IMLA Canada Day Program September 26, 2024
Renovictions Tenant Protection and Relocation Policies
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NEW WESTMINSTER

Tenants in New West

On May 27, 2019, in response to numerous complaints regarding renovictions, City Council amended the Business Regulations and Licensing (Rental Units Bylaw) to include Part 6, a section that specifically aimed to deter renovictions and to provide protection to those tenants who may be displaced by large scale renovation work. The amendment was successful and resulted in a significant decrease in the number of reported renovictions and inquiries of concern. The City is considered a leader among municipalities for this work.

ON JULY 1, 2021, THE PROVINCE OF BC AMENDED THE RESIDENTIAL TENANCY ACT (RTA) TO ADDRESS RENOVICTIONS.

The changes to the Residential Tenancy Act (RTA) protect tenants by putting in place new requirements for landlords who want to do renovations. The new rules say that if a landlord wants to end a tenancy for extensive renovations or repairs, they need to apply for an Order to End Tenancy and an Order of Possession from the Residential Tenancy Branch (RTB). When the landlord applies for the orders, the RTB will schedule a proceeding where an arbitrator will decide if ending the tenancy is the only way to complete the renovation work.

If the arbitrator decides that the tenancy must end, then the landlord must give the tenant a four month notice and the tenant is entitled to receive an amount that is equivalent of one month's rent. The tenant also has the "right of first refusal", which means the tenant can move back into the unit at market rent when the renovation or repair work is complete. If the tenant wants to exercise this right, they have to let the landlord know before they move out.



International Municipal Lawyers Association

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Renovictions, Tenant Protection and Relocation Policies

Craig MacFarlane, City Solicitor, City of New Westminster

Introduction-The 2019 New Westminster Part 6 Building Renovations Bylaw Amendment

The renoviction provisions were enacted on May 27, 2019 as an amendment to the City's Business Regulations and Licensing (Rental Units) Bylaw No. 6926 under the business regulation authority of section 8 (6) of the BC Community Charter. The City's Business Licensing Manager administered these provisions.

Part 6 of the Bylaw had provided restrictions on evictions unless all permits had been issued by the City to authorize the renovation or repair and has either:

1. Entered into a new tenancy agreement with the tenant pertaining to the rental unit, on the same or better lease terms, in respect of a comparable unit in the same building; or
2. Made other arrangements for the tenant's temporary accommodation during the renovation or repair, and for return to their original rental unit under the terms of the existing tenancy agreement following the completion of the renovation or repair.

No owner of a rental unit was permitted to increase the rent on a renovated or repaired unit unless the increase was approved under the Rental Tenancy Act (the "RTA"). The Business Licensing Manager was authorized to levy a monthly business license surcharge against the building owner in the amount that is the difference between the rent permitted under the Residential Tenancy Act application and the actual rent being paid by the tenant. If the surcharge was not paid the business license renewal could be refused.

BC Court of Appeal Upholds New Westminster Renoviction Bylaw

A petition was filed by the owner of a multi-family residential building seeking to evict tenants and perform renovations. The petition was dismissed in 1193652 B.C. Ltd. v. New Westminster (2020 BCSC 163). On April 30, 2021 the Court of Appeal (2021 BCCA 176) affirmed the lower Court decision and ruled

that the bylaw relating to renovictions was lawfully enacted under the Community Charter ss. 3 and 4 (1) to meet existing and future community needs. The Court held that the challenged bylaw was within the jurisdiction granted to the City by the ss. 8 (6) business regulation authority. It also held that further authority was provided under ss. 8 (3) (g) and 63 (f) that when read together, allowed a municipality to regulate in relation to the health, safety or protection of persons or property in relation to residential property that are subject to a tenancy agreement under the RTA.

The Court of Appeal's interpretation of the law accorded with the principle of subsidiarity, as both the RTA and the Community Charter, contemplated overlapping and complementary jurisdiction. The Court held that the proper standard of review was reasonableness, and it was reasonable for the City to conclude that the Community Charter authorized it to enact the bylaw to regulate renovictions.

Residential Tenancy Act Amendments July 1, 2021

Amendments to the RTA now require owners who want to end tenancy for renovations or repairs must apply for an Order to End Tenancy and an Order for Possession from the Residential Tenancies Branch. This process does not require a notice to end a tenancy and, since such a notice was required to begin the Part 6 process under the City's bylaw Part 6 was repealed

The RTB will schedule a hearing where an arbitrator will decide if ending the tenancy is the only way to complete the work. If the arbitrator decides the tenancy must end, the landlord must give the tenant a 4 month notice and the tenant is entitled to one month's rent. The tenant also has a right of first refusal to lease the unit at a market rent when the work is completed, with prior notice to the landlord.

The new RTA provisions do not provide for tenant relocation during the renovations or repairs and rent control upon return to the unit unlike the former Part 6 of the New Westminster Bylaw. It may still be open to BC municipalities to enact bylaws to cover those omissions under the RTA.

Tenant Protection Bylaw Authority-Bill 16.

Several municipalities such as New Westminster and Burnaby have adopted tenant relocation policies that only applies to rezoning applications which involves the demolition of existing purpose- built rental units and are negotiated with the developer. A Tenant Assistance Plan for notice, compensation and assistance in finding new accommodation is required before the issuance of a demolition permit.

On April 10th 2024 Bill 16 came into force providing municipalities with the authority to develop tenant protection bylaws to require developers to provide added support for tenants facing displacement in

cases of redevelopment. These additions to section 63 of the Community Charter includes:

(a) financial compensation for the termination of tenancy agreements;
(b) financial assistance to find and relocate to comparable replacement units; and
(c) the opportunity to enter into new agreements for the rental of comparable units in property in which the owners have an interest.

These bylaws may also provide for:

(a) explanatory notices regarding the redevelopment or proposed redevelopment;
(b) defining the nature and extent of compensation and assistance;
(c) the manner in which it is given and the timing;
(d) the characteristics of the comparable replacement units can be defined in the bylaw; and
(e) the bylaw may also require owners who have, or will have after redevelopment, new units available for rent to offer them to tenants in priority to other tenants and at a rental rate that is less than the rate provided in an applicable zoning bylaw or housing agreement.

Redevelopment is defined as demolition of residential property for new construction on the parcel on which the property was located or partial demolition to the extent that one or more units are irreversibly destroyed. However renovations or repairs without demolition would be excluded from the protection offered under this type of bylaw. It could be argued that s 63.2 (1) (b) would allow tenants to seek compensation even if their unit was not demolished provided their tenancy agreement was terminated.

The Province can prescribe classes of property that the legislation does not apply to. Under s. 63.3(2) if a tenant receives financial compensation under the RTA in relation to the redevelopment that amount must be deducted from the amounts payable to the tenant under the tenant protection bylaw.

Municipalities are allowed to designate development permit areas in their official community plans for the "mitigation of the effects of displacement on tenants who will be or have been displaced from their rental units in relation to a redevelopment, as those terms are defined under section 63.1 of the Community Charter". Under s. 491 (11) of the Local Government Act, a development permit issued in a redevelopment protection area may include requirements to comply with all or part of a tenant protection bylaw made under s. 63.2 of the Community Charter.

Residential Rental Tenure Zoning Power to Protect Rental Units

New Westminster enacted zoning bylaw amendments in January 2019, and updated in June 2019, that used the Local Government Act power to zone residential buildings to be used only for residential rental tenure to apply to six existing stratified rental buildings. In stratified rental buildings, typically all units are owned

by one or several owners and all units are rented to tenants and not owner occupied. Under this bylaw these units can only be lawfully occupied if rented to residential tenants. Owner-occupation is not permitted. However the Bylaw would not prevent the strata units from being sold, provided they remained compliant with the residential tenure restrictions. The June 2019 updated bylaw revised the descriptions of the affected properties to unsure that changes in legal status, such as the cancellation of a strata plan, do not change the effect of the bylaw and indicated that the rental tenure does not apply to commercial properties.

In March 2021 the BC Supreme Court upheld the same challenged bylaws and in May 2023 the Court of Appeal released a decision upholding the City's use of the residential rental tenure zoning power, see V.I.T. Estates Ltd. V. New Westminster, 2021 BCSC 573. The Court of Appeal held that the Residential Tenancy Act did not give a landlord the right to occupy a residential dwelling. That was a misinterpretation of the statute, which, in fact, restricts the right of a landlord to occupy rented premises. The bylaw was found not to be operationally inconsistent with the RTA and that the Local Government Act, reasonable interpreted, gave the municipality authority to enact it.

Moratorium on Strata Conversions and Other Protections

The City's 1978 Moratorium on Strata Conversions policy protects the rental tenure of other existing non-stratified multiple unit rental buildings by prohibiting their future stratification. Section 242 of the Strata Property Act now allows municipalities to approve the conversion of previously occupied residential units to strata and deny the conversion to strata title.

New purpose built rental buildings are protected through the Local Government Act section 481.1 residential rental tenure bylaws. In addition section 483 allows for municipalities to enter into housing agreements for affordable housing, forms of tenure and special needs housing.

Bill 16 also amended section 482 of the Local Government Act to expand the use of density bonuses to allow for inclusionary zoning to adopt bylaws to require the inclusion of affordable and special needs housing. Developers may also provide alternative ways to satisfy these requirements such as financial contributions to the municipality to build these types of housing.

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