

Residential Landlord and Tenant Act Public Engagement Survey

Submission to the Government of Yukon

February 29, 2024

Summary of Recommendations

1. Give adjudicators the authority to resolve eviction applications via conditional orders.
2. Direct adjudicators to order eviction only in cases where a conditional order would not be sufficient to resolve an issue raised in an eviction application.
3. Direct adjudicators to order eviction only in cases where the consequences of continuing a tenancy would outweigh the consequences of eviction for the tenant.
4. Require that landlords provide alternative accommodations for tenants during renovations and repairs that require vacant possession.
5. Regulate rents for all rental units, without exceptions such as vacancy decontrol.
6. Carefully design rent increase rules to prohibit increases that exceed landlords' cost increases.
7. Implement a mandatory rental registry.
8. Enact a primary residence requirement for short-term rentals.

About CCHR

The Canadian Centre for Housing Rights (CCHR) is Canada's leading registered charitable organization working to advance the right to adequate housing. For over 35 years, we have worked tirelessly at the intersection of human rights and housing, providing free services to renters facing evictions and human rights violations to remain housed, providing education and training about housing rights across Canada, and advancing rights-based housing policy through research, policy development, advocacy, and law reform.

Introduction

CCHR welcomes the opportunity to contribute to the Yukon government's review of the *Residential Landlord and Tenant Act* (RLTA). The review is being conducted through a survey of Yukon residents and property owners. As a national organization, CCHR offers experience and expertise based on landlord and tenant rights set out in legislation across Canada.

While all the questions in the government's survey are important, in this submission we will offer recommendations on the questions which most closely touch on our areas of expertise.

Recommendations

Proportionality in eviction (survey section B)

Legislation in all Canadian provinces and territories provides for eviction as a remedy to address a variety of tenancy issues. However, eviction is a blunt instrument which has devastating impacts on renter households. It should only ever be used as a last resort. In particular, in order to meet international human rights standards, a household should 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.¹

In circumstances where a landlord has established the grounds for an eviction, seven Canadian provinces and territories allow residential tenancies adjudicators to consider alternative resolutions.² Alternatives usually take the form of a "conditional order," which is a binding order directing a tenant to resolve an issue. For example, if a tenant owes rent arrears, an adjudicator might order them to pay the arrears according to a payment plan with specified deadlines. Eviction would only take place if the tenant did not meet the conditions in the order.

The legislation in four of those provinces and territories further directs that adjudicators must consider whether eviction would be "just and equitable,"³ "justified,"⁴ "justified in the circumstances,"⁵ or "unreasonable to refuse."⁶ This provides important direction to adjudicators that they should treat eviction as a last resort.

To ensure that eviction is treated as a last resort, the Yukon RLTA should:

- Give adjudicators the authority to resolve eviction applications via conditional orders.
- Direct adjudicators to order eviction only in cases where a conditional order would not be sufficient to resolve an issue raised in an eviction application.
- Direct adjudicators to order eviction only in cases where the consequences of continuing a tenancy would outweigh the consequences of eviction for the tenant.

Repairs and renovations evictions (survey questions B1, B4, and B5)

As discussed above, eviction should only be allowed when it is necessary to achieve a legitimate purpose. Provincial and territorial statutes sometimes permit landlords to evict tenants in order to carry out repairs or renovations so extensive that they require vacant possession of a

rental unit. While enabling repairs and renovations is a legitimate purpose, eviction is not necessary to achieve that purpose. Tenants can instead be temporarily relocated during the work period. Repairs and renovations should therefore not be grounds for eviction.

For example, the city of Hamilton, Ontario recently enacted a bylaw requiring that landlords, while carrying out renovations, make arrangements with tenants for temporary alternate accommodation or provide financial assistance for tenants to rent elsewhere during the renovation period.⁷

To prevent unnecessary evictions, the Yukon RLTA should:

- Require that landlords provide alternative accommodations for tenants during renovations and repairs that require vacant possession.

In the alternative, some statutes, such as Ontario's, aim to prevent unnecessary evictions by allowing landlords to end tenancies during renovations, but requiring them to re-rent the unit to the same tenant at the same rent once the work is complete. While this system affords some important protections to tenants, it is open to abuse by unscrupulous landlords who can be motivated to evade their obligations.⁸

If Yukon opts to allow landlords to evict tenants in order to carry out repairs and renovations, it is therefore essential to require strict proof that the proposed work cannot be carried out while the tenant is in possession of the unit, and to create robust enforcement mechanisms to ensure that landlords allow tenants to return to their homes at the same rent once the work is complete.

Rent regulation (survey questions C1, C2, and C3)

Robust rent regulation is essential both to protect tenants from economic eviction, and to preserve Canada's dwindling supply of affordable homes.

As Canada's housing markets have become increasingly dominated by large-scale investment companies, many landlords are charging excessive rents well above what is necessary to make a reasonable profit.⁹ This practice, known as "rent gouging," results in exorbitant increases that leave tenants struggling to pay rent and put food on the table,¹⁰ or that result in eviction. Rent regulation is an important tool for governments to stabilize housing markets and protect tenants from rent gouging.

To be fully effective, rent regulation must apply between tenancies as well as during tenancies. Only two provinces have "vacancy decontrol" systems which suspend rent regulation between tenancies.¹¹ In those provinces, landlords are motivated to find reasons to evict tenants in order to circumvent rent regulation.¹²

Furthermore, vacancy decontrol leads to loss of affordable housing stock. Canada is losing affordable homes twice as fast as it is creating new ones.¹³ Yukon rents have increased by 33% over the past five years – 14% higher than inflation.¹⁴

For the same reason, units with rents below the average market rate should not be exempt from rent regulation. As the housing crisis worsens and rents increase, average market rents are out of reach for more and more households. 20% of families in Whitehorse are unable to afford

market rents,¹⁵ and homelessness in Whitehorse rose by over 30% between 2021 and 2023.¹⁶ Rent regulation is necessary to keep homes affordable.

Three provinces have longstanding rent regulation systems without vacancy decontrol.¹⁷ In those provinces, rents are more stable and rental markets are cushioned against excessive rent increases during emergencies such as the present housing crisis.¹⁸

All five rent-regulated provinces allow inflation-indexed rent increases to keep rents stable in real terms. These provinces also allow landlords to increase rents when they carry out major repairs or renovations (“capital expenses”). This is based on a theory called “cost pass-through” which holds that when a landlord’s costs increase, they should be allowed to increase their revenues by the same amount so that their profit margin remains stable.

Unfortunately, existing Canadian rent regulation systems do not effectively implement the cost pass-through theory and, in practice, allow rent increases which often greatly exceed landlords’ cost increases. For example, when a landlord incurs a periodic capital expense such as a roof repair, they should be allowed to pass through the amount that the roof repair cost has increased since the last time the roof was repaired. Instead, in Ontario, British Columbia, and Manitoba, the landlord is allowed to pass through the full cost of the current repair. Consequently, rent increases can be much higher than the associated cost increases, allowing landlords to increase their profit margins at tenants’ expense. Yukon should take care to avoid replicating these calculation errors.

In sum, a rent regulation system should be designed on the following principles:

- Regulate rents for all rental units, without exceptions such as vacancy decontrol.
- Carefully design rent increase rules to prohibit increases that exceed landlords’ cost increases.

Rental registry (survey question E2)

Unfortunately, some landlords can be motivated to evade rent regulation by evicting tenants, then renting to new tenants without disclosing the previous rent. This practice is a serious problem in Quebec, for example.¹⁹ Consequently, rental registries are important tools for enforcing rent regulation.

In the absence of government action, a community organization in Quebec has established a voluntary rent registry.²⁰ However, a legislated rent registry would be more effective, because landlords and tenants could be required to report rents.

Rent registries can also be important sources of data. Although the Yukon government may already have some data on average rents derived from Statistics Canada records and/or tax records, a rent registry would generate data on specific rental units. For example, per-unit data on rent increases could demonstrate whether rent regulation was being effectively enforced, or whether some landlords were finding ways to evade it. The data could also help identify cases where rent increases were leading to economic evictions.

As part of a comprehensive, enforceable, and evidence-based rent regulation system, Yukon should:

- Implement a mandatory rental registry.

Short-term rentals (survey questions G2 and G3)

Short-term rentals have significant negative impacts on housing markets, by taking units off the rental market in large numbers. In British Columbia, short-term rentals were found to have taken 16,810 homes off the rental market, causing rents in the remaining units to increase by 16.6% in 2022.²¹

To prevent housing loss, more and more jurisdictions are enacting “primary residence” requirements for short-term rentals. These rules provide that a person may only use their primary residence, or part of their primary residence, for short-term rentals. This allows renters and homeowners to continue to provide legitimate short-term rentals, while preventing investors from removing homes from the rental housing market to use them exclusively as vacation rentals or “ghost hotels.”

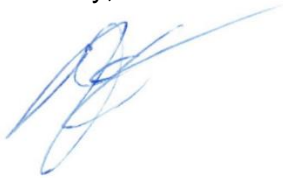
To help preserve affordable housing stock, Yukon should:

- Enact a primary residence requirement for short-term rentals.

Yukon, like the rest of Canada, is facing an affordable housing crisis. The government’s review of the RLTA represents a historic opportunity to face the crisis head-on by implementing fair protections for renters, preventing unnecessary evictions, and regulating an out-of-control rental market.

We thank you in advance for considering our recommendations. We welcome the opportunity to provide our housing expertise, and look forward to further discussions to ensure all people in Yukon can live in secure and affordable homes.

Sincerely,



Dale Whitmore
Director of Policy and Law Reform
Canadian Centre for Housing Rights (CCHR)



-
- ¹ [Proportionality: A legal framework to make eviction a last resort in Canada - Canadian Centre for Housing Rights \(housingrightscanada.com\)](#).
- ² Alberta, Manitoba, New Brunswick, Northwest Territories, Ontario, Quebec, and Saskatchewan.
- ³ *Residential Tenancies Act, 2006*, SS 2006, c R-22.0001, s.70(6).
- ⁴ *Residential Tenancy Dispute Resolution Service Regulation, Alta Reg 98/2006*, s.15.
- ⁵ *Residential Tenancies Act, RSNWT 1988, c R-5*, s.83(1).
- ⁶ *Residential Tenancies Act, 2006*, SO 2006, c 17, s.83(1).
- ⁷ City of Hamilton, “Renovation Licence and Relocation By-law,” bylaw number not yet assigned.
- ⁸ [2019 CanLII 87012 \(ON LTB\) | TST-90503-17 \(Re\) | CanLII](#).
- ⁹ [A Primer on Financialization of Housing in Canada - Canadian Centre for Housing Rights \(housingrightscanada.com\)](#).
- ¹⁰ [Renters are paying the price of Canada’s housing crisis. Here are their stories. - Canadian Centre for Housing Rights \(housingrightscanada.com\)](#).
- ¹¹ British Columbia and Ontario.
- ¹² [Growth of ‘financial landlords’ in housing sector driving spike in rents and affordable housing crisis, says A&S alum Martine August | Faculty of Arts & Science \(utoronto.ca\); BC Eviction Mapping - First United Church](#).
- ¹³ Pomeroy, Steve (October 2022). [Updating analysis on erosion of lower rent stock from 2021 census](#). Canadian Housing Evidence Collaborative, McMaster University.
- ¹⁴ [Creating Home 5-year strategic plan](#).
- ¹⁵ [CMHC Northern Housing Report 2023](#).
- ¹⁶ [Whitehorse 2023 Point-in-Time Count Report](#).
- ¹⁷ Manitoba, Prince Edward Island, and Quebec.
- ¹⁸ Grant (2011), [“An Analysis of Manitoba’s Rent Regulation Program and the Impact on the Rental Housing Market.”](#)
- ¹⁹ Vivre en Ville & Léger(May 2023) –Registre des loyers, volet Québec: Sondage web auprès de Québécois(es).
- ²⁰ Vivre end Ville, [Rental registry](#).
- ²¹ Wachsmuth (2023), [“The housing impacts of short-term rentals in British Columbia’s regions, Summer 2023 update.”](#)