



To GP - Sept. 4 2012

To: Mayor and Councillors
From: Dena Kae Beno
Affordable Housing Coordinator
Date: August 27, 2012
File:
Re: **Background Information - B.C. Residential Tenancy Act/Branch and a Standards of Maintenance Comparison**

At the request of Councillor Barnes, I am providing you with background information about ACORN Canada's request for municipal support of a Union of British Columbia Municipalities (UBCM) resolution calling for strengthened Residential Tenancy Act (RTA) policies and enforcement provisions.

Background Information

ACORN Canada is an independent, national organization representing the voices of low to moderate income households across Canada. The organization was formed in 2004 and is comprised of 30,000 members with 20 neighbourhood chapters in 7 Canadian cities. It strives to address issues that adversely impact lower income households and advocate for long-term social and economic change.

Recently, ACORN Canada sent the City of Richmond correspondence requesting support from local municipalities to bring forward a UBCM resolution call for amendments to British Columbia's Residential Tenancy Act policies, dispute resolution process, and enforcement provisions (**Attachment 1**).

The purpose of ACORN's request is to also advocate for support for BC municipalities to effectively address conditions related to unhealthy rental buildings, by imposing Provincial minimum standards of maintenance requirements, including but not limited to:

- mould,
- lack of heat and water,
- repair deficiencies,
- sub-standard living conditions, and
- adequate policies and resources to enforce RTA policy requirements.

An assessment of Acorn's position and related information with the current City of Richmond Standards of Maintenance Bylaw

On December 11, 2006, the City of Richmond adopted Rental Premises Standards of Maintenance Bylaw No. 8159. When comparing the City's Bylaw with ACORN Canada's Standard of Maintenance recommendations, the Bylaw includes standard requirements for the continuous provision of services and utilities in rental buildings (i.e. water, heat and light); however, the current Bylaw doesn't include provisions to address mould, repair deficiencies, and sub-standard living conditions.

Draft wording of the UBCM Resolution

A draft Union of British Columbia Municipalities (UBCM) resolution is included as **Attachment 2**.

Please contact me if you have any questions or require additional information.



Dena Kae Beno
Affordable Housing Coordinator
Community Social Development
Community Services Department
(604) 247-4946

DKB:dbk

Att. 2

pc: SMT
John Foster, MCIP, Manager, Community Social Development
Terry Crowe, Manager, Policy Planning
Wayne G. Mercer, Manager, Community Bylaws



Dear Councillor,

ACORN Canada is actively advocating for better laws and enforcement to ensure that every British Columbian has a Healthy Home in which to live. As a part of this we are writing city councillors across the province to provide them an opportunity to take the lead on this initiative in their respective municipalities

We are an organization of working people who understand the problems of precarious housing through our lived experience. A majority of our membership in the lower mainland live in market rental housing, and much of the affordable rental stock is rife with deficiencies that negatively affect the health and wellness of our families. From mold, to lack of heat in the winter, these deficiencies are fixable for our landlords but we have little recourse should they refuse to invest in their properties. Due to the toothless Residential Tenancy Act and the massive regulatory hole left by municipalities who lack minimum requirements of standards of maintenance – tenants in cities across BC have nowhere to turn to ensure that they have healthy rental housing.

Attached is an open letter that we have sent to the Minister Responsible for Housing, Rich Coleman, outlining the significant flaws we have found in the Residential Tenancy Act. We are awaiting confirmation of a meeting with the Minister, but to date he has refused to meet with ACORN Canada.

Also attached is a resolution that will be put forth at the UBCM conference in Victoria this September. Spearheaded by the work of ACORN Canada, the City of Surrey Councillor Judy Villeneuve drafted this call for the province to empower BC municipalities so that they can more effectively address this pertinent issue of unhealthy rental buildings within their respective cities.

ACORN Canada is asking councillors and mayors across BC to support tenants in your cities by doing the following:

1. Follow the lead taken by the City of Surrey and begin to explore ways in which your city can pass a standard of maintenance by-law.
2. Pass a resolution through your council calling on the relevant ministries in the Province of BC to:
 - a. Give more resources and power to fully enforce comprehensive standards of maintenance laws.
 - b. Perform a policy review on the Residential Tenancy Act

If you have any questions or would like to learn more about our Healthy Homes Campaign please contact John Anderson at our office – 778 385 4385 or bcacornva@acorncanada.org

Thanks,

Sue Collard, Preeti Misra and Dave Tate
BC ACORN's Elected Board Reps.

RES. R12-1058

**AMENDMENTS TO THE RESIDENTIAL TENANCY ACT DISPUTE RESOLUTION
PROCESS**

WHEREAS the Province of British Columbia has enacted legislation through the Residential Tenancy Act (RTA) to protect tenants from unacceptable living conditions;

AND WHEREAS Part 5 of the RTA outlines a process for resolving disputes that provides the Residential Tenancy Branch (RTB) with the authority to make any order necessary to give effect to the rights, obligations and prohibitions under the RTA, but in order to enforce an RTB order, it must be filed in the Court and enforced as a judgment or an order of the Court;

AND WHEREAS tenants who wish to enforce their rights under the RTA must navigate a complex bureaucratic and legal process and be prepared to spend significant amounts of time and money to engage with the process, creating barriers for tenants to access the RTA, especially tenants with low incomes or other vulnerabilities;

THEREFORE BE IT RESOLVED that the Union of BC municipalities urge the Province of British Columbia to increase the effectiveness and accessibility of the residential tenancy dispute resolution process by amending the RTA such that the RTB enforces their dispute resolution decisions or orders, and does so within a reasonable timeframe.

ON MOTION, was ENDORSED by Surrey Mayor and Council on May 7, 2012.



Honourable Rich Coleman
Minister Responsible for Housing
Room 128, Parliament Buildings
Victoria, BC V8V 1X4

July 19, 2012

Dear Minister Coleman,

It is clear that the current dispute-based system of residential tenancy law is completely ineffective in ensuring tenants live in Healthy Homes. As the Minister Responsible for Housing, we are writing to ask that you take immediate steps

1. To address the inability of current residential tenancy law and provincial enforcement mechanisms to deal with the deliberate and systemic failure by private landlords of multi-unit residential properties to abide by their legal obligations to inspect, maintain and repair;
2. To address the failure of the Province to ensure that tenants not only live in Healthy Homes but have the right to live in Healthy Homes without fear of coercion, intimidation, harassment or abuse; and
3. To initiate a Provincial investigation into and audit of the conditions of buildings and welfare of tenants in buildings owned by derelict landlords, including investigating their residential tenancy businesses.

As you are aware, the situation at 12975 106 Ave, Surrey BC offers an extreme example of the failures of current residential tenancy law. The owners of this apartment building, a building inhabited by ordinary working people, are landlords with a large portfolio of properties throughout BC.

In October 2007, one of their buildings, an East Vancouver property similar to the one in Surrey, suffered a catastrophic roof collapse after years of neglect including chronic leaking. All of the tenants were evacuated, losing their homes, personal belongings, neighbours and community.

Despite the events in East Vancouver, the owners continued in exactly the same path in Surrey. When issues regarding the roof, multiple leaking suites and other water ingress issues were brought to their attention in 2008-2009, they ignored the problems, ordered patch repairs, and promptly rotated new tenants into suites without properly addressing the repair issues.

Today, the owners show no signs of changing course, despite multiple proceedings and the levying of \$115,000 in administrative penalties. Nor have the owners been required to pay this fine. Recently, they made their fifth attempt to evict the one tenant who is speaking out about conditions at the building.

There has still been no comprehensive assessment of water ingress issues or of the extent of structural decay to the residential property at 12975 106 Avenue. The level of risk to tenants remains unknown, the extent of needed repairs remains unknown and there are no timelines established for any repairs that might be necessary to address these unknown risks.



Similar issues have come to light regarding one of their New Westminster properties, where, if reports are true, the same systemic failure to address repair issues and pattern of repeated patch work has persisted for years. Over the past decade other residential buildings held by the same owners have had publicized problems, including properties on East Hastings and on Wall Street, both in Vancouver. The large number of properties involved suggests that these actions are far from accidental and form part of a systemic pattern of behaviour.

The current system clearly allows landlords to profit from deliberate strategies of neglect that are inherently abusive of tenants. There are many ACORN members who live on fixed incomes or disability pensions. They do not have the resources to move, and many do not have the resources to dispute the conditions that persist in their suites and buildings.

As our case indicates, disputing does not guarantee repairs even when they are ordered. The Surrey apartment building continues to leak, the administrative penalties have not been paid and little has changed for tenants in the building in the two and a half years of ongoing dispute. The dispute system fails tenants when and where they need it most because the RTB does not have the power to ensure repairs get done.

It is clear to us that steps need to be taken immediately. Real measures need to be taken now to address the risks being faced by tenants today in buildings that have been deliberately allowed to decay. Real measures need to be taken now to prevent further abuse including the implementation of effective, proactive enforcement mechanisms that are capable of identifying and stopping systemic neglect and deliberate disinvestment by landlords. Real measures need to be taken now before more people suffer as a result of neglect, exploitation, indifference, and political unwillingness to take action.

It is our considered opinion that both amendments to the *Residential Tenancy Act* and changes to Residential Tenancy Branch operations, policy and procedure are needed in order to address the systemic problems highlighted by our case, but endured by many ACORN members and other tenants.

Amendments to the *Residential Tenancy Act*

- We strongly suggest that provincial minimums for standards of maintenance be incorporated into the Act.
- We suggest that provincial minimums for standards of maintenance be coupled with statutory fines for landlords who allow standards of maintenance deficiencies to persist, with fines required by the Act at particular points. These fines should not be negotiable.
- We suggest introducing a reciprocal deadline for landlords to do repairs (similar to deadline for tenants to pay rent).
- We suggest introducing a provision protecting tenants against retaliatory eviction.
- We suggest further development of the administrative penalties provisions in the Act, based on a number of concerns outlined below.



- The investigative powers in the Act are not very well defined. We suggest that these be developed further in order to provide for the operations of a new investigative unit within the RTB (see below). This investigative unit should have the powers necessary to investigate systemic neglect and deliberate disinvestment by landlords. The function and purpose of this investigative unit should be clearly set out in the Act, so as to provide guidance as to when the Branch should initiate an investigation on its own initiative, including investigations where there is no order that has been breached.
- There is not enough guidance in the legislation as to when it would be appropriate for the RTB to offer a settlement and/or negotiate away an administrative penalty that has been levied, or as to whether this is intended to be used as an enforcement mechanism.
- Currently, the Act does not provide standing in the complaint process to a person who has brought forward a complaint that has been accepted for investigation.

Residential Tenancy Branch Operations – Investigative Unit

- The Residential Tenancy Branch needs an investigative unit dedicated to effective and proactive enforcement of administrative penalties. The Residential Tenancy Branch is currently under-resourced and under-staffed, and lacks the capacity to make effective use of the administrative penalty provisions in the Act. Prior to our case, the Branch had never opened an investigation under the administrative penalties provisions in the Act.
- The new investigative unit should have the staff, resources and training necessary to function effectively. Staffing and resourcing this investigative unit should not come at the expense of other Branch operations. New and additional resources are needed for the Branch to fulfill its mandate under the Act.
- The capacity of the Branch to recognize and address systemic neglect by landlords is undeveloped. The new investigative unit should keep records of complaints against landlords for repair issues, and document and track systemic neglect by landlords. Monitoring of problematic landlords should automatically trigger an investigation at a certain point. The investigative unit should have the authority to inspect a residential property and make findings regarding compliance with the Act.

Residential Tenancy Branch Operations -- Dispute Resolution Proceedings

- The capacity of the Branch to address complex issues such as those raised in our case is limited. The Branch currently does not have an effective protocol for scheduling longer and/or in-person hearings regarding complicated issues. We have had a number of different hearings before the Branch regarding this building. These hearings involved extensive photographic and affidavit evidence and detailed legal submissions. On each occasion, we were adjourned multiple times as a result of the inadequate time set aside for hearing the case. This has had a real impact on the tenant and her family, as she has had to miss a day of work for each adjournment.



- The number of RTB offices should be increased and the RTB should be provided with more resources to deal with an increasing caseload. More trained Information Officers should be available to provide initial guidance to tenants as to how to initiate and prepare for dispute resolution.

Residential Tenancy Branch Policy and Practice

- Section 65(1)(a) of the Act allows a Dispute Resolution Officer to order a tenant to pay rent to the Branch in trust as a result of landlord failure to perform repairs and maintenance or to provide services and facilities. However, the Branch has adopted a policy that precludes Dispute Resolution Officers from making this type of order. This should be changed so that tenants may direct their rent to the Branch where the landlord has been found to be in non-compliance with statutory obligations for repair and maintenance.

As a final note, we would suggest that the number of amendments and revisions our experiences have led us to believe are needed is indicative of significant problems with a dispute-based model. Perhaps it is time to think outside this model in our attempts to ensure that tenants can live in buildings that are not allowed to decay to the point they are uninhabitable or pose serious threats to tenants' well-being.

Within a dispute-based model enforcement mechanisms are time-consuming, unwieldy, and invariably favour those with the most resources, and neither the Province nor the municipalities have shown any significant interest in enforcement despite the fact they have the capacity to do so and despite the fact that such actions may be warranted. When the systems that are in place fail so spectacularly to ensure even a minimum reciprocity in results, it is clearly time for a change.

Thank you for your attention to this serious issue affecting tenants around the Province.

Sincerely,

Susan Collard
Tenant at 12975 106 Ave, Surrey
Chair of Whalley/City Centre Chapter of ACORN Canada

cc. Bruce Ralston, Member of the Legislative Assembly for Surrey-Whalley
cc. Joe Transolini, Housing Critic for the BC NDP
cc. Andrew Sakamoto, Executive Director, TRAC

AMENDMENTS TO THE RESIDENTIAL TENANCY ACT DISPUTE RESOLUTION PROCESS

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AND WHEREAS Part 5 of the RTA outlines a process for resolving disputes that provides the Residential Tenancy Branch (RTB) with the authority to make any order necessary to give effect to the rights, obligations and prohibitions under the RTA, but in order to enforce an RTB order, it must be filed in the Court and enforced as a judgement or an order of the Court;

AND WHEREAS tenants who wish to enforce their rights under the RTA must navigate a complex bureaucratic and legal process and be prepared to spend significant amounts of time and money to engage with the process, creating barriers for tenants to access the RTA, especially tenants with low incomes or other vulnerabilities;

THEREFORE BE IT RESOLVED that the Union of BC municipalities urge the Province of British Columbia, in consultation with municipal governments, to establish minimum occupancy standards for rental properties and to increase the effectiveness and accessibility of the residential tenancy dispute resolution process by amending the RTA such that the RTB enforces their dispute resolution decisions or orders, and does so within a reasonable timeframe.