



BCNPHA

BC Non-Profit Housing Association

JULY 4, 2018

**BC Non-Profit Housing Association's
Submission to the Rental Housing Task Force
Consultation Process**

Introduction

The BC Non-Profit Housing Association (BCNPHA) is pleased to submit this response to the Rental Housing Task Force. This response represents the views of BC Non-Profit Housing Association as the provincial umbrella organization for the non-profit housing sector in British Columbia, comprised of nearly 600 members, including non-profit housing societies, businesses, individuals, partners, and stakeholders. Together non-profit housing societies manage more than 60,000 units of long-term, affordable housing in over 2,000 buildings across the province. Our members provide supportive, transitional, and assisted housing services to a diversity of individuals and families in communities of all sizes. The focus of this submission is to inform the provincial government of opportunities for clarifying and strengthening the *Residential Tenancy Act* to ensure that all British Columbians have access to safe, secure, and affordable housing and supports. Specifically, this response outlines key considerations for amendments to the *Residential Tenancy Act* (2002) that are required to more effectively support landlords and tenants in British Columbia.

We have focused our recommendations on potential changes to the Act itself, with the understanding that many of the challenges faced by tenants in today's tight rental markets will be addressed through the development of additional rental supply at all income points along the continuum. Within the community housing sector, the mission drive toward affordability eliminates the bulk of the affordability challenges faced by communities throughout the province. We are currently working closely with government to build and develop the "right" supply of community housing that are protected from market forces.

Recommendation 1: Modernize Section 49.1 to provide additional clarity for non-profit landlords and tenants

Context

Section 49.1 enables non-profit housing providers and government entities who operate housing to ensure that tenants meet the income and household size requirements attached to the public funding they receive.

Non-profit landlords conduct an annual verification for tenants living in subsidized housing units, which helps to ensure they still meet the eligibility criteria for subsidized units. The criteria relate to income, household size or health requirements and they are designed to help non-profit landlords and the government target limited subsidies to the individuals and families that require them.

When a tenant's income increases and they no longer qualify for subsidized housing, this provision allows a housing provider to free up that unit for someone with a lower income. Similarly, when tenants no longer have dependents at home, Section 49.1 allows a housing provider to move them to a smaller unit to make a larger unit available to a family with children. These measures help to ensure that our province's very limited supply of affordable housing is targeted to those most in need.

Currently

Section 49.1 has worked as intended, but the context of housing provision is changing. The operating agreements that have flowed subsidies to non-profit housing providers for several decades are beginning to expire. With the expiry of these agreements, the definition of "public housing body" and "subsidized rental unit" need to be updated to reflect expired agreements.

The current definitions relate to the flow of public subsidies and non-profits are generally considered to operate housing “on behalf of a public housing body.” Once the public subsidy ends, a non-profit may no longer qualify as a public body under Section 49.1. However, as mission-driven organizations, non-profit housing providers will continue to strive to operate housing at low rents while still covering their operating expenses. Post-expiry, if a housing provider is able to maintain a rent-geared-to-income (RGI) model for some of their housing units, they will no longer be able to do an annual verification of income and household size and to provide notice if these requirements are not met. The consequence will be that housing providers will no longer be able to ensure that affordable units are targeted to those who require them.

Solution

The *Residential Tenancy Act* needs to be modernized to more clearly define non-profit housing providers and explicitly state their ability to screen annually for income and household size when they are providing rents that are below market. This could be done by modernizing the language currently found in Section 49.1 or by creating a new section explicitly for the provision of non-profit housing.

Recommendation 2: Modernize the Act to provide clarity for supportive housing landlords and tenants

Context

Supportive housing is provided in many communities in the province and is typically designated for individuals who require supports related to mental health and/or substance use, or are experiencing other challenges that put them at higher risk of homelessness. Rent paid by the tenant includes both housing and services such as support staff, training for life skills, and employment skills training. In some cases, it also includes meal programs and on-site medical supports.

The non-profit providers of supportive housing have developed programs and services where staff and residents work collaboratively to create supportive communities. They do so in a challenging context of providing safe and secure homes for people who have been marginalized and poorly served by the housing system and who suffer from physical and mental illness, behavioural issues, and substance dependencies. Given these complexities, it can be difficult for some tenants to meet the expectations of tenancies set out in the Act, putting other vulnerable tenants at risk of being subjected to harassment, violence, and predatory behavior.

Currently

The Province has recently made significant investments into Temporary Modular supportive housing, as well as additional units of permanent supportive housing. These units operate in a legal grey zone, and the non-profit organizations that provide this housing can struggle to manage the safety and well-being of all tenants without the ability to place reasonable restrictions on guests and to conduct wellness checks on tenants to ensure their safety.

Section 4(g)(v) of the *Residential Tenancy Act* indicates that the Act does not apply in a housing based health facility that provides hospitality support services and personal health care. Ambiguity exists because the Act, regulations or policy do not define what constitutes a housing based health facility. Inconsistent decisions by arbitrators have not provided clarity as to whether supportive housing is subject

to the Act. A recent Supreme Court of BC decision indicated that supportive housing is not exempt from the *Residential Tenancy Act* and blanket guest policies were not allowable.

Solution

Non-profit supportive housing providers seek changes to the *Residential Tenancy Act* that would allow them to balance the rights of tenants in their homes with the responsibility of a supportive housing provider to ensure the safety and wellbeing of all tenants. Supportive housing providers generally agree that a wholesale exemption from the RTA is not desirable, but seeking further clarification and recognition that the equitable operation of supportive housing has challenges that are unique and additional tools are required. Supportive housing is not the same as market housing for independent families and individuals, and the Act should not treat them as such.

The Act requires a clear definition of supportive housing, and an embedded section that allows for guest policies and wellness checks to be developed and enforced by the supportive housing provider. The choices that supportive housing providers make around wellness checks and guest policies may differ depending on the requirements of individuals living within a building and the community that has been fostered there, but the Act should define the extent to which such provisions can be enacted and enforced.

Recommendation 3: Allow a vacate clause for fixed-term tenancies for non-profits planning a redevelopment

Context

The redevelopment process for existing non-profit buildings is a lengthy one, often taking several years. Given the age of the non-profit sector's building stock, its low densities in rapidly densifying municipalities, and new housing supply and financing programs being rolled out federally and provincially, there is likely to be a significant number of affordable housing redevelopments in communities throughout the province. Because they result in a net increase of new units, these redevelopments are an important contribution to meeting the government's goals of 114,000 new affordable housing units over the next ten years.

Currently

In December 2017, the *Residential Tenancy Act* was updated to close the fixed term tenancy loophole that had been misused to dramatically increase rents in the private rental market. The unintended consequence is that it is no longer possible for non-profit landlords to make effective use of their units prior to redevelopment, and highly sought after affordable rental units may sit vacant for up to a year before redevelopment.

The previous practice of housing tenants in subsidized units for a fixed term prior to redevelopment, but without the landlord needing to pay for tenant relocation and moving costs, is no longer possible. Given the non-profit sector's mission drive toward affordability and the thin margins the sector operates within, any additional costs related to a redevelopment ultimately gets built into the rents in the new development. These costs include the lost revenue from empty units prior to redevelopment.

Solution

Allow for a non-profit exemption to the vacate clause in the fixed term tenancy regulations.

Recommendation 4: Reconsider change to the two-week timeline for filing for dispute on the Condition Inspection report at move-out

Context

Sections 35-36 of the *Residential Tenancy Act* addresses the requirements of non-profit landlords and their tenants in the completion of a Condition Inspection Report at the time of move-in and move-out. If there is a disagreement of one or more aspects of the Condition Inspection Report, details must be identified in the report, both parties must sign the report, and then an application for dispute resolution established.

Currently

The timeline permitted to file for a dispute resolution on a disagreed-upon Condition Inspection Report was established as four weeks in the past, and has since been changed to two weeks. The four week time period allowed for additional opportunities for negotiations between non-profit landlords, tenants and/or their representatives.

With the reduction to two weeks for filing, there is now less opportunity for negotiation, and an increased number of filings with the Residential Tenancy Branch. This process also requires that landlords must collect and submit substantial evidence to support their application for dispute resolution.

Additionally, while accurate quotes for contractor work/repairs are often required as part of the dispute resolution process, the ability to obtain professional service quotes within a two-week timeframe is often difficult for non-profit housing landlords to obtain. This has resulted in non-profit housing landlords making cost estimations without contractor input. These estimations are often made on the high side because once an estimate has been submitted to the Residential Tenancy Branch as part of a dispute application, it can be reduced, but cannot be increased.

Solution

Reintroduce a four-week timeframe to file for dispute resolution on a disagreed-upon Condition Inspection Report which would allow greater opportunity for successful negotiations between non-profit landlords and their tenants.

Recommendation 5: Develop a non-profit unit within the Residential Tenancy Branch and consider fast tracking non-profit applications

There is considerable frustration within the non-profit housing sector about the wait times for hearings, which contribute to significant monetary losses for non-profit landlords. Similarly, arbitrators are often not familiar with the non-profit sector and their operations as social purpose landlords. Significant time is often spent educating arbitrators during hearings, and decisions for and against non-profit landlords have been inconsistent.

Both the wait times and the inconsistency could be addressed by establishing a non-profit unit within the Residential Tenancy Branch that would see applications by tenants and landlords in non-profit housing fast tracked and arbitrated by a highly trained and experienced set of arbitrators. This will help to reduce

costs overall within the sector; costs which ultimately put upward pressure on rents that are charged in affordable housing developments.