

8 October 2020

The Honourable Sonia Furstenau
MLA Cowichan Valley
164 Station Street
Duncan
BC V9L 1M7

Dear Ms. Furstenau,

Legislative Recommendations relating to the Tenants Housing Crisis in BC

We wish to bring attention to the housing crisis for tenants in British Columbia as a key platform issue in the upcoming election. This crisis continues to be defined by the lack of adequate, affordable housing, the lack of strong protections and rights for tenants, and a recurring cycle of displacement and disempowerment. Outlined below are priority areas of legislative actions we strongly recommend.

As the pandemic continues to threaten the health and safety of all of us, now more than ever, BC tenants need stronger housing protections in order to feel safe and secure in their homes. Tenants are clearly bearing the burden of this housing crisis,¹ not landlords.

Tenants in BC depend on the legal system to keep them safe and secure and to allow them to be housed with dignity. Accordingly, we ask government to implement legislation that recognizes the immediate risks of tenants losing their homes during a public health crisis and ensures long-term security and tenant protections. We believe that elected government should swiftly take the following actions:

- mandate rent forgiveness;
- provide tenants with flexibility in paying rent to landlords; and
- provide tenants who are evicted more time to move.

Mandate Rent Forgiveness

Mandating rent forgiveness and providing tenants with flexibility in providing rent to landlords is the only way to prevent unjust and unfair evictions.

¹ "There is a clear class difference between renters and owners in BC. Renters in the survey reported having much lower incomes, including nearly two-thirds with household incomes under \$60,000, compared to owners with mortgages (27 per cent reporting under \$60,000 household income)." <https://www.policynote.ca/housing-crisis-pandemic/>

Many tenant households in BC entered the pandemic in a precarious financial state and have only been further impacted by the ferocity of the economic downturn. Overall, tenants report the highest severity of income loss. Among tenants, 54 per cent report loss of income in their households, compared with 48 per cent of owners with mortgages, and just 27 per cent of owners without mortgages. In fact, a third of all tenants who have lost income because of the pandemic have reported a loss of 60 per cent or more of their take-home pay.²

For those renters facing household income loss, about two-thirds were hit with either temporary layoffs or job loss, while the other third still experienced a reduction in work hours, reduced business income, or other loss.³ It is clear that renters are dramatically and disproportionately financially affected by the pandemic, which will inevitably impact their ability to pay rent and stay in their homes. Rent forgiveness and flexibility is more than a benefit, it is a necessity.

Tenants are also more financially precarious due to lack of savings. Nearly one-third of renters report that they had less than a month's savings to survive on, and nearly two-thirds had two months' savings or less. In contrast, the vast majority of owners without mortgages reported having three months' savings or more, and 42 per cent reported having a year's savings or more, while owners with mortgages fell in between these two groups in terms of their level of savings.⁴

Tenants who accumulated rent arrears during the affected period will invariably fall even further behind because they are required to enter into repayment plans for those outstanding arrears. The result of this is simply that more tenants will be evicted.

Provide Tenants with Flexibility in Paying Rent to Landlords

The law now requires Residential Tenancy Branch (RTB) arbitrators to grant an order of possession to a landlord if a tenant is late or short on rent by any amount. CLAS is contacted frequently by tenants who have been evicted because they were short on rent for the first time due to a personal hardship that interrupted their income. Or, we assist tenants who have provided the full rent within the 5-day grace period, but are still evicted because their landlord took advantage of the direct request process for non-payment of rent. These types of evictions are punitive, and impact the people who are already hardest hit by financial insecurity, as well as the already overloaded social systems that must now support them.

The aim of the *Residential Tenancy Act* (the "RTA") and the RTB should be to correct the default on rent, not to immediately end a tenancy when a default arises. The costs of evictions to tenants, their families and the community are too high not to use all means available to avoid this result. The government's focus should be on preventing British Columbians from losing their homes, not to effectively insure a landlord's return on investment for those who are in a strong financial position. Accordingly, we propose the following legislative changes:

- I. Increase the 5-day grace period to provide rent to the landlord to 30 days pursuant to section 46(4) of the RTA.

Presumably, the default on rent will occur in the beginning of the month. A grace period of 30 days allows the tenant a reasonable amount of time to correct the default with minimal impact on the landlord. If the tenant is able to pay within this time frame, the landlord will not experience any loss and will still receive rent for the month the tenant was in possession of the rental unit.

² <https://www.policynote.ca/housing-crisis-pandemic/>

³ <https://www.policynote.ca/housing-crisis-pandemic/>

⁴ <https://www.policynote.ca/housing-crisis-pandemic/>

II. Provide RTB arbitrators with discretion to cancel a rent debt, or order a rent repayment plan where it is fair and just to do so.

If a tenant receives a notice to end tenancy for non-payment of rent or utilities, and then fails to pay rent within the 5-day grace period or dispute the notice to end tenancy, they are conclusively presumed to have accepted that the tenancy has ended. This is true even if they can pay the full amount owed within a reasonable amount of time without creating significant hardship for the landlord. RTB arbitrators are therefore precluded from considering many legitimate reasons tenants have for being late with rent or utilities. Barring arbitrators from relieving tenants from eviction in such situations inflicts needless distress on many tenants and results in unfair and unjust evictions.

III. Eliminate the direct request process for non-payment of rent.

Section 46(4) of the RTA states that a notice to end tenancy for non-payment of rent has no effect if the tenant pays the outstanding rent within the current 5-day grace period. However, it is not uncommon for tenants to pay the outstanding rent within the grace period and still receive an order of possession from the landlord. Since this process is *ex parte*, the tenant is not able to participate and the RTB arbitrator could make a decision without ever knowing that the tenant did in fact pay rent. Given the procedural frailties and lack of fairness inherent in an *ex parte* process, simple reform will not resolve the problem. Complete abolishment of the direct request process for non-payment of rent is required.

Additionally, we cannot rely on the review consideration process to resolve this problem. Although fraud is a ground for review consideration, many tenants pay rent in cash and will not possess the documentary evidence required to be successful in their application for review consideration. This change would prevent landlords from using this process to evict tenants who are honestly making their best effort to pay rent and would also be a better system-wide use of the RTB's finite resources. It will also prevent those landlords with bad intentions from using this process to evict tenants whom they are unable to evict by fair means.

Although some small landlords may rely on rental income to pay their mortgages, struggling landlords are not the typical landlord. According to the most recent (2016) Statistics Canada's Survey of Financial Security (SFS), 62 per cent of the almost 15.4 million households in the country (9.5 million) own their principal residence and 38 per cent (5.9 million) rent. Among homeowners, 7.6 million own only their residence and no other real estate property; and of these, only 340,000 households rent a part of the property. That's just 4 per cent of all homeowners who are acting as landlords, and there is no statistical evidence that suggests they face any financial hardship in doing so⁵.

Most of Canada's 5.9 million tenant households do not rent from the 340,000 homeowners who rent out only a part of their residence. In fact, the 20 biggest landlords in the country owned 20 per cent of all rental suites in 2017 and most of these businesses are not small private companies, they are Real Estate Investment Trusts (REITs), which are financial vehicles that manage assets on behalf of investors⁶.

Provide Tenants who are Evicted More Time to Move

Whilst government's focus should be on preventing evictions in the first place, providing tenants with more time to vacate when evicted could also prevent unnecessary displacement and homelessness. Currently, when a tenant is required to vacate their rental unit through a decision from the RTB, they are typically provided only 2 days to do so. In

⁵ <https://behindthenumbers.ca/2020/03/31/struggling-homeowners-not-your-typical-landlord-the-case-for-rent-forgiveness/>

⁶ <https://behindthenumbers.ca/2020/03/31/struggling-homeowners-not-your-typical-landlord-the-case-for-rent-forgiveness/>

reviewing a total of 992 RTB decisions available online, 84.7 per cent of the orders of possessions granted to landlords were effective within 2 days of receiving it.⁷ This means that for the vast majority of all orders of possession, tenants have **just 2 days** to find another place to live and move out.

Clearly, it is very difficult for anyone, no matter their situation, to vacate a rental unit on 2 days' notice. This difficulty is exacerbated for tenants that have special housing needs (subsidized housing, affordable market housing, or housing that is accessible if the tenant has a disability), and the RTB makes no consideration for these circumstances. Any tenant may have trouble vacating their unit in 2 days, but these challenges are compounded for vulnerable tenants. Moreover, there are tenants who face discriminatory and systemic barriers when searching for new housing, especially those on income assistance. Orders of possession effective on 2 days' notice put many tenants, and especially the most vulnerable tenants, at substantial risk of homelessness despite the fact that there is minimal, if any, hardship to landlords.

Most egregiously, given the short turnaround time to vacate, tenants who want to challenge an RTB decision granting the order of possession through either the BC Supreme Court or the RTB only have 2 days, or less, to do so. Since weekends are also included in that calculation, some tenants have **even less than 1 day** to obtain legal advice and prepare legal documents.

Accordingly, we propose the following actions:

- I. Impose a requirement that orders of possession cannot be enforceable for a minimum of 30 days.

This will remove the urgency often associated with evictions by allowing tenants a reasonable amount of time to either secure other accommodation or challenge the RTB decision to grant the order of possession. Removing the urgency from the eviction process will also reduce unnecessary appeals to the BC Supreme Court and the RTB. For many tenants who cannot move out urgently, an appeal to the BC Supreme Court and RTB is the only way to avoid homelessness or displacement, which places unnecessary pressure on both tenants and the legal system.⁸

- II. Mandate arbitrators to consider tenant hardship when determining the effective date of the order of possession.

There cannot be a one-size fits all approach to when a tenant should be required to vacate. For many tenants, the 30-day minimum order of possession described above may not be enough time to vacate the rental unit. For example, a tenant may have upcoming surgery that requires a recovery period of 2 months or more. Or a tenant who has nowhere else to go may have been advised by BC Housing that it will take 3 months for them to be placed in subsidized housing. In these situations, the arbitrator should be required to listen to a tenant's submissions on why they may need more than 30 days to vacate the unit and make their decision accordingly.

The housing crisis is a crisis of tenant's rights and housing justice. The housing crisis requires legislative change to truly improve safe, affordable housing for tenants, particularly those in greatest need. The legislative changes proposed above would bring a much needed sense of security and comfort to tenants, especially at a time when many BC households are navigating an uncertain economic future.

⁷ Decisions reviewed were from October 1 to 31, 2019.

⁸ Landlords could still be able to retain their ability to end the tenancy early in exceptional circumstances.

We thank you for considering our recommendations.



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