.

2. **Require automatic dispute resolution hearings for all evictions.** Landlords should have to apply for dispute resolution with the RTB and schedule a hearing before issuing an eviction notice. This is already the law in Ontario. Eviction notices should always be accompanied by a Notice of Hearing. Landlords should have to contact the RTB to be issued a dated eviction notice, and the RTB should create a registry for all eviction notices they issue to landlords. This system would also serve to insure that eviction notices without any substantive evidence do not end up in arbitration, deterring the frivolous service of eviction notices which currently serves as a common intimidation tactic. This would reverse the existing onus on tenants to dispute any and all evictions issued to them and acknowledge the existing balance of power between landlords and tenants and that receiving an eviction notice can be a traumatic event.

The RTB's existing practice of encouraging, but not requiring, speedy disclosure of evidence has not been effective. Under the existing system, parties will continue to seek improper advantage by submitting evidence as late as they possibly can. Up-front evidence provision will also enable the RTB to triage and dismiss cases with no prospect of success — for example where a party has submitted irrelevant evidence or no evidence at all. The existing practice of allowing the submission of additional evidence should continue to be allowed where new and relevant evidence is available following the initial service of hearing package, so long as at least a week of response time is afforded to the other party. The party with the burden of proof should submit evidence first, rather than the applicant

Due to the generality of the provisions under the Act for evictions, tenants can potentially be left into the dark as to exactly what their landlord is alleging until they call into a Residential Tenancy Branch arbitration proceeding. Eviction notices should be served with evidence so tenants should know exactly what their landlord is alleging from the outset in order to provide procedural fairness and a substantive right of reply. Require eviction notices to be accompanied up front by all evidence for basis of eviction. Tenants are currently required to submit evidence that landlord notices are not valid before even seeing the evidence their landlord is relying on. The existing process runs contrary to basic principles of administrative fairness and desperately requires reform.

Mandatory hearings for evictions would ensure that only serious matters with some prospect of success have to end up in front of arbitrators. The requirement for mandatory hearings would also promote the resolution of disputes between landlords and tenants outside of the RTB process before an eviction notice is issued. Ontario has a landlord-initiated evictions process, and even has in-person hearings, so we don't believe that such a system would impose an undue burden on landlords nor the administrative process.

Warning notices should be required prior to the issuance of any eviction notice. An eviction notice should never be the first place a tenant learns of an issue with their landlord. As the existing process always requires tenants to dispute eviction notices or else, presumptively, accept their validity, considerable strain is placed on the RTB Dispute Resolution process by disputes that may easily be resolved with a warning or open communication. All eviction notices should be supported by evidence that a landlord has attempted to resolve the issue informally prior to initiating an eviction.

The system the VTU is proposing would allow for the creation of an evictions database in British Columbia. This crucial dataset currently does not exist, and prevents policymakers and the public from fully understanding the rental market. Where a landlord needs to issue an eviction notice, there should be an automatic same-day request system from the RTB to receive an officially numbered eviction notice that would be logged in a database. This is a major advantage of a landlord-initiated eviction process. In addition to promoting informed policy creation, collecting evictions data could also aid in identifying problematic individuals or companies. In San Francisco, for example, this has led to a highly developed database that allows for a geographic analysis of eviction trends.

In addition to promoting informed policy creation, collecting evictions data could also aid in identifying problematic individuals or companies. As a hypothetical example, if a landlord issues a Notice to End Tenancy for caretaker use in December 2018, and again issues notice for caretaker use to another tenant in May 2019, the RTB will be in a better position to address the validity of future notices.

3. **Legislated measures to retain affordable housing stock.** Firstly, we propose are a legislated tenant priority on building purchase with government support for co-op housing agreements.Tenants in residential properties of over five units should be informed three months in advance of a landlord's intention to sell the property. Tenants should be given first priority on putting forward a purchase proposal for the building. Accessible, low-interest government loans should be provided for the purpose of facilitating tenant purchase of the property subject to a co-op housing agreement. This provision will facilitate the retention of affordable housing while providing owners with a fair market return on their property. Government loan revenue could be used to finance further affordable housing initiatives.

Affordable 1960s and 70s era walk-up buildings that are near the end of their marketable life are currently prey to investors who renovict the occupants and permanently remove these units from the affordable housing market. This is an extremely regressive form of wealth redistribution that imposes serious personal costs onto displaced tenants as well as the public due to the aggregate effects of reduced tenant spending power, displacement and homelessness.

New York has responded to this phenomenon with the Predatory Equity Bill which identifies properties that are at risk of harassment or displacement based on the relationship between their purchase price and rental revenue stream. The Bill requires that tenants in these properties receive additional protections and support to ensure that they are not displaced by a predatory investor. The VTU proposes taking the next logical step and recognizing that this is not a good faith business

model, and that tenants should be supported in purchasing their buildings and turning them into non-market housing. This is a truly progressive solution that will leave a lasting positive effect on housing affordability.

Allowing predatory investors to destroy affordable housing stock is a wasted opportunity when such housing could just as easily be kept permanently in a pool of affordable housing by providing assistance and incentive for tenants to create their own affordable housing at no public cost.

Secondly, the VTU proposes a **Right of first refusal where unit is demolished or subdivided.** Where a rental property is demolished to make way for a new rental property, a displaced tenant should have a right-of-first-refusal on a unit in the redeveloped property at the same rent. Where a rental property is converted or subdivided in some fashion (for example a single family home being subdivided into four units) affected tenants should have a right of first refusal on those units at a rate proportionate to their existing rent. This balances the goal of increasing the existing rental stock with the goal of preserving affordable units, and retains the incentive for the market to provide more rental units at greater density.

MEASURES FOR IMPROVING RENTAL AFFORDABILITY

4. **Temporary rent freeze.** Rents are already at crisis levels, and even the implementation of vacancy control would not change this reality. Freeze the annual rent increase at 0% rate for four years similarly to what has been done in New York from 2014 – 2016 (the city continues to offer a need-based rent freeze program). Subsequent annual rent increases should be fixed to real cost increases only, and the notice period for rent increases to six months. Allowing annual rent increases reaching as much as 4% slowly erodes the standard of living of tenants and increases housing precarity for long-term renters. Applications for rent increases should always be evidence-based, and the current formula has no compelling rationale. The 2% + inflation formula does not take into account the actual purchasing power of tenants, nor any documented increase in a landlord's cost of doing business. There should be mandatory rent reductions were landlord's property taxes have decreased. The Act allows landlord's to claim rent increases based on property tax and other costs, and in fairness tenants should get rent relief where a landlord's costs have decreased. Landlords should be required to report their yearly tax burden and adjust the rent accordingly if such costs have decreased.

5. A need-based refundable tax credit will only be effective in combination vacancy control. Rather than a flat $400 rebate, give low- to middle- income renters a scaled, refundable tax credit for their rental costs based on the percentage of income spent on rent. The credit would be aimed at reducing rental expenditures to 30% of income. To be truly effective such a policy needs to be paired with vacancy control, otherwise it will only act as a subsidy for property owners who have already enjoyed exponential increases in equity in recent years. In the absence of a vacancy control system, we believe that any renters rebate is wasteful and actively counterproductive in contributing to further inflation of rents. To focus on those in need such a credit could be capped for those with above-median incomes. Further research to identify core-need demographics would be necessary, and figures would likely vary from year to year depending on the median income. Manitoba's Rent Assist program is a model that prioritizes a clear definition of affordability with a housing allowance going to renters who live in apartments priced at up to 75% of the median market rate ensuring that they pay no more than 28% of their income on housing [5].

IMPROVE PROCEDURAL SAFEGUARDS

Tenants will be better protected and the RTB less burdened under a system that ensures only substantive matters end up before an arbitrator.

6. **End renovictions.** Renovations should be approached as an issue of mutual negotiation and accommodation between tenants and landlords, and should not form a basis for eviction where the tenant has demonstrated willingness to relocate in order to accommodate the work and its duration. The existing provisions of the Act for Landlord's Use of Property have been subject to widespread abuse and need to be substantially reformulated. Ontario has already moved to prohibit renovictions by giving tenants the right of first refusal at the same rent. The VTU supports the language of Melanie Mark's private member's bill M 227 2016 which allows tenants to maintain their tenancies by notifying their landlord in writing following receipt of a notice for Landlords Use of Property.

Under this regime landlords should be prompted to enter accommodation agreements with tenants where they wish to undertake renovations, largely rendering the need for issuing eviction notices unnecessary. Where such notices are issued, the form should be amended to state clearly that tenants have the right to maintain their tenancy at the same rent following renovations if they inform the landlord of their intent to exercise their right of first refusal. The RTB should provide standard accommodation agreements that provide for essential details such as the nature and duration of renovations, any relevant permit numbers, a tenant's moving and storage expenses and a re-occupancy date enforceable as an Order of Possession. Wherever possible, a tenant should be accommodated in another unit at the residential property, or another vacant unit owned by the landlord. Tenants displaced due to renovations should have priority on these units.

The BC Supreme Court has already decided in both *Baumann v. Aarti Investments Ltd., 2018 BCSC 636* and *Berry and Kloet v. British Columbia, 2007 BCSC 257* that a tenancy should continue during renovations where a tenant is willing to temporarily relocate. The RTB created a new Policy Guideline 2 - released May 18th 2018 - to reflect these developments in the courts. The courts and the RTB are now both clear that an existing tenancy should be maintained throughout renovations, and this should be clearly reflected in an amended *Residential Tenancy Act*. We believe that the recent legislative changes giving tenants the right of first refusal at market rents contradict the courts, RTB policy, and the spirit of the *Act* by legitimizing the idea that a landlord is entitled to market rent at the conclusion of renovations. The appropriate mechanism through which landlords are supposed to be compensated for their costs is through an application for an additional rent increase, which allows for an assessment of whether the work is actually done, how much money was spent, and what a fair and proportionate rent increase might be. The "shortcut" of renoviction not only precludes any of these considerations, but fails to protect tenants' security of tenure, and worsens the rental affordability crisis.

The needless and complex right-of-first-refusal system previously introduced this year which offers tenants the right of first refusal at market rents should be repealed and replaced with statutory language that maintains existing tenancies where a landlord wants to perform renovations that require temporary vacant possession of the tenants' unit.

7. **End abuse of family and caretaker move-in provisions.** More up-front protections are needed to prevent the abuse of these provisions of the Act. After-the-fact penalties won't serve as an adequate deterrent because the burden of proof is placed on the tenant to show that the landlord's stated use did not occur, a tall order where the tenant has moved out and no longer has access to a residential property. Recent changes in Ontario reflect the necessity of addressing these abuses up-front rather than forcing tenants to chase their former landlords for damages after their affordable housing has been lost.

Family-move ins for any corporate entity, including family corporations, should be disallowed, and family move-in should be prohibited in properties with over 3 units. Properties over this size are less likely to be the residential property of the landlord and more likely to be purpose-built rental. This is reflected in the law in Ontario, which prohibits family move-ins in properties of over 4 units.

Caretaker move-ins should be prohibited in buildings with under 5 units. Buildings above 5 units should be restricted to a single caretaker. Caretaker move-ins should be disallowed where the building already has a designated caretaker, caretaker unit or has never had a history of having an on-site caretaker. This is another instance where expanding the RTB's role into data collection is important, as a history of caretaker or family move-ins in a building could be used to immediately identify suspect applications.

8. **Increase compensation and reverse burden of proof for Landlord's Use of Property.** The existing 2 months' rent in compensation does not adequately compensate tenants for the true costs involved in losing a long-term tenancy, neither does it reflect the personal and financial contributions long-term tenants make to their homes and neighbourhoods. A scaled compensation model should be adopted, mandating moving expenses along with compensation based on the length of the tenancy and other relevant factors that make moving more challenging, such as dependent children or age. Refer to the Appendix at the end of this document for our recommended compensation schedule.

9. **Enforceable penalties for fraudulent evictions.** The abuse of s.49(6) is a serious form of fraud that can result in dramatic financial consequences for tenants. The VTU believes that the new penalties introduced on May 17th have been approached in a way that undermines their deterrent effect. To be truly effective, the landlord should be required to produce a notarized statement from the family member or caretaker who intends to occupy the premises to be provided to the tenant. The tenant would then be permitted at any time following the end of the tenancy to request evidence that the conditions of the notarized statement have been fulfilled, with the burden of proof falling on the landlord. If this circumstance actually materialized, this should be an extremely easy matter to prove and landlords will not be unduly prejudiced Should the stated purpose not have been fulfilled, the tenant should be entitled to a minimum of 12 months' rent, as well as additional documented costs incurred by the tenant. For comparison, in Housing Court in San Francisco, the tenant may sue for at least three times their actual damages, emotional distress, attorney fees and costs. The subsequent tenant may also sue for at least three times the excessive rent collected in the three years before the filing of the lawsuit and the period between the filing and the court date, as well as injunctive relief and attorney fees. With the implementation of Vacancy Control, we believe this provision would rarely if ever have to be used.

10. **Explicit recognition of tenant organizations and prohibition of landlord retaliation for joining, organizing, or taking legal action with such a group.** Require a landlord to negotiate in good faith with a tenant organization where any number of tenants on a residential property, or other residential properties of the same landlord, have demonstrated that they wish to communicate or negotiate through a tenant organization.

11. **Ensure all forms of housing are governed under the Residential Tenancy Act.** The current exception for "supportive housing" means our most vulnerable tenants have no functional rights under the RTA and are barred from living with privacy and dignity. The exclusion of supportive housing from the RTA amounts to paternal and discriminatory treatment of low-income persons. Situations where a tenant shares cooking and bathroom facilities with the landlord should also be included within the Act.

12. **Apply "good faith" requirement to the entire RTA.** The Supreme Court of Canada has now recognized the duty of good faith inherent in all contractual performance. Tenant compensation for bad faith conduct should be increased and made mandatory. If a landlord can be shown to have a bad faith or ulterior motives in issuing a for-cause eviction notice, their burden of proof should appropriately be higher.

There should be cost awards for unsuccessful evictions and additional penalties for bad faith issuance of eviction notices. Under the current tenant-initiated dispute resolution process for evictions, unsupported and bad faith notices are extremely onerous upon tenants. They can be experienced a serious form of harassment, and impose substantial burdens upon the RTB by wasting valuable hearing time. In addition to our recommendations for vacancy control, and up-front provision of the landlord's evidence in eviction proceedings, escalating penalties for bad-faith eviction notices beginning at $500.00 should dramatically reduce their occurrence.

13. **More assistance for tenants who are illegally locked out of their units.** The RTB should establish an express procedure for lockouts and mandatory damages and administrative penalties of at least $5,000.00 should be levied against landlords found to have illegally locked out tenants. Penalties should be higher particularly where a tenant's belongings have been illegally removed or disposed of. The existing lack of recourse for tenants in lockout situations needlessly inflates the emotional and financial costs associated with a lockout. Additionally, the province should enter consultations with police to change their policy of non-intervention in lockout situations.

14. **Higher penalties for parties who ignore RTB orders.** Mandatory penalties should be applied where a party has not complied with the order of an arbitrator. We speak to many frustrated tenants who have received orders that their landlord comply with the *Act*, only to continue to face the same conduct. These tenants have little recourse but to re-apply with the RTB with no guarantees of compliance from a landlord. In addition to administrative penalties, which cover the costs imposed on the RTB, the time, materials and other costs of repeat applicants should also be covered.

15. **Eliminate filing fees and replace with an automatic $100 award to the successful party.** This simplifies the existing process and provides a better deterrent effect to frivolous proceedings than the existing system, without presenting a problematic financial barrier to applicants pursing their rights under the Act. This award should be waived for low-income tenants.

16. **Proper funding for tenant-advocacy services and mandatory advocate representation for eviction proceedings where the tenant is below the low income cutoff.** Despite being a nominally self-serve process, many tenants from all backgrounds do not have the analytic or language skills to represent themselves effectively and insure a fair proceeding. Information about advocacy services should be a standard feature contained on all eviction notices. Tenants should always be informed of advocacy services when they receive an eviction notice and the most vulnerable tenants should always be represented. This is essential to the fair functioning of a "self serve" process where not everyone has the same resources or capacity to adequately represent their interests, especially when these individuals are disproportionately more likely to face precarious housing situations or abuses of the Act. The consequences of eviction are far more severe for vulnerable tenants than renters of middle or higher incomes, and there need to be procedural protections in place that recognize this reality.

17. **Greater clarity and more protections for renters on multi-tenant rental agreements.** Increasingly, renters of all ages are sharing accommodations and forming various kinds of collective living arrangements. Under the current provisions of the *Act*, when one tenant on a multi-tenant agreement gives notice to vacate, the agreement ends for all of the listed tenants. This creates great uncertainty for the remaining tenants as the landlord is not compelled to re-enter an agreement with them, nor to re-rent at the same rental rate. The rules should be changed to that where when one tenant gives notice the tenancy continues for the remaining tenants. Where a new tenant is added, the terms of the new agreement must reflect those of the previous agreement, including the same rent.

18. **Include "co-tenants" under the protection of the Act and normalize indeterminate tenancies.** "Co-tenants" currently occupy a grey-area that creates uncertainty and insecurity for both tenants and landlords. The Residential Tenancy Act should apply equally to all occupants and co-tenants of a residential unit.

19. **More discretion for arbitrators to accept late applications**. Section 66 allows arbitrators to waive application deadlines for dispute resolution only in "exceptional circumstances." This is a very onerous provision in the context of a tenant-initiated process, and the RTB applies an extremely high standard, essentially requiring a tenant to have been hospitalized at all material times in order to be granted an exception. The standard should be lowered and arbitrators should have more discretion to accept late filings. There are many compelling reasons beyond hospitalization that a tenant could miss a filing deadline, and the presumption that even a groundless notice is deemed binding by a tenant's failure to apply for dispute resolution is in itself problematic. The VTU believes a landlord-initiated evictions process with mandatory hearings would best resolve this situation, but in any case – tenants should never be presumed to accept an end to their tenancy where no evidence has been provided as to the basis for the eviction.

20. **Proper form and content on eviction notices.** Section 68(1) of the Act should be repealed. There is no excuse for automatically amending an eviction notice that is not completed properly.

21. **In-person hearings where requested** by a tenant or landlord, where this option is accessible to both parties. In-person hearings promote fairness, truthfulness, reliability and promotes increased confidence in the Dispute Resolution process.

22. **Neutral experts where specialist testimony is essential to a fair outcome.** Neutral experts are needed in situations where damage, repairs, building safety or the need for vacant possession is put at issue in a proceeding. Either party to a proceeding should be able to request an inspection by a neutral expert and have their evidence given the most weight in a proceeding. It is not fair to allow the testimony experts and contractors under the employ of landlords to be determinative of these issues. Even when these individuals are independent, they have a contract with the landlord that could be

jeopardized by not presenting the necessity, nature, scale and scope of work in a manner than is beneficial to the landlord. Conversely, tenants are frequently unable to get experts to participate in their hearings, as there is no contract attached to the opinion provided. The use of neutral experts will also promote the interest of not requiring repeated proceedings. Tenants will not have to apply for awards where bad-faith practices have occured when there are up-front safeguards that prevent abuses from occurring.

MAINTENANCE

23. **Expand and clarify grounds for emergency repairs.** The current emergency repair process is difficult to use and creates uncertainty for both tenants and landlords by asking that a landlord address emergency issues within a "reasonable time." The VTU recommends that a landlord have twenty-four hours to address an emergency repair that has been brought to the landlord's attention.

The grounds for emergency repairs also need to be expanded. Currently external locks to the building, hot water, power, kitchen appliances and impediments to accessing the rental unit such as stairs or an elevator are not included as eligible "emergency repairs." All of these circumstances need to be considered as such as they are all items essential to the use of a residential property.

Additionally, tenants who use the existing process to withhold rent against emergency repairs that they have undertaken expose themselves to significant risk. Currently tenants risk eviction if they withhold rent in this circumstance because a landlord may issue a 10 Day Notice for Unpaid Rent while also disputing the tenant's claim for repairs. There have been instances where RTB arbitrators have found fault with a tenants' accounting, and as a result of lack of clarity around the emergency repair procedure, tenants have been evicted for non-payment of rent. This is major disincentive from tenants exercising their right to undertake emergency repairs under the *Act*. Tenants who are withholding rent against the cost of emergency repairs should not be subject to a separate dispute resolution for non-payment of rent by which a landlord can file a claim on the basis that they disagree with the tenant's assessment or accounting of an emergency repair and we awarded the equivalent to those costs.

Securing the ability of tenants to withhold rent against outstanding repairs will create a strong incentive for maintenance to be carried out regularly and properly, and reduce reliance on the RTB dispute resolution process for orders that repairs be completed.

24. **Mandatory damages and administrative penalties where a landlord does not comply with an RTB maintenance order within a reasonable time.**

25. **Mandatory compensation for evictions caused as a result of municipal orders.** Eviction as a result of a municipal or government order currently constitutes a 'for cause' form of eviction. This is completely unfair, leaving tenants ordered out of their homes through no fault of their own with little notice and no compensation. If a tenant is ordered out due to the order of a municipal body, fire official or WorkSafeBC, the tenant should be compensated. If the vacancy required is temporary, moving costs and any increase in accommodation costs should be covered by the landlord for the period of vacancy. If the building is shut down permanently or demolished, the landlord should compensate tenants moving expenses, a minimum of four months rent, with more compensation available for tenancies of greater duration as set out in the Appendix to these recommendations. If such an incident is not the fault of the landlord, they still have civil recovery options against any person or entity responsible for their costs. This recommendation creates a strong and appropriate incentive for landlords to maintain their buildings.

Non-payment of rent remains the most frequently disputed issue with the RTB. The following recommendations aim to ensure a more secure process that will reduce the need for arbitration, while maintaining the right of landlords to timely rent payment.

26. **Require rent receipts to be issued for all forms of rent payment.** Tenants should always receive evidence of having paid their rent, no matter the payment method.

27. **Establish clear requirements in standard tenancy agreements establishing the landlord's method of rent acceptance.** If the landlord later wishes to change the method of payment stated on the tenancy agreement, the tenant must agree in writing to the change in method, or else the landlord must continue to honor the terms of payment included in the lease. Particularly in VTU-organized buildings, we have witnessed repeated instances where a landlord arbitrarily or capriciously, with late or no notice at all, changes their method of accepting rent. Sometimes the new payment method is inconvenient or entirely inaccessible to the tenant and subsequently results in a 10 Day Notice. If a landlord does not provide an on-site method of making physical rent payments, they must provide for a digital means of making payments. We have again seen instances of landlords forcing tenants to pay rent by registered mail, or drive to rental offices in a different city in order to pay rent. This has been witnessed to often comprise part of strategy of retaliation against organized tenants.

28. **Increase grace period for late payment of rent from 5 days to 14 days.** This is already the law in Ontario. The tenant should not be required to make a dispute application, rather the landlord should have to make an application for dispute resolution. Increasing the notice period also creates a clearer and more compelling grounds for landlords to legitimately end tenancies where necessary. A provision for arbitrator discretion should also be added. Compassionate grounds should exist where there is proof of a compelling personal or family emergency.

The 10 Day Notice for late payment of rent is extremely onerous for tenants, and the 5 day timeline for tenants to dispute an erroneous notice is too short and procedurally unfair. The current legislation does not account for family emergencies, travel delays, holidays, banking services, miscommunications and other events which may form a compelling basis for late payment of rent.

29. **Eliminate the Express Hearing process.** The current exclusion of tenants from express proceedings is procedurally unfair, as they cannot even appear in cases where there is a legitimate issue around service of the notice. Under the current system an unscrupulous landlord can simply photograph a 10 Day Notice on a tenant's door, remove it so the tenant is never notified, and then file for an order of possession in a proceeding that excludes the tenant's testimony.

30. **Eliminate security deposits.** Section 38 of the Act is needlessly complex and creates redundancy because landlords must apply to the RTB to retain all or part of a security deposit in any case. If landlords face loss from damage caused by a tenant, they can apply to recover their losses in any case. Security deposits often present a significant problem for tenant mobility, as a dispute over a security deposit in an existing rental can result in loss of opportunities for housing choice where a tenant is left unable to come up with a security deposit and the first month's rent on a new unit. By eliminating security deposits, confusions around the retention of security deposits would be eliminated, and the need for RTB arbitration proceedings reduced. Additionally, landlords would no longer be liable for the existing penalty for not returning a security deposit within the required timeline.

31. **Expand review period following an RTB arbitrator's decision to 14 days.** The current review period of 2 days is an unfair and unrealistic timeline to get legal advice on the grounds for review and for counsel to prepare an adequate filing. An order of possession issued to a landlord from an RTB arbitrator should be enforceable not less than 14 days, or the balance of the month following the date of the decision, whichever is greater. Standard orders of this nature give tenants only 48 hours to vacate, which is clearly inadequate and serves as a deterrent and a implicit threat of homelessness to tenants who might otherwise pursue valid applications to the RTB to strike down invalid eviction notices. Expanded

grounds for review should be provided, and enforcement of RTB orders in BC Supreme Court should be prohibited for the duration review period. Additionally, there should be fair timelines after evictions.

32. **Six month notices for tenants whose rent subsidy agreement is withdrawn.** Tenants who lose their rent subsidy agreement often face eviction for non-payment of rent when they find themselves without the support on which they relied to pay their rent. This leaves the most vulnerable tenants unprotected when they lose a subsidy through no fault of their own.

33. **Regulate and record tenant buyouts.** A minor industry exists in Vancouver where tenants in below-market buildings are approached by landlord "consultants" in an effort to negotiate compensation in exchange for the signing of a Mutual Agreement to End Tenancy. At the VTU we have found this practice widespread and subject to abuse where vulnerable tenants are offered next to nothing under threat of eviction, while more informed and affluent tenants are able to negotiate better terms for themselves. Recording these transactions is essential to ensure that where tenants agree to vacate, that they are being justly compensated for the value of their tenancy. These transactions need to be brought to light, regulated and protected from harassment and undue influences such as threats of eviction.

We recommend these figures contained in the Appendix to this report in the interest of regulating practices that are already occurring. The VTU has repeatedly seen tenants bought out of long-term tenancies at the scale established in the City of Vancouver's Tenant Relocation and Protection Policy, with offers between $2,000.00 and $6,000.00 being quite common. In nearly all cases, the tenants were told that renovations were coming that would require vacant possession, and that the compensation packages would be rescinded if the tenants challenged the eviction. The highest offer we have observed in Vancouver was a buyout of a small building where tenants received $20,000.00 each. Buyouts of rent controlled tenancies in San Francisco have been reported as high as $285,000 for a single tenant, and buyouts for single tenants *averaged* at $27,495.00 in 2017. San Francisco has been regulating tenant buyouts and collecting data since 2014, all of which is posted online publicly.[6] The practice is so common that several law firms specialize in negotiating these agreements and apps have even been developed to facilitate automated buyouts.

It should be emphasized that even in the context of these high compensation figures, San Francisco is currently considering imposing additional fines onto these transactions to reflect the public costs that can result from the loss of affordable rental housing.[7] As witnessed in both Vancouver and San Francisco, it is clear that these rates are tenable for developers seeking vacancy, and simply regarded as a cost of doing business. While we believe that this practice is ultimately negative in that it contributes to depletion of affordable rental stock, tenants who are willing to move should be appropriately compensated.

IMPROVE RTB PROCESSES

34. **Expand role of information officers.** Many RTB dispute resolution proceedings could be prevented by expanding the role of RTB Information Officers to include outreach to explain the application of the law to tenants and landlords. Many dispute proceedings could be avoided by allocating RTB resources toward informal intervention and real *dispute resolution* rather than directing tenants and landlords into an adversarial arbitration process where both parties may enter without an adequate understanding of the laws that apply.

35. **Provide translation for people who do not speak English at Residential Tenancy Branches and at dispute resolution hearings.** Translation is fundamental to a fair hearing where a party lacks adequate skills in the language of adjudication. Parties should be able to indicate if they require translation and the RTB should contract neutral translators for this purpose.

36. **Reduce arbitrator caseloads.** The large caseload imposed on RTB arbitrators is an impediment to cases being given adequate hearing time, a full review of the evidence, and fully considered decision-making.

37. **Fair mediation.** Even when tenants have an extremely strong case against their eviction, members of the VTU have observed that they are frequently pressured to mediate under threat of potentially being given 48-hour notices to vacate if they lose the hearing. The VTU believes that this approach to mediation is completely inappropriate, particularly where advocates are absent from proceedings. The *Act* is recognized by the courts to be benefit-conferring legislation and needs to be applied as such – tenants should not be pressured to compromise on enforcing their rights by the very body tasked with upholding them.

38. **Accountable decision-making.** The RTB needs a better system for archiving decisions. RTB decisions should always be attributed to the decision-maker, and should be searchable by a number of criteria. The corporate name or family name of a landlord should always be a searchable field. Having an improved record of past RTB proceedings will serve the purpose of accountable decision-making as well as incentivize compliance with the *Act*. Dispute Resolutions should be officially recorded and supplied to both parties at the time a decision is rendered. The recording of disputes would promote accountability on the part of all parties and promote a higher standard of decision-making.

39. **Improvements to online filing system.** The creation of an online filing system was a very positive step in 2017, though there is room for improvement on this system. The inability to edit submissions following the availability of new evidence, the inability of tenants to join related claims, the inability to upload other forms of digital evidence such as audio and video recordings, very low file-size limitations (10mb) and the fractured nature of the evidence submission process have proven problematic. The online filing process remains inaccessible to those without access to a computer or with limited computer-literacy, disproportionately affecting the most marginalized and vulnerable tenants, precisely those who most rely on the protections of the Residential Tenancy Act.

40. **Improved process for joint hearings.** The existing process for joint hearings with multiple tenants is problematic because the delay in processing these requests in combination with the scheduling priority these matters are given has resulted in unrealistic and unfair evidence timelines being imposed on both tenants and landlords, and compromises the parties' right to a full and fair hearing in matters precisely where a large number of parties will be affected by the outcome. Preliminary hearings - currently used electively - should be mandatory to determine not only the basis for a joint application, but for scheduling the necessary hearing time and length, along with establishing fair evidence deadlines. Joint hearings should be conducted at a very high standard and preferably heard by senior arbitrators.

41. **Improved training for arbitrators.** Hire arbitrators with previous legal experience, and ensure that arbitrators are property trained on relevant principles of administrative law, contract law, statutory interpretation and remedies. Ensure that arbitrators are up to date on developments in case-law and precedents which are binding on the exercise of their decision making. Also important is ensuring that parties are never put in a better position through non-compliance with the *Act*.

PREVENTING DISCRIMINATION

42. **Prohibit discrimination against tenants with pets.** Housing for tenants with pets is very difficult to come by in Vancouver's tight rental market. Tenants shouldn't be presented with the possibility of having to give up a pet if they are forced to move. Implement the recommendations of PetsOKBC to improve housing security for pets and tenants with pets.

43. **Prohibit discrimination against tenants with children.** Tenants should not face eviction for having an unreasonable amount of occupants in the unit where the addition occupant(s) are children. This is already the law in Ontario in recognition that families who rent already have extraordinary difficulty finding housing.

44. **Regular audits of tenant application processes that require landlords to give written reasons for declining an application.** The current lack of accountability leaves tenants unable to prove that they have been discriminated against. The BC OIPC recently found that landlords routinely request too much information from tenants, and there is no accountability for how this information is used. There is little recourse or evidentiary basis for tenants to pursue Human

Rights claims where they believe they have been discriminated against, as well as difficulty in accounting for real financial losses as a result of the discrimination. The only solution is proactive investigation and auditing of rental listings, with substantial fines imposed where discrimination is found to occur.

45. **Accountability for references.** At the VTU we have seen tenants threatened with "blacklisting" and other threats intended to make it difficult for tenants to find other housing. The *Act* should require landlords to provide positive references to subsequent landlords, barring where a tenancy is ended for cause and supported by an RTB order. Tenants shouldn't be subject to retaliation where they have abided by their tenancy agreements and the Residential Tenancy Act. In the current housing market, the prospect of having a negative reference – or none at all – is a serious deterrent to tenants asserting their rights under the *Act*, and limits the housing choices and economic mobility of tenants.

46. **Protection for religious and spiritual practices.** No one should face eviction for engaging in a religious or spiritual practice in their home. This is an essential aspect of the use of one's personal space for many tenants. Indigenous people should not face threats of eviction for practices such as smudging, and the *Act* needs language that protects tenants from for-cause eviction for engaging with their belief system.

SECURITY DURING TRANSITIONAL PERIODS

47. **Simplified process for subletting.** The reality of the current job market requires tenants to be geographically flexible. People also go on vacation or take temporary work assignments. The *Act* needs to be updated so that permission to sublet is not unreasonably withheld. Tenants are already legally responsible for the conduct of their sub-tenant, so where they can provide their landlord with a copy of an enforceable sublet agreement with their sub-tenant that clearly makes the tenant responsible for the conduct of the sub-tent, such an arrangement should not be rejected by the landlord barring extraordinary circumstances.

48. **Protections for tenants upon sale of property.** Section 49(5) of the *Act* should be removed as it is redundant and legislates too low of an evidentiary burden to ensure the provision is not abused. New owners can already use 49(4) of the *Act* to occupy the unit, and unlike subsection (5), requires adequate proof that the new owner or a close family member intends to occupy the unit. 49(5) currently requires only evidence of a sales agreement and a letter from the buyer that they intend to occupy the premises. This is much lower burden than 49(4), which has a good faith requirement. There is no principled reason for the absence of this requirement from 49(5). This amendment will protect tenants from eviction when the residential property is sold while preserving the right of new owners to occupy the premises.

49. **Protection against foreclosure.** Tenants should not be penalized where a landlord has defaulted or otherwise failed to meet their financial obligations. Vacant possession of a property is the standard award given to creditors in foreclosure proceedings, and this can lead to the mass eviction of tenants who are in no way at fault. Tenants should receive more than one month's notice and no compensation when a landlord is in default. In Vancouver this disproportionately affects vulnerable renters. The Residential Tenancy Act should specify that where a residence under the jurisdiction of the *Act* is involved in foreclosure proceedings, the creditor awarded the property should assume the obligations and tenancy relationships of the landlord in default.

COMMERCIAL TENANT PROTECTIONS

50. **Protections for commercial tenants.** Commercial lease regulation is necessary for protecting small businesses a well as the jobs and sense of place that they create. It is also key to protecting the character of neighborhoods. Create a regulatory framework for commercial leases that implements a system of rent control for small businesses and prohibits "triple-net" leases for local businesses with less than 15 employees. The current lack of regulation for commercial leases has lead to increasing difficulties for small businesses. Rent, not wages, is the single biggest factor that determines the success or failure of a small business. The standard use of triple-net leases mades small businesses responsible for property taxes that are divorced from their actual income stream and tied instead to the speculative value of the property. With so much money to be made in property appreciation alone, large commercial landlords are increasingly insulated from having

to concern themselves with whether the businesses of their tenants succeed or fail. Potential small business owners won't open up shop in these spaces when they face unregulated rent increases that could put their business underwater. Small businesses that give neighborhoods their identity increasingly have to close up shop as they cannot bear the tax burden created by the speculative inflation of property values. The solution is to make sure that the party benefiting from increased property values, the property owner, is paying these taxes.

APPENDIX

Recommended compensation figures for tenants receiving Notice of Landlord's Use of Property or Municipal Orders to Vacate. Compensation figures for long-term and low-income tenants need to be very high to incentivize the accommodation of tenants, and to appropriately compensate tenants where displacement remains the only option. As referred to above, in instances where Landlord's Use of Property is required, these full figures only apply to residences with over 3 rental units in order to target larger, purpose-built rental accommodation. We recommend one third of the base figures be applied for Landlord's Use of Property in properties with under 3 units.

1 – 5 years = 6 months rent (+2 months if below low income cutoff or over 65)
5 – 10 years = 12 months rent (+ 4 months if below low income cutoff or over 65)
10 – 20 years = 18 months rent (+ 6 months if below low income cutoff or over 65)
20+ years = 24 months rent (+8 months if below low income cutoff or over 65)
Stipend per dependent child = 3 months rent (+2 months if below low income cutoff)

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