



## **BRIEFING NOTE**

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### **AMENDING THE RESIDENTIAL TENANCY ACT TO PROTECT VICTIMS OF DOMESTIC VIOLENCE**

**April 2014**

## BRIEFING NOTE

### AMENDING THE *RESIDENTIAL TENANCY ACT* TO PROTECT VICTIMS OF DOMESTIC VIOLENCE

**PURPOSE:** To recommend that the BC government pass an amendment to BC's *Residential Tenancy Act*<sup>1</sup> allowing victims of domestic violence to end fixed-term tenancy agreements in order to flee domestic violence.

**BACKGROUND:** Currently, a tenant who flees domestic violence remains liable for the balance of her fixed-term tenancy agreement (also referred to as a lease) if she must leave her residence for safety reasons before the term of the lease expires. There is no mechanism to remove her name from the lease, so the person victimized by violence can be held responsible for rent that goes unpaid, as well as physical damage done to the unit after she leaves.

Not only can tenants be held liable for the balance of the rent for the remainder of the lease period, but they may also be required to cover a landlord's advertising costs until the unit is re-rented, and may have to forfeit their security deposit. Breaking a lease can also impact a tenant's credit rating if there are fees associated with breaking the lease that remain unpaid. Once tenants have broken a lease, they are usually considered to have a poor rental history, and may have trouble finding new accommodation without references from previous landlords.

Women should not be trapped in fixed-term tenancies when they need to escape a violent situation. Québec, Manitoba and Nova Scotia have all amended their residential tenancy legislation to include provisions allowing for the breaking of leases in situations of domestic violence. BC should follow suit.

We propose an amendment to BC's *Residential Tenancy Act* (the RTA) to ensure that victims of violence are able to end their fixed-term tenancies without penalty in order to escape violence and abuse. The amendment would also provide protection to landlords and support landlords to meet their obligations to ensure their tenants' rights to quiet enjoyment in their homes.

#### THE CURRENT LAW

A fixed-term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will end on a specified, predetermined expiry date.

Under sections 44 and 45(2)(b) of the RTA, a tenant may not end a fixed-term tenancy earlier than the date specified in the tenancy agreement unless the landlord agrees otherwise or the landlord has breached a material term of the tenancy agreement.

Many fixed-term tenancy agreements contain a liquidated damages clause requiring tenants to forfeit their security deposit or some other amount if they break their lease prior to the date specified in the tenancy agreement. Tenants may be liable for all lost rent revenue for the balance of the lease period if the landlord is unable to find another tenant to move in, as well as any advertising costs incurred by the landlord until the unit is re-rented.

Fixed-term tenancy agreements can provide security to both landlords and tenants; tenants have security of tenure knowing their landlord cannot evict them during the term of the agreement other than for cause, and landlords enjoy security knowing that they will receive a consistent revenue stream from the unit and will not have to expend the time and resources involved in re-renting the suite during the term of the agreement. However, for a victim of domestic violence, a fixed-term tenancy can act as a barrier to her ability to flee an abusive situation.

## KEY CONSIDERATIONS

**Domestic violence is a critical issue in British Columbia.** According to the 2012 Statistics Canada report *Family Violence in Canada: A Statistical Profile*, there were 16,259 police-reported victims of intimate partner violence (“IPV”) in BC in 2010, a rate of 427 victims per 100,000 people, which is much higher than the national average.<sup>2</sup> Most instances of IPV are not reported to police; national data from the General Social Survey indicates that only 22% of cases came to the attention of police in 2009.<sup>3</sup>

Women are much more vulnerable to violence than men; the 2012 Statistics Canada report found that the rate of IPV is four times higher for women than for men, and women are far more likely to suffer more serious forms of spousal violence, including sexual assault, choking, and threats with a weapon. The rate of spousal homicide is also far higher for women; according to a 2012 BC Coroner’s Service report, 72.5% of IPV homicide victims between 2003 and 2011 were women, and male assailants were responsible for 83.7% of all IPV deaths.<sup>4</sup> In 2009, 67 women were killed by a current or former male partner in Canada, an average of one woman every six days.<sup>5</sup>

Violence against women is an issue in every neighbourhood, community, and income bracket. Women’s vulnerability to violence is heightened when they live in isolated communities, when they are poor, when they have a disability, when they have low levels of education or literacy, when they do not speak English, when they lack regularized immigration status, and when they live on reserve without access to urban resources. Aboriginal women, for example, are three times more likely to be victims of violence overall, and more than twice as likely to be victims of spousal violence as non-Aboriginal women.<sup>6</sup> Aboriginal women are also much more likely to be killed by their spouse than non-Aboriginal women.

**Leaving an abusive situation is the most dangerous time for women.** Statistics Canada has reported that almost half (49%) of women killed by their spouses are killed within two months of separation, and another 32% are killed within 2-12 months after separation.<sup>7</sup> Further, physical abuse, stalking, and harassment continue at significant rates post-separation. National research in Canada suggests that for approximately one-quarter of abuse victims, the violence becomes more severe post-separation compared to pre-separation violence.<sup>8</sup>

While domestic violence affects women at every income level, those with lower incomes are less likely to be able to find alternative accommodation, particularly if they are fleeing with their children. Women and their children who are fleeing violent situations are at increased vulnerability to homelessness. A study conducted by the Canadian Mortgage and Housing Corporation found that some landlords openly discriminate against women who have been abused, increasing their vulnerability.<sup>9</sup>

**Preventing women from fleeing abuse is poor public policy.** Women who are being abused by their partners are sometimes told by the Ministry of Children and Families that they are putting their children at risk by exposing them to domestic violence, and MCFD threatens mothers with the prospect that their children will be removed if they do not flee the violence at home.<sup>10</sup> Additionally, police and Crown may be unable to move forward with the prosecution of an abuser if the woman has not left the home.<sup>11</sup> While there are many complex reasons why a woman may feel unable to leave her abusive spouse, the fact that she is trapped in a lease she cannot get out of should not be one of them.

**The protections afforded by the new *Family Law Act*, while welcome, do not sufficiently address the needs of vulnerable tenants.** BC's new *Family Law Act* allows victims of family violence to apply for protection orders, which may exclude the abuser from the home and offer some protection from further violence. The law's definition of "family violence" to include stalking, harassment, and threats is appropriately inclusive and should be adopted in the residential tenancy context.

However, protection orders are not sufficient protection for many women. While important, a protection order is merely a piece of paper; the abuser still knows where the victim lives and may even have keys to the home. Further, obtaining a protection order is a legal process which requires victims of violence to fill out and file legal forms and make an appearance in court, and only very low income women will qualify for a legal aid lawyer to assist them through these steps.

Moreover, protection orders issued under the *Family Law Act* only cover violence between "family members". Everyone deserves to be safe in their home, and violence and abuse in a tenancy can occur between non-family members such as roommates or neighbours. Protection orders expire a maximum of one year after they are made (unless the judge orders otherwise), and many protection orders are made that expire much earlier. While breach of a protection order is a criminal offence punishable by fine or imprisonment under section 127 of the *Criminal Code*, West Coast LEAF has heard reports that RCMP officers are failing to enforce the orders because the enforcement clause is discretionary.<sup>12</sup> Moreover, police generally refuse to intervene in what they deem to be residential tenancy matters.

Obtaining a protection order will remain an essential component of many women's safety plans when fleeing abuse. However, tenants who have been victimized by violence need additional tools to keep themselves safe. They need a reliable escape hatch from their fixed-term tenancies so that the financial implications of breaking a lease do not become an additional barrier to fleeing the violence.

**The process for breaking a fixed-term lease in order to flee domestic violence must not be an overly onerous one.** Victims of violence seeking to break a lease in order to flee the violence must not be required to report the abuse to police or participate in the prosecution of their abuser. This is a key shortcoming of the legislative amendments in Nova Scotia and Manitoba and has been criticized by anti-violence organizations in those provinces; this error must not be replicated in British Columbia.

Violence against women is a vastly under-reported crime. According to a 2009 Statistics Canada report, 7 in 10 women victims do not report incidents of spousal violence to the police.<sup>13</sup> There are many reasons why women may not report incidents of violence including financial dependence on their

abuser, immigration status that depends on their abuser's sponsorship, language barriers between themselves and police, fear of having their children apprehended, and an expectation that they will not be believed. Some women who do call the police find themselves being blamed for the abuse, and are at risk of being arrested themselves (despite police policy to the contrary).

Aboriginal women in particular have experienced historic abuse and discrimination from law enforcement. A 2013 Human Rights Watch report documents how Aboriginal women are both under-protected by police and face direct abuse by the police.<sup>14</sup> This abuse, for some women, has defined their relationship with law enforcement, discouraging them from reporting any violence they face. Aboriginal women have often not been adequately protected by police. The Missing Women's Inquiry report also shines a light on the failure of police to respond to the needs of Aboriginal women, finding that "systemic bias by the police" contributed to the deaths and disappearances of dozens of women from Vancouver's Downtown Eastside and around the Highway of Tears.<sup>15</sup> Requiring a woman to report the violence she is experiencing to police could act as an additional barrier to her ability to keep herself and her children safe.

Instead, tenants should be required to obtain third party verification before they can lawfully end a fixed-term tenancy agreement. Third Party Verification Statements are used to verify the presence of domestic violence in a number of other government service contexts, including applications to BC Housing for subsidized housing. A Third Party Verifier must be someone familiar with the tenant's current circumstances and cannot be a friend, neighbour or relative. BC Housing allows a number of professionals to act as Third Party Verifiers in situations where someone is fleeing domestic violence and applying for subsidized housing, including a nurse or physician, a settlement worker, a Stopping the Violence counsellor, or a shelter or transition house worker.<sup>16</sup> A model Third Party Verification Statement is attached as Appendix A.

A victim of violence should be required to sign a Declaration of Abuse Statement, which will be kept by the Third Party Verifier. A model Declaration of Abuse Statement is attached as Appendix B. The Third Party Verification Statement, attesting to the violence and signed by one of the listed professionals, should be all that's required in order for the victim to make use of the amendments we are proposing and end her fixed-term tenancy early. The victim's declaration shall be stored and kept confidential by the Third Party Verifier.

Unlike the Manitoba and Nova Scotia legislation, which involved little consultation with anti-violence organizations, West Coast LEAF has sought feedback on this approach from numerous BC anti-violence organizations including the BC Society of Transition Houses, the Ending Violence Association of BC and the Jane Doe Legal Network. They have all offered their strong support for this approach.

**Landlords will benefit from the proposed amendments.** Perpetrators of domestic violence are often problem tenants. Instances of domestic violence can impact the rights of other tenants to quiet enjoyment in their units. These amendments would give landlords the opportunity to be rid of these problem tenants before the expiry of a fixed-term tenancy. Even if the perpetrator does not reside at the rental unit, allowing the tenant to end her lease removes the violence from the building.

A 2012 decision of the Residential Tenancy Branch demonstrates how the amendments would benefit vulnerable tenants, landlords, and a building's other residents. The case involved a female tenant who called the police on a number of occasions to report incidents of domestic violence by her partner, who was under a restraining order and barred from the property. However, the landlord evicted the woman on the basis of "illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord". The Branch agreed with the landlord's rationale, holding that the tenant had breached section 47(1)(e)(ii) of the *Residential Tenancy Act* by "permitting the return of her male partner to the rental unit after repeated incidents of domestic violence."<sup>17</sup>

It is impossible to determine exactly what happened in this case based on the Branch's terse three page decision, but it is concerning that the Branch upheld the eviction of an abused woman – a woman who had obtained a restraining order against her partner which barred him from the property – on the basis that she "permitted him" to return. Protecting the safety of tenants is paramount, and landlords also have a duty to preserve other tenants' right to quiet enjoyment by taking steps to deal with problem tenants. However, evicting a victim of abuse because she is being abused is absurd and unhelpful. Allowing victims of violence to break their fixed-term leases in order to flee the violence will promote victims' safety and the rights of other tenants, without subjecting victims of violence to eviction orders and the possibility of homelessness.

## **CONCLUSION AND RECOMMENDATIONS**

We seek an amendment to section 45 of the *Residential Tenancy Act* to provide that, upon service to the landlord of Notice to End Tenancy and a Third Party Verifier Statement attesting to the violence and signed by a designated professional, a victim of violence may end a fixed-term tenancy on not less than one month's notice. See the model Third Party Verifier Statement attached as Appendix A for a list of designated professionals.

A Third Party Verifier Statement signed by a designated professional should be all that is required to authorize a victim of violence to end a fixed-term tenancy. There must not be any requirement imposed on a victim of violence to report the abuse to police or participate in the prosecution of the abuser in order to break her lease and flee the violence. The designated professional should have no obligation to hear from or consider representations from the person alleged to have committed the abuse. The designated professional cannot be compelled to appear in court or before the Residential Tenancy Branch.

A landlord may challenge a Notice to End Tenancy in this context only on the basis that the Notice to End Tenancy and Third Party Verifier Statement were not properly served.

Landlords must keep confidential and not disclose the contents of the Third Party Verifier Statement. Landlords have a right to contact the Third Party Verifier for the limited purpose of confirming that the Third Party Verifier did sign a Third Party Verifier Statement for the named tenant.

We would be pleased to meet with you to discuss these recommendations and answer any questions you may have.

## ENDNOTES

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<sup>1</sup> S.B.C. 2002, c. 78.

<sup>2</sup> Family Violence in Canada: A Statistical Profile 2010, Section 2: Violence against intimate partners, online: <<http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11643/11643-2-eng.htm#a8>>.

<sup>3</sup> Family Violence in Canada: A Statistical Profile Section 1: Self-Reported Spousal Violence, 2009, online: <<http://www.statcan.gc.ca/pub/85-224-x/2010000/part-partie1-eng.htm>>.

<sup>4</sup> BC Coroners Service, Intimate Partner Violence in British Columbia, 2003-2011, online: <<http://www.pssg.gov.bc.ca/coroners/reports/docs/stats-domestic-violence.pdf>>.

<sup>5</sup> Sara Beattie and Adam Cotter, "Homicide in Canada, 2009" *Juristat* Vol. 30 No. 3, online: <<http://www.statcan.gc.ca/pub/85-002-x/2010003/article/11352-eng.pdf>>.

<sup>6</sup> Shannon Brennan, Violence victimization of Aboriginal women in the Canadian provinces, 2009 *Juristat*, online: <<http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.pdf>>.

<sup>7</sup> Tina Hotton, Spousal violence after marital separation, *Juristat* Vol. 21 No. 7, online: <<http://violenceresearch.ca/sites/default/files/HOTTON%20%282001%29%20SPOUSAL%20VIOLENCE%20AFTER%20MARITAL%20SEPARATION.pdf>>.

<sup>8</sup> *Ibid.*

<sup>9</sup> Canadian Mortgage and Housing Corporation, "Housing discrimination against victims of domestic violence" (July 2006), online: <<http://www.cmhc-schl.gc.ca/odpub/pdf/65096.pdf>>.

<sup>10</sup> See Andrea Vollans, "Court-related abuse and harassment: Leaving an abuser can be harder than staying" (Vancouver: YWCA, 2010) at 12.

<sup>11</sup> See Pivot Legal Society, "Imagining courts that work for women survivors of domestic violence" (2012).

<sup>12</sup> BC Provincial Court Form 25: Protection Orders. <<http://www.ag.gov.bc.ca/courts/forms/pfa/pfa098.pdf>>

<sup>13</sup> Family Violence in Canada, *supra* note 3.

<sup>14</sup> Human Rights Watch, "Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia", (2013), <[www.hrw.org/node/113506/section/2](http://www.hrw.org/node/113506/section/2)>

<sup>15</sup> Wally T. Oppal, "Forsaken: The Report of the Missing Women Commission of Inquiry", (2012), <[www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-Vol-1-web-RGB.pdf](http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-Vol-1-web-RGB.pdf)>

<sup>16</sup> For the complete list see BC Housing, "Who can be a Third Party Verifier" online: <[http://www.bchousing.org/Options/Subsidized\\_Housing/Apply/Apply-registry/Supplemental/3rd](http://www.bchousing.org/Options/Subsidized_Housing/Apply/Apply-registry/Supplemental/3rd)>.

<sup>17</sup> RTB Decision 1331.

## APPENDIX A

### BC RESIDENTIAL TENANCY BRANCH

#### THIRD PARTY VERIFIER STATEMENT

##### Who Can be a Third Party Verifier?

A Third Party Verifier must be familiar with the tenant applicant's current circumstances and cannot be a relative. An eligible Third Party Verifier includes the following community professionals in their professional capacity:

Doctor / Psychiatrist	Transition House Worker	Police Officer	Victim Service Worker	MCFD Worker
Nurse	Shelter/ Outreach Worker	Lawyer	Community Legal Advocate	Counsellor / Psychologist
Aboriginal Support Worker	Settlement Worker	Family Support Worker	Other: _____	

**Definition of Violence / Abuse:** The Residential Tenancy Branch adopts the BC Family Law Act definition of violence. The Residential Tenancy Branch also recognizes that everyone deserves to be safe in their home, and that violence and abuse in a tenancy can also occur between non-family members such as roommates or neighbours. Therefore the Residential Tenancy Branch defines abuse as follows:

- (a) physical abuse of a tenant in the tenancy, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a tenant,
- (c) attempts to physically or sexually abuse a tenant or family member of the tenant residing with the tenant in the tenancy,
- (d) psychological or emotional abuse of a tenant, including
  - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
  - (ii) unreasonable restrictions on, or prevention of, a tenant's financial or personal autonomy,
  - (iii) stalking or following of the tenant, and
  - (iv) intentional damage to property, and
- (e) in the case of a child living with the tenant, direct or indirect exposure to violence or abuse;

Name:	Position:	
Agency:		
Agency Address:	City:	Prov:
Postal Code:	E-mail Address	
Phone:	Fax Number:	
<p>I CONFIRM THAT: I am an appropriate Third Party Verifier for the Applicant Tenant. I have read the Applicant Tenant's Declaration of Abuse.</p> <p>I have also read the above definition of Violence/Abuse and I AFFIRM THAT: I have direct knowledge or verify believe that: the Tenant Applicant must flee her/his current tenancy situation as a result of violence or abuse in her/his tenancy.</p> <p>I confirm that I verily believe the tenant's personal safety is at risk because of violence/abuse occurring in her/his tenancy by another person, and that it is not safe for her/him to continue her/his tenancy.</p>		
Name	Signature	Date

## APPENDIX B

### BC RESIDENTIAL TENANCY BRANCH *APPLICANT – DECLARATION OF VIOLENCE/ABUSE*

**Definition of Violence/Abuse:** The Residential Tenancy Branch adopts the BC Family Law Act definition of violence. The Residential Tenancy Branch also recognizes that everyone deserves to be safe in their home, and that violence and abuse in a tenancy can also occur between non-family members such as roommates or neighbours. Therefore the Residential Tenancy Branch defines abuse as follows:

- (a) physical abuse of a tenant in the tenancy, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a tenant,
- (c) attempts to physically or sexually abuse a tenant or family member of the tenant residing with the tenant in the tenancy,
- (d) psychological or emotional abuse of a tenant, including
  - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
  - (ii) unreasonable restrictions on, or prevention of, a tenant’s financial or personal autonomy,
  - (iii) stalking or following of the tenant, and
  - (iv) intentional damage to property, and
- (e) in the case of a child living with the tenant, direct or indirect exposure to violence or abuse;

TO BE COMPLETED BY APPLICANT		
First Name:	Last Name:	
Address:	City:	Prov:
Postal Code:	E-mail Address:	
Phone:	Other contact:	
<p>I DECLARE THAT:</p> <p>I have read the above definition of Violence/Abuse and I AFFIRM THAT: I am or was a member of a household where I have been subject to violence or abuse from another person.</p> <p>I AFFIRM THAT: I must flee my current tenancy situation as a result of violence or abuse in my tenancy.</p> <p>I verily believe my personal safety is at risk because of violence/abuse occurring in my tenancy by another person, and that it is not safe for me to continue my tenancy.</p> <p>If requested by my landlord, I consent to the Third Party Verifier confirming to the landlord that I have made this Declaration of Abuse on this date.</p>		
Name	Signature	Date
Name of Third Party Verifier	Signature	Date