

# BC Non-Profit Housing Association

## Memorandum - Residential Tenancy Concerns of the Non-Profit Housing Sector in British Columbia

September 17, 2009



Submitted To:

Province of British Columbia  
Residential Tenancy Branch  
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## 1. KEY MESSAGES

- The non-profit housing sector plays an important role in the provincial economy by providing approximately 85,000 housing units for lower income households in British Columbia, many with complex housing and health needs.
- The non-profit housing sector operates with limited resources with some housing providers highly dependent on government subsidies and others reliant solely on below market rents.
- Due to its social mission, its limited resources and a variety of other unique legal and practical considerations, the non-profit housing sector in British Columbia faces distinct issues in relation to residential tenancies.
- Those operating in the non-profit housing sector have serious concerns regarding both the dispute resolution process and the content of the decisions arising from dispute resolution hearings of the Residential Tenancy Branch.
- The principle concerns in relation to process include:
  1. Timelines
  2. Late filings
  3. Teleconference
  4. Cost of Review
  5. Jurisdiction over Assisted Living
- The principle concerns in relation to content include:
  1. Lack of understanding of the context of non-profit housing
  2. Monetary Awards against non-profit housing providers

## 2. BACKGROUND

The Residential Tenancy Branch (the “RTB”) is an agency of the Provincial Government of British Columbia that is responsible for the administration of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 and the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c.77. The RTB’s primary function is to provide landlords and tenants in British Columbia with information and dispute resolution services.

The BC Non-Profit Housing Association (“BCNPHA”) is a provincial, member based organization that represents the non-profit housing sector in the province of British Columbia. The Association provides leadership and support to housing providers in order to facilitate a high standard of affordable housing throughout the province. BCNPHA also advocates on behalf of members for the continued provision of safe, secure and affordable housing through public, private, and non-profit sector cooperation and partnering.

The non-profit housing sector in British Columbia represents an important component of the provincial economy and consists of over 600 individual societies managing approximately 85,000 housing units. Despite their significant role in housing a vulnerable portion of the population of British Columbia, non-profit housing providers operate on extremely limited budgets and in some cases are highly subsidized by government. In 2007/2008 BC Housing provided approximately three hundred and nineteen million dollars of subsidies to support non-profit housing providers in the province. These subsidies allow non-profit housing providers to carry out the vital work of providing social housing to low income citizens of British Columbia who are often facing additional challenges including job loss, mental health, addictions, and aging related issues.

The social mission and limited resources of non-profit housing providers in the province, combined with other unique legal and practical attributes of those operating in the sector have resulted in challenges in dealing with the RTB. Under the auspices of the BCNPHA, the non-profit housing sector has prepared this memorandum in order to bring these challenges to the attention of the RTB in the hopes that they can be resolved in a collaborative manner.

### 3. SPECIFIC ISSUES

The principle concerns of BCNPHA in relation to process include:

#### 1. Timelines

While the recent addition of Direct Request has been quite effective, the timeline from filing to the date of the dispute resolution hearing can still often be delayed by up to four to six weeks in cases where Direct Request is not available. This delay has a considerable impact on non-profit housing providers as the loss of rental income for even one month can significantly impact operations. Impacts from delay can have an even greater negative impact when a tenant's eviction is being sought for disruptive or unsafe behaviour.

*Example: Metro Vancouver Housing issued a notice to end tenancy for non-payment of March rent and an application for dispute resolution was filed on March 11, 2009. The Dispute Resolution Hearing was scheduled for May 1, 2009.*

*Example: Affordable Housing Societies submitted an application for dispute resolution on July 8, 2009 and the Dispute Resolution Hearing was scheduled for October 22, 2009.*

#### 2. Late filings

Non-profit landlords are commonly held to a strict standard in terms of compliance with filing deadlines and notice periods with the result of non-compliance often being the disallowance of the notice or filing. Tenants however are not held to the same standard and late filings from tenants are often allowed to proceed.

*Example: Red Door Housing Society attended a Dispute Resolution Hearing on November 4, 2008 where the tenant was late in filing two of their documents. The Dispute Resolution Officer asked*

*the Society if they would accept the late filing and upon being informed that the society would not, the Dispute Resolution Officer held that they would make an exception to the filing rules in this circumstance.*

### **3. Teleconference**

The vast majority of dispute resolution hearings are now taking place by teleconference. While teleconference can be more convenient in some circumstances, in others the lack of face to face contact can obscure body language and can lead to other communication difficulties.

*Example - The Society of Hope attended a dispute resolution hearing conducted by teleconference disputing an eviction for cause. The hearing was concerning a somewhat complex issue and involved counsel and multiple witnesses. Communication difficulties during the call have led to the hearing having to be rescheduled three times.*

### **4. Cost of Review**

The internal review process contained in s.79 of the *Residential Tenancy Act* is so specifically worded and narrowly interpreted by Dispute Resolution Officers as to make it unavailable for the vast majority of cases. The only remaining avenue for review is an application for judicial review to the Supreme Court of British Columbia. The costs for a judicial review average three to five thousand dollars and the process itself can take months. These factors therefore make judicial review both cost and time prohibitive for non-profit housing providers and thus represent a systematic barrier to justice.

*Example – Affordable Housing Societies sought an order for possession as a tenant did not provide accurate and appropriate information to qualify for a subsidized unit. Contrary to s. 2 of the Residential Tenancy Regulation the Dispute Resolution Officer sought to establish jurisdiction over the rental subsidy issue and denied the order of possession. As this case involved an error of law an internal review pursuant to s. 79 of the Residential Tenancy Act is not available and therefore the only remedy is a judicial review.*

### **5. Jurisdiction over Assisted Living**

As the sections of the *Tenancy Statutes Amendment Act, 2006, S.B.C. c.35*, dealing with Assisted Living have not been brought into force and as non-regulatory solutions have not been implemented, there is considerable confusion as to the jurisdiction of the Residential Tenancy Branch over assisted living. Information provided to non-profit housing providers by the Residential Tenancy Branch is inconsistent in this regard which leads to difficulties for providers in their daily operations.

*Example – An unidentified assisted living provider was facing a possible dispute with a tenant. In a bid for further information the provider contacted an information officer at the Residential Tenancy Branch and was told that assisted living was not under the jurisdiction of the Residential Tenancy Act because the 2006 amendments had not been brought into force and was directed to the Office of the Assisted Living Registrar. Upon contacting the Office of the Assisted Living Registrar the provider was told that the office did not have jurisdiction over tenancy issues and was referred back to the Residential Tenancy Branch. The provider then contacted the Residential Tenancy Branch by e-mail and was informed that they could not provide an answer to the question of jurisdiction as that was a decision of a Dispute Resolution Officer.*

The principle concerns of BCNPHA in relation to content include:

### **1. Lack of understanding of the context of non-profit housing**

The non-profit housing sector is concerned that the RTB and specifically Dispute Resolution Officers do not properly understand the context of non-profit housing and the downstream consequences of their decisions for both the sector and the various government agencies that are involved in the sector. Examples of this lack of understanding arise in various disparate contexts however a number of recent examples include a Dispute Resolution Officer creatively attempting to assert jurisdiction over rent subsidies and a Dispute Resolution Officer considering a host of irrelevant factors and ordering a significant rent reduction on a subsidized rent based on these factors. In addition, non-profit housing providers are concerned with decisions that provide tenants “one more chance” to rectify their behaviour given that non-profit housing providers typically seek an order of possession only as a last resort.

*File # 721682 – Affordable Housing Societies – misunderstanding of rent subsidies*

*File # 732281 – HFBC Housing Foundation – consideration of irrelevant factors*

### **2. Monetary Awards**

The non-profit housing sector is concerned that the RTB and specifically Dispute Resolution Officers do not understand the consequences of the awarding of monetary awards against non-profit housing providers. Non-profit housing providers in the province of British Columbia are principally operated as non-profit societies that are either dependant on tightly budgeted government subsidies or are dependant on below market rents to sustain operations. A monetary award rendered against a non-profit society therefore represents a potential threat to the financial viability of the society and has the potential to disrupt the delivery of a valuable service to the community.

*File # 719545 – HFBC Housing Foundation - \$350 loss of quiet enjoyment for spraying for bedbugs*

*File # 723543 – HFBC Housing Foundation - \$50 loss of quiet enjoyment due to trades repairing plumbing*