



Committee of the Whole Report For the Meeting of September 2, 2021

To: Committee of the Whole **Date:** August 18, 2021
From: Karen Hoes, Director, Sustainable Planning and Community Development
Subject: Rental Business Licensing Bylaw

RECOMMENDATION

That Council direct the Director of Sustainable Planning and Community Development to:

1. Suspend development of a Rental Business Licensing Bylaw given changes to the provincial *Residential Tenancy Act* (RTA) designed to prevent evictions carried out to renovate or repair a rental unit that came into effect on July 1, 2021;
2. Monitor the implementation of the provincial legislative updates and report back to Council in the fall of 2023 on its efficacy and whether future City initiatives to further enhance protections for tenants are needed;
3. Facilitate public awareness and access to information regarding RTA requirements on repair and renovations of rental housing;
4. Undertake tenant capacity-building and outreach activities regarding RTA requirements on repair and renovations of rental housing.

EXECUTIVE SUMMARY

The purpose of this report is to provide Council with an update on the development of a Rental Business Licensing Bylaw. The objective of this bylaw was to protect tenants from eviction due to repair or renovation and was prioritized in June 2020 in response to mounting housing insecurity during the onset of the COVID-19 pandemic. The project commenced in the fall of 2020 and consultation with targeted stakeholders took place in early 2021.

In March 2021, the BC Provincial Government announced changes to the *Residential Tenancy Act* (RTA) that would improve protections for tenants from evictions relating to repair or renovation. The new legislation aims to prevent nearly all evictions relating to repair or renovations; there may however still be instances where the nature and duration of work is so extensive that accommodation of tenants may not be possible. Current provincial policy guidance indicates that most repairs and renovations can be carried out without tenants having to vacate their unit.

Given this new legislation, it is recommended that Council suspend development of a Rental Business Licensing Bylaw at this time. Instead, it is recommended that the provincial implementation of RTA amendments be monitored over a two-year period to better understand their efficacy and determine whether further municipal actions are required. In addition, to complement the provincial legislation, actions to improve housing security in Victoria through public awareness and tenant capacity building initiatives are proposed for immediate implementation.

PURPOSE

The purpose of this report is to provide Council with an update on new provincial legislation designed to improve protections for tenants (in effect as of July 1, 2021), provide recommendations regarding the previously initiated Rental Business Licensing Bylaw in light of this new legislation, and propose new actions that the City can take to further strengthen tenant protections.

BACKGROUND

Victoria Housing Strategy

One of the key actions in the *Victoria Housing Strategy 2016-2025* (Housing Strategy) is the preservation of Victoria's existing rental housing stock. The Market Rental Revitalization Study (MaRRS) led to the adoption of the Tenant Assistance Policy and the Rental Property Standards of Maintenance Bylaw, as well as the upcoming Seismic Energy Efficiency Pilot Program to explore incentives to encourage rental building upgrades. The Housing Strategy also proposes examination of additional incentives and regulations to preserve existing rental housing stock (to be re-initiated in the fall of this year) and protect tenants from renoviction¹. In June 2020, as part of COVID-19 recovery, Council directed staff to prioritize the development of a Rental Business Licensing Bylaw to regulate landlords that are proposing renovations, with the aim of preventing renovictions.

Preliminary Work on Rental Business Licensing Bylaw

In response to direction from Council, staff initiated work on the Rental Business Licensing Bylaw. This included a jurisdictional review, developing a draft bylaw and targeted public engagement.

Jurisdictional Review – Prior to the announcement of the March 2021 provincial RTA amendments, a jurisdictional review was completed to inform the creation of a Rental Business Licensing Bylaw (Attachment A, Jurisdictional Review). In early 2019, New Westminster was the first municipality in BC to enact regulations that restrict the ability of landlords to evict tenants to accommodate repairs and renovations. According to New Westminster staff, the bylaw initially required significant resources, but these have decreased as compliance improved; it has been effectively applied to 15 buildings, comprising 340 units. The bylaw has been challenged several times in court and while it was upheld by the BC Court of Appeal in May 2021, Landlord BC has submitted an application to appeal to the Supreme Court of Canada. New Westminster staff are waiting to see how their regulations will work with the provincial RTA amendments and expect that some changes will be required.

The Port Moody and Port Coquitlam Bylaws have not yet been enforced, in part due to their limited number of rental apartment buildings. It is unclear how they will function in tandem with the new process for overseeing evictions for repair and renovation and staff have indicated that they are keeping a watching brief.

Draft Rental Business Licensing Bylaw – To help inform consultation, a draft Rental Business Licensing Bylaw had been prepared prior to the provincial announcement of the RTA changes. The draft bylaw was similar to the New Westminster regulations on renovations of rental properties,

¹ The Government of British Columbia defines 'renoviction' as "an eviction that is carried out to renovate or repair a rental unit." Most often, a renoviction refers to the eviction of tenants by landlords for minor cosmetic renovations and for disingenuous plans to undertake this work with the primary intention of increasing rents.

which required that landlords obtain necessary permits to complete a renovation prior to giving tenants notice to vacate, and that tenants be provided with:

- alternative accommodation while renovation work is being carried out, and then a return to the renovated unit with no rent increase; or
- accommodation in another comparable rental unit in the same building on the same or better terms as the previous tenancy agreement.

Engagement – To seek input on the draft bylaw content and the draft enforcement approach, targeted consultation took place between February 1 and March 15, 2021. A diverse range of groups were consulted, and multiple interests were considered, so that the potential impacts of the proposed Rental Business Licensing Bylaw could be assessed across different sectors, including tenant advocacy, rental housing development, property management, financial institutions, and the provincial government. Support for the proposed bylaw was mixed, with some key organizations citing concerns over data gaps, costs, and overlap, while others noted the value of the additional housing security and landlord accountability.

The provincial government announced its legislative improvements to the RTA after the City's engagement was complete, therefore staff were not able to include these considerations in stakeholder discussions. However, staff have assessed how the impacts and outcomes of the new provincial legislation intersect with feedback received during engagement and considered this in their recommendation.

Provincial Legislation and New Amendments to Prevent Renovictions

The *Residential Tenancy Act* (RTA) is provincial legislation that regulates residential tenancies in British Columbia. The RTA Section 49(6) (Attachment B) permits a landlord to end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law and intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The RTA also establishes levels of compensation (equivalent compensation to one month's rent) and notice (four months' notice) for tenants who must vacate their unit due to renovation or repair.

In response to the growing concerns regarding renovictions in BC, including the adoption of municipal bylaws to prevent them, the province introduced the *Tenancy Statutes Amendment Act* on March 1, 2021, that came into effect on July 1, 2021 (Attachment C, Province of BC - Media Announcement). This Act requires landlords to apply to the Residential Tenancy Branch (RTB) for approval prior to ending a tenancy for the purposes of repairs or renovations.

In this new process, RTB arbitrators will determine whether tenants can be reasonably accommodated. Current provincial guidance (Attachment A, Jurisdictional Review, page 8) indicates that most work can be undertaken without ending existing tenancies. Specifically, there are four types of work that are unsafe for tenants or that may result in the prolonged loss of an essential service or facility and would likely require vacancy: unit re-wiring, fire sprinkler installation or replacement, seismic upgrades, or interior wall or ceiling demolition (see Table 1).

If the RTB determines that tenants cannot be reasonably accommodated, a four-month notice to vacate with one month's rent in compensation is required, and an offer of right of first refusal would be required for tenancies within a residential property containing five or more rental units. Alternatively, a landlord and tenant can enter into a Mutual Agreement to End Tenancy with a negotiated compensation package should such an agreement be reached.

Table 1: Examples of Type of Work and Vacancy²

Types of Work	Examples	Vacancy
Cosmetic Repairs and Renovations	<ul style="list-style-type: none"> • Repainting • Replacing baseboards, cabinets, or doors 	Almost Never ³
Repairs or Renovations that cause temporary, intermittent, or short-term loss of services	<ul style="list-style-type: none"> • Re-piping • Electrical Service Replacement • Building Envelope Repair 	Unlikely
Extensive Repairs and Renovations, Significant disruption to tenants	<ul style="list-style-type: none"> • Rental unit re-wire • Fire sprinkler installation or replacement • Seismic upgrades • Interior wall or ceiling demolition 	May be Required

Table 2: Summary of Key RTA Amendments

Previous Regulation
<ul style="list-style-type: none"> • Landlords provided notice to vacate directly to tenants; the RTB is not notified • If tenant had reason to believe an eviction was done in bad faith, it was their responsibility to file a dispute with the RTB • Four months' notice and one month rent in compensation required for all evictions
New Regulation
<ul style="list-style-type: none"> • Landlord must apply to the RTB for any eviction for renovations requiring vacancy of the unit • Landlord must have all necessary permits in place and must demonstrate that the renovations are: <ul style="list-style-type: none"> ○ necessary to prolong or sustain the unit and, ○ that the only way to achieve vacancy of the unit is to end the tenancy. • In cases where an end to tenancy is approved, four months' notice and one month rent is still required

ISSUES & ANALYSIS

1. Rental Business Licensing Bylaw Considerations in Light of RTA Amendments

The adoption of the new RTA amendments increases provincial oversight protecting tenants from renoeviction and has potential resource implications, limitations, and opportunities for municipalities, which has led staff to reassess whether Victoria should proceed with a Rental Business Licensing type of bylaw. Each of these considerations are outlined in detail below.

² Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, July 2019: [gl2b.pdf \(gov.bc.ca\)](#)

³ Examples of when vacancy might be required in these situations include asbestos remediation, lead based paint disturbance, or other contaminants.

Table 3: Comparison of City's draft RBLB and RTA Amendments

Indicator	City Rental Business Licensing Bylaw	BC Tenancy Statutes Amendment Act
Applicability	Rental properties that require a business license; excludes landlords with two or fewer rooms/units	All rental housing under the RTA and <i>Manufactured Homes Act</i> in BC
Prevention of evictions for <i>minor or disingenuous</i> repairs	Relies on tenant complaints and building permits to trigger enforcement. May not prevent evictions for cosmetic renovations that do not require building permits.	Likely to prevent most evictions due to repair or renovation. Relies on tenant awareness and landlord compliance.
Protection from evictions for <i>major</i> repairs	Although the bylaw requires that tenants not be evicted due to major repairs, exemptions to the Bylaw are required to comply with municipal bylaws, such as the Rental Properties Standards of Maintenance Bylaw.	Requires tenants to be reasonably accommodated. Unknown level of risk of displacement where RTB determines that accommodation is unreasonable due to the extent of work or length of time vacancy is required.
City Resources	The bylaw would require significant resources to administer effectively, and it is estimated it would require a minimum of 1 FTE (\$120,000), more engagement, and \$10,000 to implement a communications strategy and tenant outreach.	The City could initiate several complementary actions to improve housing security for tenants, including a communications strategy and tenant outreach, costing \$10,000.
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Level of Effectiveness

High Benefit	3	Medium Benefit	2	Low Benefit	1
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Jurisdiction

Tenant and landlord relations are provincially regulated under the RTA. The main objective of pursuing a municipal Rental Business Licensing Bylaw was to supplement the RTA with more robust tenant protections. However, with the introduction of improvements to the provincial legislation, the need for a municipal bylaw is now uncertain.

If Victoria proceeds with the development of a Rental Business Licensing Bylaw at this time, there are risks of a duplication of efforts and competing expectations causing confusion for tenants wishing to avoid eviction. Furthermore, separate provincial and municipal application processes running simultaneously would likely result in a high risk of legal and procedural conflicts.

Additionally, the RTA applies to all permanent rental housing in the province, whereas the City's authority to enforce a Rental Business Licensing Bylaw would only apply to rental property operators that require a business license and would not apply to landlords that do not require a City Business Licence – homes where there are two or fewer suites for rent.

Without understanding the new RTB process in practice, it is unlikely that revisions to the draft Bylaw at this time would resolve the high risk of conflicts between each regulation.

Preventing Evictions for Extensive Repairs and Renovations with Prolonged Duration

Under current RTA legislation a landlord cannot end a tenancy to renovate or repair a rental home just because it would be faster, more cost-effective, or easier to have the home vacant. To balance the financial burden of necessary building upkeep and the need to keep tenants housed, the new RTA amendments allow landlords to apply for a rent increase to recuperate costs of completed work. Annual increases of up to 3% are permitted for a maximum of three years in addition to inflation, when proof of completed work is provided. This change replaces the previous regulation that permitted a 2% annual rent increase and will direct rent increases towards the intended maintenance costs. A new bylaw would not impact the ability for landlords to apply for this increase.

Cost and Complexity to Administer and Enforce

If Council wishes to proceed with drafting a Rental Business Licensing Bylaw, it is anticipated that at least one FTE would be required to administer the bylaw in addition to existing resources. Even with the improved provincial oversight, the bylaw's administration would likely require significant resources within the first two years of implementation. This work includes developing policy guidance and establishing precedents for exemption applications to ensure that the bylaw is enforced fairly and consistently. Administration of the bylaw includes receiving and responding to public enquiries, investigating complaints, reviewing applications for exemptions, tracking incidents, developing a mechanism to identify potential evictions for repair or maintenance, coordinating across departments and liaising with external groups including the RTB, tenant advocates, property owners, and landlords, as well as building awareness and compliance. There are also particularly large resource implications where staff bring forward time sensitive exemption applications for Council's consideration.

2. Complementary Actions to Improve Housing Security and Prevent Renovictions

Given the legislative improvements the province has made to improve tenant security, as well as the issues described with creating a similar municipal bylaw, it is recommended that Council not proceed with a Rental Business Licensing Bylaw at this time. Instead, it is recommended that the City pursue other actions to complement the improvements to the RTA and its implementation, to improve housing security for renters in Victoria, help to improve landlord compliance, and prevent renovictions. These actions are discussed below.

Monitoring the Outcomes of the Provincial Legislation Using the Equity Framework

Given the analysis provided, it is recommended that Victoria staff maintain regular communication with provincial staff in order to monitor the outcomes of the RTA amendments over a two-year period. The new RTB process will include tracking data on evictions for repair or renovations across BC. Staff also propose working closely with the EDI office and using the forthcoming Equity Framework to assess the efficacy of the new legislation for under-represented and under-served members of the community.

Improve Public Awareness and Access to Information

The effectiveness of the new provincial legislation relies on the compliance of landlords and awareness of tenants. There are several opportunities for the City of Victoria to lead initiatives that improve understanding of tenants' rights and landlord responsibilities. This includes providing RTA information during the permit application initiation; updating the City's website relating to tenants' rights and resources; and supporting tenants, through the City's Tenant Assistance Planner, to determine if the necessary permits and approvals are in place and make referrals to tenant advocacy organizations when needed.

Undertake Tenant Capacity-Building and Outreach Activities in Partnership with The Shift Initiative

The City of Victoria has been invited to participate as one of five municipalities across Canada in the Shift Demonstration Project, a national effort to operationalize a human rights approach to housing. This project will engage with tenants and build their capacity so that they are better equipped to respond to notices or threats of eviction, with a fulsome understanding of their rights and entitlements. Feedback from tenants in this initiative would support the creation of the framework for monitoring the effectiveness of the RTA amendments.

The Shift Initiative is an international organization led by Leilani Farha, former UN Special Rapporteur on the right to adequate housing, in partnership with United Cities Local Government (UCLG) and the Office of the High Commissioner for Human Rights (OHCHR).

OPTIONS & IMPACTS

Option 1 (Recommended): Suspend the development of a Rental Business Licensing Bylaw, monitor efficacy of the provincial legislative improvements, undertake tenant capacity building for awareness and report back to Council on RTA efficacy in two years.

This option allows the City to monitor the RTA improvements and work with the province to ensure that the changes are adequately protecting tenants, ensures that municipal actions are responsive to tenants' needs in Victoria, fulfills the intent of improving housing security, and balances the City's desire to support tenants with responsible stewardship of City resources. Should Council choose Option 1, a budget of \$10,000 will be requested as part of the 2022 Budget process, to improve awareness and undertake tenant capacity building through a partnership with the Shift Initiative.

Option 2 (Not Recommended): Direct staff to report back with a revised draft Rental Business Licensing Bylaw, an implementation plan, and resourcing requirements for Council's consideration.

This option is not recommended as a City bylaw would create overlapping and conflicting requirements to the RTA which would be problematic for tenants, landlords, City staff and potentially, the RTB. The provincial government has made significant improvements to the RTA that protect tenants against illegal renovations for minor or disingenuous renovations and repair. Additionally, a municipal bylaw would require additional City resources to implement.

This would include an initial cost of \$120,000 per annum for a new staff position with a tenant focus. The administration of the bylaw would further draw on existing resources from building permits and inspections, zoning, housing policy, and bylaw enforcement, possibly also requiring additional staffing. The tenant capacity building and awareness actions estimated at \$10,000 for Option 1 would also be required for this option.

Should Council choose the option to proceed with bylaw development, staff would update the draft bylaw, incorporating feedback from early consultation, and carry out further engagement to identify opportunities for the bylaw to work in concert with the *Tenancy Statutes Amendment Act, 2021* as much as possible. Following this update to the draft bylaw, Council direction to engage in public consultation would be required before adoption.

Related Municipal Plans and Policy

Accessibility Impact Statement

With the adoption of the provincial legislation, all groups, including individuals that have disabilities, as well as other vulnerable populations identified in the Housing Needs report will be positively impacted. Pending Council direction to proceed with Option 1, staff will ensure that education and awareness materials are targeted toward a range of equity-seeking groups.

2019 – 2022 Strategic Plan

The recommendations in this report align with Strategic Objective Three: Affordable Housing, by improving housing security for tenants in Victoria.

Impacts to Financial Plan

The recommendation for the tenant capacity building and awareness actions is estimated to require \$10,000 for engagement costs including accessibility provisions, technology, and if needed, catering and venue rentals. This will be included in the 2022 budget as part of continued Victoria Housing Strategy implementation, for Council's consideration.

Option 2 would require, at a minimum, \$130,000 which would include one new staff position to administer the bylaw, in addition to the tenant capacity building and awareness initiatives.

Official Community Plan Consistency Statement

The tenant capacity-building actions recommended in this report, together with the improvements to the provincial RTA legislation support the *Official Community Plan* objective that all residents have access to appropriate, secure and affordable housing.

CONCLUSIONS

The changes to the *Residential Tenancy Act*, will improve provincial oversight and improve protections of tenants who are unnecessarily displaced due to renovation or repair. The City of Victoria is well positioned to implement complementary actions to enhance housing security for residents, by monitoring the performance of provincial legislation and building tenant capacity, without duplicating work at the senior government level.

Respectfully submitted,

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Report accepted and recommended by the City Manager.

List of Attachments

- Attachment A: Jurisdictional Review
- Attachment B: Province of BC – Policy Guidance for Evictions Due to Repair or Renovation
- Attachment C: Province of BC – Media Announcement