Summary of 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-based, 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.

This document is a highly-condensed version of our full proposal, available in June on the Vancouver Tenants Union website. We highly recommend reading our full recommendations for additional context, explanation, and comparison to other jurisdictions.

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.** Where a tenant vacates a rental unit for whatever reason, rental rates should remain the same for a subsequent tenant, unless the landlord can demonstrate increased operating costs or expenses put into the unit that require a rent increase to recoup these costs within a reasonable amount of years.

Vacancy control removes the financial incentive for landlords to evict tenants paying less than market rate, effectively ending the motive for 'renovictions,' dubious fault-based evictions and fraudulent claims of caretaker or owner use of a rental unit. This measure will reduce the need to exhaustively re-work other aspects of the *Residential Tenancy Act* (RTA) and lower the number of cases that come before RTB arbitrators. Vacancy Control will serve the wider policy goal of progressively improving rental affordability in Vancouver and the province of BC. To address the housing crisis, the provincial government must 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, an alarming number of whom are paying well over 30% of their income on rent.

Quebec, Manitoba, and PEI all have vacancy control systems that restrict rent increases when tenancies ends and instead allow landlords to apply to increase rents based on improvements to units or documented increases in operating costs. The implementation of vacancy control does not penalize developers of private rental housing because it does not place any rental cap on units as they first enter the market. Studies in Manitoba have shown that vacancy control has no negative effect on vacancy rate or construction.[1] Similarly, a study examining BC rent control measures from 1974 - 1984 showed that there was no discernable negative impact on rental construction.[2] So as not to deter homeowners from renting suites, we would propose that owner-occupied rental properties with two rental units or less be exempt from vacancy control.

2. **Require automatic dispute resolution hearings for all evictions.** The existing eviction process in BC does not automatically account for the issuance of unsupported eviction notices; instead, the onus is on tenants to dispute these notices and be granted a hearing. Substantive due process for tenants requires that a hearing on the merits occur for all evictions. The VTU recommends a process modeled on Ontario's, where it is the landlord who initiates eviction proceedings by applying with the Residential Tenancy Branch in order to receive a registered eviction notice and schedule a mandatory hearing. This system serves 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.

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 registered eviction notice that would be logged in a database. The landlord would then receive a hearing date, which they would be required to serve to the tenant along with the evidentiary basis for the eviction. This system would have the additional benefit of creating an evictions database in British Columbia. This crucial dataset does not currently exist, preventing policymakers and the public from fully understanding rental trends in the province. In addition to promoting informed policy creation, collecting evictions data could also aid in identifying problematic individuals or companies.

In addition to mandatory hearings, there needs to be **proper funding for tenant-advocacy services** and **mandatory advocate representation for eviction proceedings where the tenant is on income assistance like disability, welfare or a pension.** Tenants in rent controlled units in New York recently received the right to legal representation in eviction proceedings. At a bare minimum, information about advocacy services should be a standard feature on every Notice to End Tenancy.

[1] Lazzarin, "Rent Control and Rent Decontrol in British Columbia: A Case Study of the Vancouver Rental Market, 1974 to 1989" https://open.library.ubc.ca/cIRcle/collections/ubctheses/831/items/1.0098573

[2] Hugh Grant, "An Analysis of Manitoba's Rent Regulation Program and the Impact on the Rental Housing Market" http://www.gov.mb.ca/cca/pubs/rental_report.pdf

There is also an urgent need to **provide translation for people who do not speak English at Residential Tenancy Branch hearings.** Parties should be able to indicate if they require translation and the RTB should contract neutral translators for this purpose.

3. **Priority for tenants on building purchase and right of first refusal on re-developed rental stock.** Tenants in residential properties of over five units should be informed a minimum of 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. 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 rental buildings that are near the end of their marketable life in Vancouver are currently prey to investors who renovict the occupants and permanently remove these units from the affordable housing market. 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.

Affordable rental stock should only be turned over to the market where the proposed redevelopment of the building includes a net increase in rental units, and where existing residents are not permanently displaced. Existing 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.

MEASURES FOR IMPROVING RENTAL AFFORDABILITY

Implement a **Temporary rent freeze.** Freeze the annual rent increase at 0% for four years, as was 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 should be six months. Annual rent increases slowly erode the standard of living of tenants and increases housing precarity for long-term renters. The existing 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. Landlords should only be able to increase rents based on improvements made to rental units and increases in operating costs. Conversely, there should be mandatory rent reductions were landlord's property taxes or other costs have decreased.

The VTU would also like to see the implementation of an **income-scaled refundable tax credit for renters to function in conjunction with Vacancy Control**. Rather than a flat $400 rebate, give low and middle-income renters a 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. As an example, Manitoba's Rent Assist program 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 to ensure that they pay no more than 28% of their income on housing.[3] To be truly effective, such a policy needs to be paired with vacancy control to prevent it from acting 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,contributing to further inflation of rents. To focus on those in need, such a credit could be capped for those with above-median incomes.

IMPROVE PROCEDURAL SAFEGUARDS

Relationships between landlords and tenants need to proceed on a good-faith basis. **Applying a "good faith" requirement to the entire *Act* would** create a more effective tenancy regime**.** The Supreme Court of Canada has recognized a good faith requirement inherent to all contractual relationships, and this principle naturally extends to tenancy agreements. Good faith needs to be a consideration in all matters that come before Residential Tenancy Branch in order to have a substantive process. **Higher penalties for parties who ignore RTB orders would i**ncrease compliance with the RTA **.** Mandatory penalties should be applied where a party has not complied with the order of an arbitrator. In addition to administrative penalties to cover the costs imposed on the RTB, the time, materials and other costs of repeat applicants should also be covered. The RTA also needs to provide for the **explicit recognition of tenant organizations and prohibition of landlord retaliation for joining, organizing, or taking legal action with such a group.** Landlords should be required 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. Finally, to help tenants feel safe asserting

[3] Josh Brandon, Jesse Hajer and Michael Mendelson; "What does an actual housing allowance look like? Manitoba's Rent Assist program" https://maytree.com/wp-content/uploads/1117ENG.pdf

their rights with the Residential Tenancy Branch, landlords need to have legislated **accountability for references.** The *Act* should require landlords to provide positive references to subsequent landlords unless a tenancy is ended for cause *and* supported by an RTB order. At present, tenants can be threatened with "blacklisting" and other landlord actions intended to make it difficult for tenants to find other housing.

All forms of housing need to be 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. Situations where a tenant shares cooking and bathroom facilities with the landlord should also be included within the *Act*. Vulnerable tenants need greater protections, especially those tenants receiving rental subsidies. **Six month notice should be required for tenants whose rent subsidy agreement is withdrawn.** In addition to applying to all forms of housing, the RTA needs to apply to all kinds of tenants. **"Co-tenants" need to be included under the protection of the Act.** Additionally, there needs to be **greater clarity and more protections for renters on multi-tenant rental agreements.** 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. The RTA should instead state 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 rental rate.

ENDING ABUSES

Ending renovictions is one of the VTU's highest priorities**.** 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 facilitate the work. 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. The right-of-first-refusal system introduced to the RTA this year is unnecessary and complex,offering tenants the right return at market rents. The amendment should be repealed and replaced with statutory language that maintains existing tenancies in cases where a landlord wants to perform renovations requiring temporary vacant possession of the tenants' unit. The RTB should provide standard renovation accommodation agreements that include 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 same residential property, or another vacant unit in a property owned by the landlord. Tenants displaced due to renovations should have priority on these units.

Additionally, the RTA needs to be amended to **end abuse of family and caretaker move-in provisions.** Family-move ins for any corporate entity, including family corporations, should be disallowed, and family move-in should be prohibited for properties with over 3 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, a caretaker unit, or has never had a history of having an on-site caretaker.

Increased compensation and a reversed burden of proof for Landlord's Use of Property should be established**.** A scaled compensation model should be adopted, mandating paid moving expenses along with compensation based on the length of the tenancy and other relevant factors, such as dependent children or age, that can make moving more challenging. Our recommended compensation schedule would give tenants between 6 and 24 months rent in compensation, depending on length of tenure, as well as additional compensation for tenants with dependant children, tenants over 65, and tenants who are below the low-income cutoff. **Enforceable penalties for fraudulent evictions** should accompany the aforementioned increased compensation for no-fault 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. These circumstances should be easily proven and landlords need not be unduly prejudiced against providing such proof. Should the stated purpose not have been fulfilled, the tenant should be entitled to a minimum of 12 months' rent and reimbursement of any additional documented costs incurred.

In some cases, a landlord and tenant may be agreeable to ending a tenancy where a landlord wants to make use of the rental property. In these cases, the RTA needs to **regulate and record tenant buyouts.** The VTU has noted a widespread trend in which tenants in below-market buildings are approached by landlord "consultants" who seek to negotiate the signing of a Mutual Agreement to End Tenancy in exchange for tenant compensation. Recording these transactions is essential to ensure that where tenants agree to vacate, they are being justly compensated for the value of their tenancy. These transactions need to be brought to light and regulated and tenants need to be protected from harassment and undue influences such as threats of eviction. While we believe that the practice of offering buyouts is

ultimately negative in that it contributes to depletion of affordable rental stock, tenants who are willing to move should be appropriately compensated. San Francisco currently records all buyouts of rent-regulated tenancies.[4]

More assistance for tenants who are illegally locked out of their units is desperately needed**.** These tenants currently have little recourse under the law and are forced to wait upwards of two months for a Dispute Resolution hearing in order to reclaim their homes. The RTB should establish an express procedure for lockouts and mandatory damages and administrative penalties should be levied against landlords found to have illegally locked out tenants, particularly where a tenant's belongings have been illegally removed or disposed of.

MAINTENANCE

An amended RTA needs to **expand and clarify grounds for emergency repairs.** The current process for addressing emergency repairs creates uncertainty for both tenants and landlords. Under the current system, tenants can be evicted for non-payment of rent, mistakenly thinking they are legally withholding rent against emergency repairs they had paid for. The VTU recommends that a landlord be given twenty-four hours to address an emergency repair that has been brought to their attention. Currently, external locks to the building, hot water, power, kitchen appliances and facilities necessary to access the rental unit such as stairs or an elevator are not included as eligible "emergency repairs." All of these circumstances need to be taken into consideration as essential to the use of a residential property. To encourage compliance, there need to be **mandatory damages and administrative penalties where a landlord does not comply with an RTB maintenance order within a reasonable time.** Non-enforcement of RTB orders can lead to severe consequences, including building closures, which currently leave tenants unprotected. The RTA also needs to include **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. If a tenant receives an order to vacate from 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, and pay a minimum of four months rent, with more compensation available for tenancies of greater duration as set out in the Appendix to these recommendations.

PAYING RENT

Rental payment can be a source of considerable uncertainty and unpredictability, despite its fundamental role in any tenancy agreement. The RTA needs to **establish clear requirements in standard tenancy agreements establishing the landlord's method of rent acceptance.** If a 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. If a landlord does not provide an on-site method of making physical rent payments, they must provide a digital means of making payments. Further, the RTA should **require rent receipts to be issued for all forms of rent payment.** An amended RTA should **increase the grace period for late payment of rent from 5 days to 14 days.** This is already the law in Ontario. Compassionate grounds for late rent payment should exist where there is proof of a compelling personal or family emergency. There is a need to **eliminate the Express Hearing process** for non-payment of rent, a non-participatory proceeding which can result in bailiff removals. Also desperately needed is an **expanded 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. 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.

IMPROVE RTB PROCESSES

The VTU would like to see an **expanded role for RTB information officers.** Many RTB dispute resolution proceedings could be prevented by expanding the role of RTB Information Officers to include outreach in order to explain the application of the law to tenants and landlords. Another major improvement to the process could come from **reduced 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. A reduction in caseload needs to occur in conjunction with **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. Steps are necessary to ensure that parties are never put in a better position through non-compliance with the *Act*. This will in turn promote **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. Dispute Resolutions should be officially recorded and supplied to both parties at the time a

[4] DataSF, "Buyout Agreements" https://data.sfgov.org/Housing-and-Buildings/Buyout-agreements/wmam-7g8d/data

decision is rendered. **Fair mediation also** needs to be a standard practice**.** Under the current system,even tenants with an extremely strong case against their eviction are frequently pressured to mediate rather than risk being served a 48-hour notices to vacate if they lose the hearing. 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.

Eliminating filing fees and replacing them with an automatic $100 award to the successful party would reduce financial barriers to tenants enforcing their rights under the Act**.** The RTA also needs to provide **more discretion for arbitrators to accept late applications**. Section 66 allows arbitrators to waive application deadlines for dispute resolution only in "exceptional circumstances." The standard should be lowered and arbitrators should have more discretion to accept late filings. The VTU believes a landlord-initiated evictions process with mandatory hearings would best resolve this situation. The Dispute Resolution process could also be assisted by **improvements to the online filing 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.

Proceedings with multiple tenants are a much more efficient way of addressing widespread tenancy conflicts. However, currently tenants who proceed with group claims face an unpredictable, accelerated process which does not take account of often heavy evidentiary requirements. We recommend an **improved process for joint hearings.** 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. Also necessary are **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.

PREVENTING DISCRIMINATION

Current rental application processes have little oversight and even less enforcement where discrimination is occurring. It is time for **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 Office of the Information and Privacy Commissioner recently found that landlords routinely request too much information from tenants, and there is no accountability for how this information is used. The only solution is proactive investigation and auditing of rental listings, with substantial fines imposed where discrimination is found to occur. More action is needed to **prohibit discrimination against tenants with children.** Tenants should not face eviction for having an excessive number of occupants in the unit where the additional occupant(s) are children. The RTA also needs to **prohibit discrimination against tenants with pets.** 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. Most importantly, there needs to be stronger **protections for religious and spiritual practices.** No one should face eviction for engaging in a religious or spiritual practice in their home. Indigenous people should not face threats of eviction for spiritually significant 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

A **simplified process for subletting** needs to be implemented 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.

The RTA needs to provide **protections for tenants upon sale of a rental 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 which, unlike subsection (5), requires adequate proof that the new owner or a close family member intends to occupy the unit. There is no principled reason for the absence of this requirement from 49(5). **Foreclosure protections for tenants** are also needed. 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 adequate compensation when a landlord is in default. 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.