Renters At Risk - Submission to the Rental Housing Task Force

We commend the work already done to amend sections of the Residential Tenancy Act and Regulations by the Government in 2017 and 2018.

The extreme housing affordability crisis is a key factor driving people from their homes. Stronger legislation is needed to provide some security of tenure for renters and preserve the limited existing affordable rental housing for long term tenants, families and vulnerable seniors.

BACKGROUND OF RENTERS AT RISK:

In 2006, a number of mass evictions started in the West End and tenants raised the alarm on the growing trend of evictions for renovations. The term "Renovictions" originated in the West End. Several group of tenants who won at the BC Supreme Court formed Renters At Risk to help other tenants and advocate for much needed policy changes to protect renters from unfair practices to get around yearly allowable rent increases. Since 2017, some changes have been implemented that will help close previous loopholes.

SUMMARTY OF CURRENT POLICY REQUESTS

We have two requests for review by the task force:

1. **Amend Bill 12, the section on Rights of First Refusal, to allow tenants to return at the same rent (or at the yearly allowable rent increase) instead of entering into a new tenancy agreement.**

   51.2 (1) In respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives a notice under section 49 (6) (b) is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so.

   Replace <u>"to enter into a new tenancy agreement"</u> with
   <u>"to get the first opportunity to occupy their rental unit at the same rent, plus any guideline increase that may have incurred, after the renovations or major repairs"</u>

   Bill 12 on Right of First Refusal without restricting rent is missing the point of the Ontario legislation and may not be effective in protecting tenants from market driven evictions.

2. **Remove the additional 2% from the yearly allowable rent increase formula of [CPI + 2%] to be just CPI or inflation.**

   Since 2004 when the 2% was added to the yearly allowable rent increase of inflation, maximum allowable rent increases total 52.7%. When compounding interest is factored in, rents on long term tenancies have potentially increased by **68%** .

Respectfully Submitted by Sharon Isaak, Janine Fuller, Sarah Berry, Co-Founders, Renters At Risk

APPENDIX 1: DISCUSSION ON (1) Rights of First Refusal and (2) Annual Rent Increases

1. Summary Discussion on "Rights of First Refusal" in Bill 12

> 51.2 (1) In respect of a rental unit in a residential property containing 5 or more rental units, a tenant who receives a notice under section 49 (6) (b) is entitled to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations or repairs for which the notice was issued if, before the tenant vacates the rental unit, the tenant gives the landlord a notice that the tenant intends to do so.
>
> *(Amendment request: replace " to enter into a new tenancy agreement" with "to get the first opportunity to occupy their rental unit at the same rent, plus any guideline increase that may have incurred, after the renovations or major repairs"

Background on"Rights of First Refusal" (ROFR)

In Ontario, Rights of First refusal legislation was introduced as a solution to protect tenants from renovictions. The Ontario legislation goes much further than what is proposed in bill 12, it preserves the existing rental rates, which is the key to removing ambiguity from the legislation so it works as intended to protect tenants from renovictions.

- "A tenant has the right of first refusal, which means that the tenant gets the first opportunity to occupy their rental unit at the same rent, plus any guideline increase that may have incurred, after the renovations or major repairs."

While well intentioned, the rights of first refusal language in Bill 12 to enter into a new tenancy agreement could be potentially worse than the status quo, even with the clarifying language in Hansard about intent. When legislation is amended, it can be tested in the courts. Any time tenants have to use the courts, they had already lost because the process itself is a huge barrier. If the Rights of First refusal language in Bill 12 does not limit returning rents, it could result continuing evictions under 49 (6) b and loss of affordable housing for long-term tenants.

REASONS FOR MORE PROTECTION IN RIGHTS OF FIRST REFUSAL (Bill 12)

- **LIMIT RENT INCREASES IS THE KEY TO ROFR WORKING TO PROTECT TENANTS:**

The whole point of the "Rights of first refusal" concept is to preserve a tenant's existing rental rates, which is the key to preventing renovations from being used as a way to end a lease to raise rents. By not including "returning at the same rent or guideline increase", it makes the legislation too ambiguous and removes rent control protection for tenants. Most tenants simply cannot go the RTB or court, the process is far too difficult.

Rights of first refusal must limit the rent increases to be effective deterrent to renovictions. At the very least, the returning rent needs to be capped to the yearly allowable increase guidelines

- **LEGISLATION IS AMBIGUOUS AND DOESN'T CLEARLY PROTECT TENANTS:**

Bill 12 on ROFR as written (returning at new rents) is ambiguous and could be argued by Landlords at the RTB to remove or replace the existing status quo provided by the courts in Berry et al (2007). Bill 12 is new legislation and while the intent clear in Hansard, the bill needs to be more clearly written. Any ambiguity in the Act is not good for the disadvantaged party, namely the tenant. The mere need to keep trying renovictions cases over and over at the RTB and in the courts with the same bad faith fact patterns indicates more clear protection is warranted.

- **POTENTIALLY REMOVES ACCOMMODATION PRECEDENT:**

The wording "enter into a new tenancy agreement" could be interpreted by the RTB replace a tenants existing (court established) ability to offer to accommodate the renovations, cited in the Berry court decision. (Summarized as follows: if a tenant is willing to accommodate the renovations, there is no need to end their tenancy to do the renovations and there will be no rent increase because the tenancy agreement remains in effect)

- **DEFINING SCOPE OF RENOVATIONS (THRESHOLD TO END A TENANCY):**

The RTB often upholds evictions under 49 (6) (b), citing the scope of most renovations require some period of vacant possession due to safety issues. The courts have overturned this literal interpretation in Berry et al (2007) and found that it wasn't reasonable to end a long-term tenancy for a short period of vacancy if the tenant was willingness to accommodate the renovations. However, the threshold for what timeline and scope of renovations trigger ending a tenancy remains largely undefined, is it 5 days, a month, 6 months? (Allman et al V Amacon 2007 BCCA addresses economies of scale, but not timelines of vacancy)

- **RTB PROCESS IS A BARRIER TO TENANTS:**

The very process of going to the Residential Tenancy Branch (RTB) and Court is onerous and difficult, few tenants are able to do it. ROFR as written is essentially the status quo, where tenants keep going to the RTB over and over about the same bad faith fact patterns. Renovictions are often used a way to drive out long term tents to get rent increases, but bad faith is very hard to prove. The process of going the RTB itself is a huge deterrent for tenants as it is very time consuming and requires access to advocates and computers to be successful. Eviction timelines are tight and the stress of preparing to lose your home while simultaneously going to court is extremely difficult. Only a fraction of tenants go the RTB, the average tenant, seniors, the poor, the disenfranchised are not able to access justice.

- **NEW LEASE LANGUAGE REMOVES MATERIAL TERMS IN EXISTING LEASE:**

"Entering into a new tenancy agreement" removes any rights outlined in an existing tenancy agreement, including rent such as rent or other various material terms including allowing pets in a lease. Therefore, being offered the right to come back with a new tenancy agreement may not protect the existing tenants who have pets.

2. Summary Discussion "Yearly Allowable Rent Increases"

In many areas of Vancouver and now BC, market rents have increased much more than the yearly allowable rental increases (CPI+2%). Landlords have historically used renovations as a way to end tenancy agreements to circumvent legislated yearly rent controls on units below market value.

In 2004, the RTA was amended to change the yearly allowed annual rent increase formula from the Consumer Price Index(CPI, or inflation), to add a 2% surcharge to CPI/inflation.

The intention of the additional 2% was to incentivise upkeep of rental supply, so landlords would not have to make an additional rent increase application to recoup additional costs of repairs, renovations and maintenance. However, this has not lead to an increase in general upkeep and periodic renovations of units. Landlords generally do not renovate or repair a unit until tenants move out, charging unrestricted rent increases on the units in a new tenancy agreement. Other jurisdictions require Landlords to provide receipts or apply for rent increases to prove that repairs and improvements were actually completed. Often tenants fear asking for basic repairs because they fear getting a renovicion notice instead.

Since the rent increase formula changed in 2004, Landlords continue to 'renovict' tenants under 49 (6) (b) and re-rent the renovated units at much higher rents (in many cases double the original rent) to get around the rent increase restrictions in an existing tenancy agreement.

In the 14 years since the 2% surcharge was added to CPI formula for yearly allowable rent increases, rents have potentially increased by 52.7% if a landlord raises rents every year (and many do). This figure does not factor in compounding interest calculations. (Of the 52.7%, 24.7% is CPI and 28% is the 2% additional increase introduced in 2004.

However, when compounding interest is accounted for, the 52.7 % rent increase translates into a <u>68%</u> increase in real dollars in 15 years if a landlord raised rents by the maximum allowable amount every year.

Most tenants have not seen a 68% increase in income over the same period. Many people cannot keep up and are priced out of their homes and neighbourhoods.

This severely affects seniors on fixed incomes who are forced to make hard choices about spending money on food or medications or housing and often they have nowhere else to go. The stress of a forced move can lead to declining health, becoming homeless and even death for some.

Summary of Yearly Allowed Rent Increases:

- 2018: 4.0%
- 2017: 3.7%
- 2016: 2.9%
- 2015: 2.5%
- 2014: 2.2%
- 2013: 3.8%
- 2012: 4.3%
- 2011: 2.3%
- 2010: 3.2%
- 2009: 3.7%
- 2008: 3.7%
- 2007: 4.0%
- 2006: 4.0%
- 2005: 3.8%
- 2004: 4.6%

APPENDIX 2: HISTORICAL OVERVIEW AND BACKGROUND OF RENTERS AT RISK:

In 2006, a number of mass evictions started in the West End and tenants raised the alarm on the growing trend of evictions for renovations. Several group of tenants who won at the BC Supreme Court formed Renters At Risk to help tenants and advocate for much needed policy changes to protect renters from unfair practices to get around yearly allowable rent increases. A large awareness campaign raised the issue in the media, the courts and with various levels of government for a number of years. The term "Renovictions" originated at one of the press conferences held in the West End at the Seafield with Renters At Risk.

Many of the tenants involved in the Renters At Risk movement over the last 12 years have since moved away from Vancouver and BC, but others remain and continue to advocate for much needed changes to BC's rental housing legislation.

RENTERS AT RISK CAMPAIGN (Text from 2007)

A Community Response to Mass Evictions of Tenants and Excessive Rent Increases

The Renters at Risk Campaign was started in response to an alarming trend of evictions-for-renovations. Over the past several years, hundreds of renters have lost their homes as property owners buy up buildings across the Lower Mainland and use loopholes in BC tenancy legislation to evict tenants for renovations. Loopholes in the Residential Tenancy Act allow property owners to obtain massive rent increases that would be otherwise prohibited.

The Renters at Risk Campaign aims to educate the public about this growing trend of evictions-for-renovations and rent increases, and to lobby the government to amend the Residential Tenancy Act to give tenants, among other options, the rights of first refusal as in Ontario.

Members of the Renters at Risk group include several tenants at Bay Towers, who have been engaged in Residential Tenancy Office arbitrations and costly Supreme Court proceedings over this issue with their landlord, Hollyburn Properties Ltd. They have recently received a precedent setting ruling that will profoundly help other renters in BC who are evicted for renovations.

(The Berry and Kloet decision: http://www.courts.gov.bc.ca/jdb-txt/sc/07/02/2007bcsc0257.htm

How are rental companies using the RTA to get around the rent increase cap in BC?

Most renters believe that they are safe because of rental caps in BC. Think again. Property owners use a number of tactics to get around the legislated 4% per-year rent increases:

• Landlords 'propose' massive "voluntary market rent increases" to renters, Some tenants unknowingly sign their rights away. Other tenants refuse to sign, and are then served with an eviction notice for renovations.

• Floor-by-floor and building-by-building, tenants are being evicted from their homes by landlords for cosmetic renovations to their suites. Apartment units are then re-rented for double the old rent.

The BC Liberals have allowed these mass evictions and rent increases to happen by amending the *Residential Tenancy Act* in 2004 to unjustly favour landlords over tenants.

The Dispute Resolution Process

Funding cuts have also made the Residential Tenancy Branch (RTB) and Dispute Resolution processes inaccessible to tenants. When tenants do reach Dispute Resolution, they find that not only is the Act imbalanced, but the process itself often favours property owners.

While some tenants in Richmond and Vancouver's West End were recently successful challenging their RTB decisions at the Supreme Court and the BC Court of Appeal, they found the process to be excessively difficult, emotionally taxing, financially draining and generally inaccessible. Yet despite all this, the BC Liberal government feels the Residential Tenancy Act and Dispute Resolution "system" is working well for BC citizens.

Renters At Risk calls on the Government of British Columbia to:

1. **Stop the evictions for renovations loophole by implementing the Right of First Refusal (Bill M205).** In Ontario legislation was implemented in 2007 to solve their eviction crisis. Right of first refusal allows landlords to do legitimate upgrades and gives evicted tenants the option of returning to their units after the renovations are completed at their original rental agreement and rate. If tenants opt not to return, they get 3 months compensation (BC gives only 1 month) and 120 days to move out (BC gives only 60 days).

   2018 Note: Bill 12 introduced in 2018 addresses several of these points, but fails to prevent unrestricted rent increases upon returning to a unit, which essentially is the current status quo.

2. **Remove the geographic market rent increase clause (section 23(1)(a) of the Regulations).** Landlords can apply to the Residential Tenancy Branch to bring "below market" rental units up to existing market rents in a geographic area. It means that tenants with long-term leases can have their rents increased above the yearly amount at any time, through arbitration. As rents get pushed up dramatically, renters are being pushed out of their homes. The Liberal Government added this clause instead of their retroactive rent increase clause in 2004.

2018 Note: This has now been removed in 2017

3. **Remove voluntary rent increase agreements (section 43(1)(c) of the RTA).** Landlords send letters to tenants asking them to agree to higher rent increases, and threaten them with eviction or massive rent increase applications if they refuse the "deal". Many tenants fear arbitration and unknowingly sign their rents away.

4. **Remove fixed term leases, unless by application.** Using tenancy forms from the Residential Tenancy Branch, landlords are now asking tenants to sign time-limited leases in this tight rental market before the 2010 Olympics. When the lease is up, the tenancy is over and does not revert to a month-to-month lease that is subject to the yearly allowable rent increase. The tenant must either move out on the date specified, or negotiate a new lease with an unrestricted rent increase.

2018 Note: This has now been removed in 2017

Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator) Hollyburn
2007 BCSC 257
http://www.courts.gov.bc.ca/Jdb-txt/SC/07/02/2007BCSC0257.htm

3 main points in the Berry decision that support tenants' rights:

1) **If a tenant agrees to move out temporarily to accommodate renovations, they should not be evicted because the tenancy agreement doesn't need to end to do the renovations.**
2) **If vacancy is only required for a brief period of time, it would not be reasonable to evict someone from their home permanently.**
3) **The Act is designed to support security of tenure. Thus, any ambiguity in interpreting the Act should be resolved IN FAVOUR OF THE TENANT, who is the more vulnerable party.**