

A. G. KEMP & ASSOCIATES INC.

Serving and Assisting Rental Housing Providers since 1997

May 21, 2018

Mr. Spencer Chandra Herbert
Chair, Rental Housing Task Force
Government of British Columbia
Legislative Buildings
Victoria BC

BY EMAIL

Dear Mr. Chandra Herbert:

RE: Submission to the Rental Housing Task Force

A. G. Kemp & Associates Inc. is a private sector company providing services, education, and representation to BC's rental housing industry. Prior to reactivating my company in 2013, I was the CEO of the Rental Owners and Managers Society of BC (ROMS BC) for 16 years. With a reputation for prompt and accurate service, we built this organization from a small southern Vancouver Island group to a province wide organization with over 2400 members. Many of the previous ROMS BC members became my clients when I announced the reactivation of my company, offering the same quality and breadth of services to residential landlords, from basement suite owners to major property management companies.

For the past 20+ years, I have been working with rental housing providers, media, and governments to ensure our members/clients are providing safe, secure, and stable housing and are doing so ethically and legally. I have also been privileged to enjoy an open professional relationship with a succession of Executive Directors of the Residential Tenancy Branch, including Kathy Elder, the current Executive Director.

I provide this information for solely to establish my credibility as a knowledgeable and experienced spokesperson for the industry that provides homes for nearly 35% of British Columbia households, and a person qualified to identify the priorities facing our industry that need to be addressed by your government.

There are over 100,000 rental housing providers in BC, providing homes for over 600,000 renters. Just as small business constitutes about 95% of the businesses in BC, small rental housing providers constitute about 95% of the landlords in BC. The reason I stress this fact is that – as with almost any industry – a few unethical, unscrupulous suppliers (a) get 100% of the media coverage, (b) establish an unearned negative reputation for the industry as a whole, and (c) cause governments to write laws to curb their actions. It is important for your task force to recognize that It is a very small percentage of these 100,000+ landlords who fit this image. In my experience, virtually every landlord with whom I have had contact views his or her primary responsibility is to provide rental housing that is secure, meets all building standards, and is desirable to those choosing or having to rent their homes. It is not about maximizing profit; it is about operating a sustainable and reputable business. I sincerely hope your task force's recommendations are made in this context.

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You asked for our industry's top three priorities. First, allow me to provide some additional context. BC's *Residential Tenancy Act* ("the Act") was almost totally rewritten before it became effective January 1, 2004. In directing that the Act be rewritten, the then Minister responsible for Housing stated he had three objectives for the "new" legislation:

- an Act written so that landlords and tenants could understand it, without having to refer to lawyers,
- an Act that as much as possible, would establish a balance of both rights and responsibilities between landlords and tenants, and – perhaps most important –
- an Act that resulted from significant consultation with groups representing landlords and tenants.

I was extensively involved in that consultation as CEO of ROMS BC, along with the leaders of organizations such as the Tenants Resource and Advisory Centre. I believe the current Act meets those three objectives, and can comment that it is regarded by many of my industry colleagues across Canada as the country's most balanced landlord/tenant legislation. The Act has stood the test of time, and has undergone several amendments and improvements without disturbing that important balance of landlords and tenants' rights and responsibilities.

Based on my experience with the Act over the last 14 years, and daily contact with many housing providers, I consider the following to be the three most important priorities. You will note that only one has any relationship to rents or rent increases.

Priority #1 – Fixed term, must vacate tenancy agreement clause

Until recently, the Act allowed for essentially three different tenures of tenancy agreements:

- month to month ("periodic") meaning that if renters paid the rent, acted responsibly and took care of the property, they could live there forever, one month at a time.
- fixed term, renewable, establishing a point in time where the tenancy agreement (not the tenancy) would end, and prescribing that if the parties did not agree on a new renewable term, the tenancy agreement would automatically become month to month.
- fixed term, must vacate, the same as the fixed term, renewable, except that renters were required to vacate the property at the end of the term.
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Unfortunately - and directly related to the above facts about unethical, unscrupulous suppliers - a few landlords, particularly in the lower mainland and Victoria, used the fixed term, must vacate clause to circumvent allowable annual rent increases. As you know, these few landlords would require this form of tenancy agreement; then would inform renters shortly before the end of the fixed term that the renters had two choices: vacate as required, or pay an exorbitant rent increase.

Our industry consistently opposed this practice and as rents increased and vacancies decreased, repeatedly implored the government of the day to close this loophole. The good news is that your government has closed this loophole; the bad news is that by abolishing the use of fixed term must vacate clauses in any circumstances, the unintended consequences will unduly and unfairly restrict the industry from continuing to provide rental housing in several circumstances.

Last November, shortly after the announcement that changes would be made to the Act to remove the ability to enter into fixed term, must vacate tenancy agreements, I sent a letter to Kathy Elder, describing the several circumstances where the removal of this type of tenancy

agreement would likely cause a reduction in the overall rental supply and/or would unfairly restrict the ability of rental housing providers in certain circumstances to offer rental housing. I have included a copy of this letter with this submission; however, briefly these circumstances included:

- Using this type of agreement as a form of probation. This was almost exclusive to the thousands of smaller, less sophisticated landlords who lacked the resources or knowledge to do thorough “due diligence” before deciding to accept a tenancy applicant.
- Plans for the owner to move a relative or friend outside the definition of “family member” into the rental unit.
- The owner plans to sell the property and wishes it to be vacant before listing.
- The owner wants to do major renovations, but does not wish to disrupt the renters either by attempting to do the work while the unit is occupied, or issuing a two month notice to end the tenancy
- For similar renter considerations, the owner plans to move into the unit at a known future date
- The units are rented for +/- six months in areas such as Whistler (April to October) or Victoria (October to April), reverting to daily accommodation during ski and tourist seasons.
- The Strata Property Act provides that a strata lot owner may continue to rent the lot for one year, following a Strata Council decision to restrict the number or ban all rentals.

I proposed that Ms. Elder draft and recommend to Cabinet a number of regulations that would allow for the continued offering of this type of tenancy agreement in circumstances such as those listed (as provided for in by s. 97(2)(a.1) of the current Act).

If fixed term, must vacate tenancy agreements are permitted in the regulations, some of them could “re-establish” the rent increase loophole. This could easily be prevented by including in the regulations a provision similar to the following:

If in any of [the above] exceptions, a landlord proposes to increase rent beyond the allowable annual increase amount, the tenancy will immediately default to a month to month tenancy and the landlord will not be permitted to increase the rent for the subsequent two years.

Granted, this or something similar could lead to an increase in dispute resolution cases, it would on the other hand avoid the inevitable reduction in rental stock throughout BC that is already happening as a direct result of this clause being eliminated.

Regarding “probationary” fixed term, must vacate tenancy agreements, the regulation should include a provision that this form of agreement must be for a duration not exceeding six months, and that if the tenancy continues, it can only be on a month to month basis. This would discouraged abuse of this particular provision.

Recommendation: That the Residential Tenancy Regulation be amended to allow fixed term, must vacate clauses in tenancy agreements, for prescribed legitimate purposes [as described in the Regulation].

Priority #2 – Retain the 2% base in the Allowable Rent Increase formula

With the introduction of the current *Residential Tenancy Act* January 1, 2004, came a legislated formula for maximum allowable annual rent increases. This formula consists of two components: a base annual increase of 2% of current rent, plus an inflation factor drawn from the increase in the Canada Consumer Price Index (CPI) from August to July of the previous year.

Parenthetically, the “basket” that makes up the CPI is based on typical household consumption; thus it bears no resemblance to the “basket” that makes up the operational costs of a typical residential rental property, whether a single unit or a large apartment building.

It is more important to understand the rationale for establishing the 2% annual base increase. Its purpose and intent are to guarantee that rental building owners can ensure they have ongoing sufficient funding – unrelated to inflation – to keep their properties well maintained, secure, and desirable. The 2% base is not intended to go toward major expenses; it is intended to provide the legislated ability to recover the costs of lesser renovations and repairs, such as replacing windows or flooring as units become vacant.

Rental housing providers rely on the availability of this 2% base to ensure they will be able to fund minor maintenance on an ongoing basis. Also, knowing this base increase will be available in the future allows for planning to accumulate these amounts over a few years to carry out projects, the costs of which might otherwise have to be recovered through an additional rent increase application, adding to the Residential Tenancy Branch workload, and altering the “smoothing” effect on residents of an annual minimal rent increase of 2% to a one time rent increase of several times that amount.

Recommendation: Retain the 2% base increase in the allowable annual rent increase formula.

Priority #3 – Retain the ability of rental housing providers to decide whether to accept pets.

S. 18(1) of the Act states,

“A tenancy agreement may include terms or conditions doing either or both of the following:

(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;”

There was considerable controversy surrounding this provision when the Act was being developed. Some factions proposed forcing landlords to accept pets (as is the case in Ontario); others were equally vocal in not wanting to be exposed to animals in or near their homes.

There are several facts a landlord must consider when making decisions related to pets:

- Even pets owned by responsible pet owners (the vast majority) cause additional wear and tear to both rental units and areas of residential property, such as lobbies and hallways.
- Many renters own or want to own pets, usually dogs or cats. To not allow pets is to reduce the availability of suitable renters. This is an important consideration in areas of BC where rental vacancy rates can be as high as 20%
- Some people require pets to contribute toward their mental stability.
- Some people are seriously allergic to animals, particularly cats.

- Some people are afraid of animals, particularly dogs.
- Some people simply don't like animals.
- Dogs bark, sometimes frequently or even continuously when their owners are not present.
- Restricting the size or breed of animals, particularly dogs, requires arbitrary decisions, often detracting from or negatively impacting renter relations.
- Establishing a maximum number of animals permitted on the residential property can also lead to renter relations issues.

As can be seen, some of these facts encourage rental housing providers to allow pets; others discourage that decision. I am not aware of any set of circumstances – or regulation – that would satisfy all renters and all rental housing providers.

The introduction of a half month's pet damage deposit in 2004 had the desired result of more building owners permitting pets.

As there was prior to the enactment of the current Act, there is a current movement advocating that rental housing providers be forced to accept pets. Given the conflict among the above facts, forcing landlords to accept pets is not in the best interests of all renters. Currently a landlord can decide to limit the number of animals on a property, allow only dogs or only cats, allow a maximum number of animals on the property, or permit animals only in one section or on one floor of a building. In short, the flexibility allowed by the current legislation allows rental housing providers to accommodate the needs and desire of all their renters.

Recommendation: That s.18 of the current Act be retained.

The implementation of these three recommendations will undoubtedly increase both the ability and confidence of rental housing providers to continue to offer secure, stable, housing for so many British Columbia households. Their implementation will also prevent the inevitable reduction of badly needed rental stock in many areas of the province, that is already occurring.

I look forward to meeting with you, Mr. Olsen, and Ms. Leonard. Further I am available to the task force at any point in the future, should you wish further information or assistance. I appreciate the opportunity to make this submission.

Sincerely,

A. G. Kemp and Associates Inc.



Al Kemp,
President

A. G. KEMP & ASSOCIATES INC.

Serving and Assisting Rental Housing Providers since 1997

November 7, 2017

Kathy Elder
Executive Director
Residential Tenancy Branch
4th Floor, 614 Humboldt St.
Victoria BC

by email

Dear Kathy:

Re: Legitimate Reasons for fixed term, must vacate tenancy agreements.

There is a great deal of concern over the “abolition” of fixed term, must vacate tenancy agreements, introduced in amendments to the Tenancy Acts on October 27th. I have had more feedback on this than any one topic I can recall in the 20 years I have been serving and educating residential landlords. In their feedback, no owner or manager even mentioned the removal of the opportunity to increase rents. I think you know that landlord representatives such as LandlordBC and my company have long advocated closing the loophole. We have not advocated removing the provision completely.

Companies and individuals alike fear that they will lose the ability to enter into fixed term, must vacate agreements for a variety of legitimate reasons, some of which benefit the tenants.

It is important to note that tenancy applicants have the right to sign a must vacate tenancy agreement, or look elsewhere.

It's also important to recognize the Regulation will apply throughout the province. Some of the following reasons are more or less prevalent in certain areas, e.g. renting summer cottages for the winter.

The more restrictive the reasons for legitimate must vacate agreements are, the more rental units that will undoubtedly be withdrawn from the market. Several of my clients have expressed this concern; they want to provide rental housing, but not at an inordinate risk.

Following are some of the reasons why the Regulation needs to provide more than one ground for entering into a fixed term, must vacate tenancy agreement.

1. S.143(1)(a) of the Strata Property Act states that if a Strata Council prohibits or restricts rentals, the strata lot owner can re-rent for only up to one year after the current tenant leaves. A rental beyond that point would result in the strata lot owner being fined.

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2. Many landlords, particularly small ones, do a must vacate for the first period only – usually 6 to 9 months - as a form of probation. Subsequent agreements are either month to month or fixed term, renewable. Examples include renters from other countries, first time renters, or applicants with poor credit records. Retaining this ability is particularly important for the foreseeable future, given the long wait times for a hearing if the landlord's only alternative is to evict for cause.
3. Some tenants want must vacate agreements, e.g. they purchased a home that is being built, or they know they are being transferred by their employer at a future date.
4. The owner wants to move in a family member other than parent or child, e.g. a nephew completing university in another city, or a brother and wife returning from an overseas assignment.
5. The owner wants to move in on a known future date; but doesn't want to give two months' notice and pay one month's rent.
6. The owner has a plan to sell the property on a known future date, and prefers it to be vacant at that time.
7. The owner wants to do major renovations on a known future date, but doesn't want to disrupt the tenant.
8. Seasonal rentals, e.g. renting a summer cottage for the winter. Also, a number of motels in Victoria rent to homeless people over the winter, (at very low rents), requiring move-out in the late spring before tourist season. This ensures that the homeless can live in a warm environment over the winter. ADDED Nov. 23rd: The opposite timing is the case in Whistler, where units are rented from April to October, then become nightly rentals
9. A quote from a large company that owns, develops and rents multi-unit buildings:

“We currently have a property that is going to be redeveloped. In the meantime, we continue to operate a large rental site with over 230 apartments. This past year we started using fixed-term RTA's to make it clear that any new tenants moving in would have to move out at the end of term because of the pending redevelopment. This applied only to new tenants in that particular phase when we thought we were within 12 months of having to move all tenants out. We have had tenants take 3 to 6 month terms with us on that understanding and we have been happy to extend some for 3 more months at a time with no increase in rent upon renewal.

“The latest news about the crack down on fixed term agreements has our senior management nervous that we are off-side but intentions were good and it had nothing to do with an opportunity to increase rents.”
10. And from a property management company in Nanaimo:

“Two reasons we've used the fixed term is to be able to give a down on their luck tenant a chance. Unlike Victoria we deal with a lot of sketchy clientele. There have been some we want to help, kind of believe they became human again but being able to do a three months fixed term has worked out for both parties in some cases. If we have to go through the "normal" eviction process we just won't take the chance.

“Our most common use is for an off island person buying their retirement home but not ready to retire for a few years; that is an important scenario.”

11. From a company that specializes in renting single family homes and duplexes.

“Another recent situation involved an American owner who wanted to rent his furnished house from September to June, and occupy it in July and August. This was agreeable to the prospective tenant who likes to travel with his family in the two summer months. They signed two fixed term, must vacate agreements, one ending June 30, 2018; the second beginning Sept. 1, 2018 and ending June 30, Sept. 2019. This home would have remained vacant otherwise.”

I know there is significant time pressure to proclaim this amendment to the Acts. However, once passed, it is likely to remain. It is critical that “the baby not be thrown out with the bathwater.” The primary purpose of removing the fixed term, must vacate provision from the Act is to stop the small minority of landlords who have used it nefariously. This change should not be at the expense of the vast majority who are ethical, follow the law, and provide needed rental housing to British Columbians – and don’t attract media attention!

Sincerely,



Al Kemp,
President

cc: Tyann Blewett, Director of Policy, Residential Tenancy Branch
David Hutniak, CEO, Landlord BC
Andrew Sakamoto, Executive Director, Tenant Resource and Advisory Centre
Brian Clifford, Policy Manager, BC Non-profit Housing Association
Danielle Sabelli, Community Legal Assistance Society