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Getting Out

How to End a Fixed-Term Tenancy

By Yuka Kurokawa
and Erin Kelly

“Help! I’ve signed a fixed-term tenancy for a year and it’s three months in and I’ve had no heat for a month. Any way I can get out of this?”

“I’m in a two-year lease but now there’s violence in the home and I have to leave to protect my children. Can I break the lease?”

A fixed-term tenancy is a tenancy that lasts for a predetermined amount of time agreed upon by the tenant and the landlord. If you are in a fixed-term tenancy, you are responsible for fulfilling the terms of the tenancy agreement, including

paying rent, until the end of the term.

However, sometimes people find themselves needing to leave a fixed-term tenancy early. This article explores when you can do so and how to go about doing so legally. We will also look at some situations where a fixed-term tenancy cannot be broken and what options a tenant may have in these circumstances.

Landlord’s Breach of Material Terms

The Residential Tenancy Branch (RTB) describes a material term as “a



term that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.” The provision of heat or power are typically considered material terms. However, what is considered a material term for one person may not be material for another. For

(See Tenancy, page 4)

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BC OVERDUE FOR A POVERTY REDUCTION PLAN

The following is excerpted from the summary of the report “Long Overdue: Why BC Needs a Poverty Reduction Plan,” by Seth Klein, Iglia Ivanova, and Andrew Leyland, published by the Canadian Centre for Policy Alternatives (CCPA). The full report is available to read at the TAPS office or online at www.policyalternatives.ca.

British Columbia is the only province or territory in Canada that stubbornly refuses to develop a poverty reduction plan. This is not because BC doesn't have a poverty problem. In fact, despite being one of Canada's wealthiest provinces, BC has among the highest poverty rates in the country—13.2 per cent according to the Market Basket Measure (MBM), which we believe most accurately estimates current poverty. This makes BC's poverty rate the second highest in Canada.

Since 2008, over 400 organizations representing hundreds of thousands of British Columbians — including community groups, faith, Indigenous, business and health organizations, trade unions and others — have signed on to the BC

Poverty Reduction Coalition's call for a comprehensive plan with legislated targets and timelines. In rejecting the call for a poverty reduction plan, the BC government points instead to its Jobs Plan. [The CCPA] report reveals the failure of their approach.

First, while the government touts “jobs” as its answer to poverty, a large share of the poor have already taken such advice and are currently employed in the low-wage labour market. It is a common misconception that the poor are mostly on social assistance. [The authors'] research shows that about half of those living below the poverty line are either the working poor or children of the working poor. While over 13 per cent of British Columbians live in poverty, only about four per cent rely on social assistance at any given time (the balance of those not employed are mainly seniors or those who rely on other forms of income support).

Second, a closer look at poverty trends over time reveals that the government's approach has failed to meaningfully reduce poverty. BC's poverty rates are now

TAPS' SILENT WITNESS PROGRAM

Many of our clients find that appointments with the Ministry of Social Development and Social Innovation (MSDSI) can be stressful. Some find that having another person at their appointment lessens their stress and helps the appointment proceed smoothly. At TAPS, we have volunteer silent witnesses who can accompany individuals to ministry appointments. If you would like to be connected with a silent witness, call TAPS at 250-361-3521.

approximately the same as they were prior to the 2008 recession (when the call for a poverty reduction plan was first issued), and poverty rates remain much higher than historic lows seen in the late 1970s and late 1980s. Measures of severe hardship such as food bank use and homelessness have continued to climb. And the number of people working but who still live in poverty is also on the rise.

People in every BC community experience

(See Poverty Report, page 6)

TAX TIME AT TAPS

By Tony Pullman

Well, it's that time of year again—tax time. By the end of February everyone should have received their T slips from employers, or from government, setting out how much they received in 2016 and how much they paid in income tax, CPP and EI.



The act of filing a tax return, which we do electronically, triggers a PST refund, GST credits, BC Low Income tax credits, Child Tax Benefits, Guaranteed Income Supplements and other benefits to which you may be entitled.

TAPS continues to offer its tax clinics each Thursday, with the only difference being that *we do not do prior years' returns in the period from late February*, when we get the software from Revenue Canada, *to the end of April*, when the rush starts to subside. And we will try to have three volunteers on duty in the mornings from 8:30 until 12:30, and three more in the afternoon from 12:30 until 4:30.

With longer hours and more volunteers we hope to meet the demand we are

anticipating. Last year we were able to handle over 60 clients in a single day!

Remember to bring your T slips. Also, if you want to start having your refunds and GST credits paid into your bank account directly by the government, have your banking details ready or bring a

void cheque. The software needs to know the following: bank identification number (three digits); bank branch transit number (five digits); and your bank account number. Your bank can help you if you are in any doubt. ■

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JOIN TAPS!

Show your support—become a member! Fill out the membership form on the back of the Taproot and drop it off at TAPS, or join online at tapsbc.ca.

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(Cont'd from Tenancy, Page 1)

example, if an older adult with mobility issues is living on the third floor of a building and the elevator is broken and is going to be out of service for a while, that would be a breach of that tenant's material terms, because without the building having a functional elevator the person would never have moved into the apartment. However, for someone who is able-bodied and living on the third floor, the broken elevator may not be a material breach of their tenancy because they can take the stairs. Having a functioning elevator may not be essential to their living there or choosing to live there.

A landlord's breach of the material terms of your rental agreement may warrant

your ending a fixed-term tenancy. If you believe your

landlord has breached a material term and you want to end the tenancy, there are several procedures you must



SUPERVISED CONSUMPTION SITES NOW OPEN

By Lana Fine

In response to the high number of overdoses in the region, Island Health (IH) has named three locations for safe injection sites. The Place of Dignity (POD) is operating through Our Place Society and is open from 6:30am to 9:00pm, at 941 Pandora Avenue.

The second site is at the Portland Hotel Society Residential Outreach Building (the old Central Care Home) at 844 Johnson Street, but is currently closed to the public, only providing services to those living in the building.

The third site is at

Rock Bay Landing, at 2920 Bridge Street. The hours of operation are from 7am to 9pm, with harm reduction staff and peer support workers available on site, providing information, referrals to resources, and supervision for safety. The goal is to provide a more integrated, client-centered, supervised consumption site, outreach services, and increased Naloxone training for the public.

For more information contact: Our Place Society 250-388-7112; Portland Hotel Society Residential Outreach Building 250-812-1764; Cool-Aid Society 250-383-6945.

follow:

1) You must first inform the landlord in writing that there is a problem, and that as the tenant you believe that the problem breaches the material terms of the tenancy agreement. The letter should include your name, your contact information, the date, a detailed description of the issue, and a request that your landlord rectify the issue.

2) If the landlord does not or cannot comply with your request, you can write another letter stating that you are ending the tenancy due to a "breach of material terms," and serve it on your landlord. The notice to your landlord must include your name, the date, the address of the rental unit, the date you plan to leave the unit, and your signature.

(See Tenancy, page 5)

(Cont'd from **Tenancy**, Page 4)

Keep in mind that your landlord might argue that there was not a breach of material terms and may still attempt to hold you accountable for any losses they suffer as a result of your ending the tenancy early.

Fleeing Family Violence/ Going into Long-Term Care

In December 2016, the legislature introduced amendments to the *Residential Tenancy Act (RTA)* allowing people in a limited set of circumstances to end a fixed-term tenancy early without financial penalty. One of the amendments affects people fleeing from family violence who need to leave their rental unit to protect themselves or their children (as defined by the *Family Law Act*). The other amendment affects those who have been accepted into a long-term care facility or who have been assessed as requiring long term care. If you find yourself in either of these situations and need to



end your tenancy, here are the steps you must follow:

Step One

The first step is to fill out the *Ending Fixed-Term Tenancy Confirmation Statement* form, available on the RTB website. You will need a third party verifier to confirm that you are fleeing from family violence or that you have been accepted into, or have been assessed as needing to enter, a long term care facility, as the case may be. Some examples of reputable third party verifiers approved by the Residential Tenancy Branch to confirm that someone is **fleeing from family violence** (see section 39 of the *RTA Regulation* for the full list) are:

- outreach worker
- police officer who is a member of the provincial or municipal force
- medical physician, nurse practitioner, registered nurse, registered counsellor
- registered social worker

Some examples of reputable third party sources approved by the RTB to confirm that someone has been

PERSONS WITH DISABILITIES

TAPS has advocates who can help you apply for Person With Disabilities status (PWD) through the Ministry of Social Development and Social Innovation. TAPS can also help you with an appeal if you have applied and been denied. Call us at 250-361-3521 for more information. If you are at the appeal stage, be sure to get in touch with us as soon as possible after receiving your letter of denial, and tell the receptionist you are calling about a disability appeal.

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@tapsbc**

accepted into or has been assessed as needing to enter a **long term care** facility (see section 40 of the *RTA Regulation* for the full list) are:

- medical physician
- manager of a long term care facility
- registered occupational therapist

(See *Tenancy*, page 6)

(Cont'd from Tenancy, Page 5)

Step Two

The next step is to serve your landlord with a one-month notice to end tenancy and your completed copy of *Ending Fixed-Term Tenancy Confirmation Statement*, according to procedures approved by the RTB. Your tenancy will then officially end on the last day of the following calendar month. You are required to pay rent until this time; however, you have no obligation to remain in the unit until then.

Please note that your landlord cannot dispute your reason for providing a one-month notice to end tenancy. The landlord can, however, dispute the third party source who filled out the form if they have good reason to believe the person is not an authorized third party source.

When a Fixed-Term Tenancy Can't Be Broken

There may be other situations where you might want to end a fixed-term tenancy early, such as getting a job out of town, or suddenly needing a bigger place because of a growing family. While in these circumstances you cannot end a tenancy early using the methods outlined above,



there may be other legal options available to you, depending on the terms of your tenancy agreement:

- You can negotiate with your landlord a mutual agreement to end tenancy on an agreed-upon date.
- You can negotiate an assignment, and transfer your tenancy agreement, along with all of its rights and obligations, to a new tenant.
- You can sublet your unit to a sub-tenant.

Each of these requires that you follow specific legal procedures. Please consult the RTB (250-387-1602) or TAPS (250-361-3521) for more information about these options.

If you break a fixed-term tenancy agreement early for reasons that are not sanctioned by the *Residential Tenancy Act*, or fail to follow legislated procedures, you may be accountable for the landlord's loss of rental income. You may also be responsible for paying damages set out in your tenancy agreement. ■

FEDERAL DISABILITY ADVOCACY PROJECT

TAPS' Federal Disability Advocacy Project can provide information on CPP-Disability, the Disability Tax Credit and the Registered Disability Savings Plan. If you would like to speak with an advocate about any of these benefits, or would like help applying, contact Caitlin Wright at TAPS at 250-361-3521.

(Cont'd from Poverty Report, Page 2)

poverty and are affected by the physical, emotional and social hardships of being poor. Particularly troubling is the high number of children living in poverty because of the long-term health and social impacts. One in five of BC's poor are under 18 years of age. Poverty rates are also disproportionately high for marginalized groups including Indigenous people, people with disabilities and mental illness, recent immigrants and refugees, single mothers, single senior women, and queer and transgender people. When these factors combine, rates climb even

(See Poverty Report, page 7)

(Cont'd from Poverty Report, Page 6)

higher. For example, the poverty rate for children in single mother-led households is a shocking 49 per cent. The poverty rate for Indigenous children in Vancouver is 33 per cent, and 52 per cent of on-reserve Indigenous children live in poverty.

Too often we become resigned to the presence of poverty, hunger and homelessness, and we falsely believe that ending these social ills represents too great a challenge. The “poverty gap” in BC—meaning the total amount of money needed to bring every British Columbian living under the poverty line to that threshold—was \$5.8 billion in 2014. That’s how much it would take in increased wages and income supports to eliminate poverty in BC. This sounds

TAX CLINIC

At TAPS

Every Thursday

8:30 to 4:30

First come, first served.

Please note:

We will not be doing 2016 taxes until late February.

See www.tapsbc.ca for updates.

NEW STUDENTS AT TAPS

TAPS welcomes a new crew of practicum students this term. Lana Fine is in her fourth year of Social Work at UVic, and it is her interest in doing anti-poverty work at the system level that brought her to TAPS. She is with us until April, working in both the disability advocacy project and the income assistance project.

Erin Kelly is at TAPS this semester working on a project dealing with systemic causes of homelessness and housing insecurity, as well as

providing advocacy help to tenants on an individual basis. She is in her third year of Social Work at UVic.

Shereen Samimi is in Social Justice Studies at UVic, and is working in our disability advocacy project.

We also have students from Pro Bono Students Canada: Brendan Morgan, Carolyn Leblanc, and Kathryn Costain.

We welcome our new students to TAPS and look forward to working with them through the term.

like a lot of money, but it represented only about 2.4 per cent of BC’s economy (as measured by GDP).

Surely in a province with an annual income of \$250 billion we can afford to close a poverty gap of less than \$6 billion. Jurisdictions that set ambitious goals have seen substantial progress in reducing poverty.

[The] report recommends a comprehensive provincial poverty reduction plan that includes measures to:

- Significantly increase welfare and disability rates and index them to inflation;
- Increase the minimum wage to \$15 an hour and

then index it to inflation, and encourage

employers to adopt the living wage for families in their community;

- Build 10,000 new social and co-op housing units annually; and
- Adopt the \$10-a-Day child care plan, which includes free child care for those earning less than \$40,000.

Meaningful action to address poverty in our province is long overdue. As we approach a provincial election in the spring it is incumbent upon all political parties to finally join the rest of Canada and commit to adopting a poverty reduction plan. ■

ABOUT TAPS

TAPS was established and registered as a society in 1989. We provide legal information and representation on issues relating to income assistance, provincial and federal disability benefits, residential tenancy, and employment standards to people in the Greater Victoria area. We also provide public legal education in these areas and on broader poverty issues.

You can reach us between 9:30 am and 4:30 pm, Monday to Friday, by phone at 250-361-3521 or in person at #302 - 895 Fort Street. The office is closed daily for lunch between noon and 1:00 pm and is closed to walk-in clients on Monday and Friday mornings.

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