

# Proportionality

A legal framework to make eviction  
a last resort in Canada



## About us

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The Canadian Centre for Housing Rights (CCHR) is Canada's leading non-profit organization working to advance the right to housing. Founded in 1987, CCHR has worked tirelessly for over 35 years at the intersection of human rights and housing. We advance the right to housing by serving renters to help them stay housed, providing education and training about housing rights, and advancing rights-based housing policy through research, policy development, advocacy and law reform.

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## The problem

Evictions are an unfortunate reality in Canada. Nearly one out of 10 Canadian households (7%) report that they have been evicted at some point in their lives.<sup>1</sup> Provincial laws use evictions to address a wide range of issues, such as financial difficulties leading to unpaid rent, disputes between neighbours, safety concerns, owners' changing plans, and more. Undeniably, these issues need to be addressed. However, eviction is a blunt instrument which has devastating impacts on renter households. It should only ever be used as a last resort.

In Canada, evictions are not always a last resort. Eviction laws in Canada do not adequately address alternatives to eviction. Instead, laws frequently treat eviction as the only solution available to address tenancy issues. To take just a few real-life examples of how alternatives to evictions are not systematically pursued:

- In Manitoba, a tenant is evicted because she owes \$450 in rent – even though she can pay the full amount by the next day.<sup>2</sup>
- In Newfoundland, a tenant is evicted even though he can afford his rent because, during the COVID-19 pandemic, he paid half of his rent at the start of each month and half in the middle of the month.<sup>3</sup>
- In Prince Edward Island, a tenant asks for a chance to pay her rent arrears to avoid eviction. The Director of Residential Rental Property refuses to even consider the request before ordering the eviction.<sup>4</sup>
- In Yukon, a landlord is unable to prove that their tenant has done anything to warrant eviction – but eviction is ordered anyway.<sup>5</sup>
- In Saskatchewan, a tenant is evicted because they owe \$5.<sup>6</sup>
- In Quebec, a tenant is evicted because they owe \$2.<sup>7</sup>

In each of these cases, and countless others, a renter lost their home unnecessarily because the law did not require that the adjudicator consider any alternative to eviction.

In order to pursue eviction as a last resort, proportionality can be used as an assessment tool.

## Defining proportionality

Proportionality is a legal framework for deciding whether an eviction is necessary. Under a proportionality framework, a household can only be evicted if all of the following are true:

- The eviction must have a legitimate objective.
- Eviction must be necessary to achieve the objective, and there must be no reasonable alternative.
- The consequences of eviction must be proportionate to the objective.

The proportionality framework requires that an adjudicator consider all the circumstances of the case, and only order eviction if they are satisfied that all three of the above conditions have been met. The adjudicator must consider the interests of both the tenant and the landlord, but must come to their own objective conclusion as to whether eviction is really necessary.

The proportionality framework was originally developed by the European Court of Human Rights.<sup>8</sup> Council of Europe member states are required to incorporate the framework into their eviction laws. A household facing eviction in Europe can appeal to the Court of Human Rights if the proportionality of the eviction is not properly considered.

The proportionality framework has also been adopted by the United Nations Committee on Economic, Social and Cultural Rights, which uses it to determine whether evictions around the world are compliant with the right to housing under the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>9</sup> Almost every country in the world, including Canada, has ratified the ICESCR. Hence, countries which carry out evictions without a proportionality assessment are in contravention of their obligations under the ICESCR. Unfortunately, there is no legal mechanism to force Canada and other non-compliant countries to meet their obligations.

## Proportionality in Canadian law

Eviction laws are different in every province and territory. In Ontario,<sup>10</sup> Saskatchewan,<sup>11</sup> Quebec,<sup>12</sup> and Northwest Territories,<sup>13</sup> legislation explicitly allows adjudicators the discretion to consider alternatives to eviction. Court and tribunal decisions have confirmed that adjudicators also have that discretion in Alberta,<sup>14</sup> New Brunswick,<sup>15</sup> and Manitoba,<sup>16</sup> and in some cases in Yukon.<sup>17</sup> The law gives adjudicators little to no discretion in British Columbia.<sup>18</sup> The law is unclear in Nova Scotia,<sup>19</sup> Newfoundland,<sup>20</sup> Nunavut,<sup>21</sup> and Prince Edward Island.<sup>22</sup>

This means that in some parts of Canada, but not others, adjudicators have the authority to avoid unnecessary evictions by considering reasonable alternatives. This is an important policy which makes a real difference in the lives of countless renter households.

However, no Canadian law requires that adjudicators follow a proportionality framework in eviction decisions. Hence, while adjudicators are often *allowed* to choose alternatives to eviction, they are not *required* to refuse eviction in cases where reasonable alternatives are available. In every part of Canada, renter households continue to be evicted unnecessarily.

## The solution – how to implement proportionality in Canada

Proportionality in eviction is an important legal framework to ensure that eviction is always treated as a last resort. Provinces and territories can implement the framework by:

- Amending their residential tenancies laws to ensure that adjudicators have the authority to choose alternatives to eviction.
- Amending their residential tenancies laws to direct that adjudicators *must* choose alternatives to eviction, except in cases where eviction is the only reasonable solution.
- Training adjudicators to treat eviction as a last resort.
- Ensuring that tenants have full, fair access to legal advice and to tribunal proceedings so that they can participate in eviction decisions.

## Proportionality as a tool to respond to Canada's affordability crisis

The proportionality framework is an important tool for preventing unnecessary evictions. However, it cannot solve the housing crisis or fully protect households from eviction by itself. That is because it does not address the underlying causes of problems that lead to eviction.

For example, if a household falls behind on their rent, the proportionality framework can protect them from eviction by giving them the opportunity to pay back the rent on a repayment plan. However, this will not be enough if the rent is no longer affordable because of inadequate rent regulation that leads to unaffordable rent increases.

Governments must ensure that renters not only have access to affordable homes but are also able to maintain their tenancy. It is important that our governments implement eviction prevention policies like the proportionality framework to stabilize housing and reduce housing precarity. However, proportionality is not a silver bullet and the road to housing security for renters across Canada will also require governments to implement policies that address the root causes of our housing affordability crisis.

## Endnotes

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- <sup>1</sup> Statistics Canada. (2022). *Evictions in Canada, 2021*. July 21, 2022. <https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2022046-eng.htm>
- <sup>2</sup> Manitoba Residential Tenancies Branch (RTB), ORDER NO: 2002W3538 & 2002W3539 (2002) (Unpublished decision available from the RTB through a [subscription service](#)).
- <sup>3</sup> [Newfoundland Residential Tenancies Tribunal, Decision 21-0043-03 \(2021\)](#).
- <sup>4</sup> [Island Regulatory and Appeals Commission, Order LR14-10 \(2014\)](#).
- <sup>5</sup> [C.E. v F.M., 2018 YTRTO 1 \(CanLII\)](#).
- <sup>6</sup> [PA Community Housing v Pederson, 2020 SKORT 1319 \(CanLII\)](#).
- <sup>7</sup> [Coopérative d'habitation l'Art de Vivre c. Paré, 2012 CanLII 131577 \(QC TAL\)](#).
- <sup>8</sup> The framework applies to all human rights in Europe. Its application to the human right to the home was confirmed in [McCann v. the United Kingdom, no. 19009/04, ECHR 2008](#) at para. 50.
- <sup>9</sup> [Lopez Alban et al. v. Spain, E/C.12/66/D/37/2018 \(2019\)](#); [Rosario Gomez-Limon Pardo v. Spain, E/C.12/67/D/52/2018 \(2020\)](#); [El Goumari and Tidli v. Spain, E/C.12/69/D/85/2018 \(2021\)](#); [El Ayoubi and El Azouan Azouz v. Spain, E/C.12/69/D/54/2018 \(2021\)](#); [Soraya Moreno Romero v. Spain, E/C.12/69/D/48/2018 \(2021\)](#); [Lorne Joseph Walters v. Belgium, E/C.12/70/D/61/2018 \(2021\)](#).
- <sup>10</sup> [Residential Tenancies Act, 2006](#), SO 2006, c 17, s.83.
- <sup>11</sup> [Residential Tenancies Act, 2006](#), SS 2006, c R-22.0001, s.70(6); [Williams v Elite Property Management Ltd., 2021 SKQB 46 \(CanLII\)](#).
- <sup>12</sup> [Civil Code of Québec, CQLR c CCQ-1991, s.1973](#); [Sylvania Construction c. Boretsky, 2011 QCCQ 7008 \(CanLII\)](#).
- <sup>13</sup> [Residential Tenancies Act, RSNWT 1988, c R-5, s. 63\(4\)](#).
- <sup>14</sup> [615247 Alberta Ltd. v. Wimperis, 2007 ABQB 55](#); [Gosine v. Hepas, 2008 ABQB 321](#).
- <sup>15</sup> [Nethervue Park v. MacKinnon et al., 2013 NBQB 15](#); [Haldor Ltd v Ross, 2022 NBQB 14](#).
- <sup>16</sup> Unpublished decisions of the Manitoba Residential Tenancies Branch (RTB), available from the RTB by [subscription service](#).
- <sup>17</sup> [G.H. v H.A., 2021 YTRTO 5 \(CanLII\)](#); [A.J. & R.J. v F.N., 2021 YTRTO 4 \(CanLII\)](#); [J.B. & M.H. v E.H., 2020 YTRTO 9 \(CanLII\)](#).
- <sup>18</sup> [LaBrie v Liu, 2021 BCSC 2486 \(CanLII\)](#) at para. 62.
- <sup>19</sup> [Cragg v Southwest Properties Ltd, 2012 NSSC 298](#).
- <sup>20</sup> The Newfoundland Residential Tenancies Office does not appear to have ever considered that it could have the discretion to make an order other than eviction.
- <sup>21</sup> The Nunavut Residential Tenancies Office does not publish its decisions, and the Nunavut courts have not considered the question of discretion in eviction decisions.
- <sup>22</sup> A [new Residential Tenancy Act](#) was proclaimed in PEI in April, 2023. It has not yet been interpreted by the courts and tribunals.



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