



OFFICE OF THE
SENIORS ADVOCATE
BRITISH COLUMBIA

FORGOTTEN RIGHTS

SENIORS NOT AFFORDED
EQUAL RENT PROTECTION

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MESSAGE FROM THE SENIORS ADVOCATE

JULY 2024

Most seniors want to live in their own homes as they grow older. However, if they wish to downsize or need assistance with the tasks of daily life, many seniors move into an independent living residence. In this form of housing, seniors rent an apartment with a hospitality service package that generally includes meals and housekeeping, which are required as part of the tenancy.

For many seniors, independent living is the bridge between living in their own homes and moving into assisted living or long-term care which offer clinical support. For older people who do not require daily care, renting an independent living unit enables them to live as they wish while doing fewer chores, such as cleaning and cooking, and enjoy recreational programs and social services provided in congregate living. As the number of seniors in B.C. continues to rise, we see more and more people are opting for independent living as their housing of choice.

Unfortunately, to the surprise of many people, older British Columbians living in retirement homes are at risk of eviction. Landlords are raising the cost of hospitality services without limit. Seniors have told our office they've been notified their service costs will increase by as much as 24%, take effect within weeks, and must be paid or they will have to find another place to live.

Many seniors find themselves in an extremely difficult position of having to question the landlord about the significant service cost increases – the very person they depend on for shelter and services. Often, there are no suitable alternative housing options in their home community.

This report finds that many landlords in independent living are telling seniors and their families that:

- Rent increase protections in the Residential Tenancy Act don't apply;
- They must pay mandatory service package cost increases far above the annual allowable rent increase even though the services form part of the tenancy agreement; and
- If a senior doesn't pay the fee increases, or wants to change the service package, they face eviction.

If a landlord compels a senior to sign a service agreement with a mandatory monthly minimum fee that they cannot opt out of as a condition of their tenancy, government must recognize that it forms part of the rental contract. The Residential Tenancy Branch needs to keep pace with the growth of the retirement living sector by ensuring tenancy and cost protections are enforced and the dispute resolution process is affordable and easy to navigate. Clear and transparent information and proactive oversight for all tenancy matters in independent living will allow seniors and their loved ones to prepare for their futures while affording them the same rights and protections as other renters.

Currently, the power dynamic between seniors in independent living and their landlords is weighted towards the landlord. Government must act now to correct this imbalance so older British Columbians can raise concerns about the increasing cost of rents and services without fear of losing both as the housing crisis continues.



Dan Levitt
BC Seniors Advocate

INTRODUCTION

When the upkeep of a house becomes too onerous, loneliness starts to set in or the risks of living alone increase, many seniors choose a housing option where they can enjoy the independence of their own apartment, the benefit of socializing over a shared meal and peace of mind knowing help is nearby if needed.

Throughout B.C., there are over 40,000 seniors who embrace this option - commonly referred to as “seniors independent living”, “assisted living” or “retirement living”. While there are differences in terms of unit size and the full scope of services offered, all provide some type of private rental unit and a basic service package.

When a senior moves into a retirement home, they sign a standard rental agreement which states how much they must pay each month for the unit they occupy. They are also generally required to sign a service agreement outlining the mandatory monthly fee for basic services. These basic services are commonly referred to as “hospitality” services and can include a minimum number of meals, scheduled housekeeping services, personal monitoring systems and whatever else is deemed necessary. In addition to paying rent each month, the senior must also pay monthly for their basic service package. Almost without exception, it is a condition of their tenancy that they pay this fee and they cannot opt out of the service package. Examples of this would be delivery of meals to their unit, personal laundry, assistance with medications and help with personal care.

Almost all retirement living rental settings are provided by the private market. There are a few publicly-subsidized assisted living units funded by health authorities and some independent living units operated by not-for-profit societies that use provincial government subsidies including Shelter Aid for Elderly Renters (SAFER) to help offset costs. In B.C., there are an estimated 30,000 independent living units, most of which are private market rentals, and 8,400 registered assisted living units, of which almost 50% are private market rentals.

Much attention is currently focused on ensuring tenancy protections to keep people from being priced out of their homes through unreasonable rent increases and unlawful evictions. While seniors in retirement homes sign a tenancy agreement, and the amount assigned to the monthly rent is subject to the maximum allowable rent increase under the Residential Tenancy Act (RTA), protection from large increases to their mandatory monthly service fees are not being enforced. These are portrayed by landlords as separate from the rental agreement even though a senior cannot opt out of these services and they are a condition of their tenancy.

The Office of the Seniors Advocate (OSA) has been hearing from an increasing number of seniors who live in retirement homes experiencing financial challenges due to significant increases to their mandatory service fees. This was one of the issues raised in the OSA’s June 2023 report, *It’s Time to Act: A Review of Assisted Living in B.C.* Since that time, government has not acted to address this issue and calls to OSA have more than doubled.

Seniors renting apartments in retirement homes are currently subject to the practice of landlords increasing their mandatory service fees by whatever amount they choose. If a landlord compels a senior to sign a service agreement with a mandatory monthly minimum fee that they cannot opt out of as a condition of their tenancy agreement, it forms part of the rental contract. Raising fees that must be paid as a condition of tenancy is the same as raising the rent.



The OSA has received concerns from seniors who were served an eviction notice when they advised their landlord they could not afford the service agreement increase and wanted to opt out of purchasing services. Given the urgency of the situation, the OSA is releasing this report to highlight a growing problem and provide the provincial government with the necessary imperative to strengthen enforcement measures to ensure senior renters are protected from eviction at a time when they are vulnerable both physically and financially.

DIANE & HUGH'S STORY

Diane and her husband, Hugh, contacted our office with concerns about an 11% increase to the hospitality service portion of their monthly fee at their independent living residence. The landlord advised that the rent was increased by the allowable amount under the Residential Tenancy Act (RTA) and the 11% increase applied to their mandatory service package.

Diane had escalated their concerns formally through the Residential Tenancy Branch (RTB) and an arbitrator ruled in favour of the landlord. The reason provided for the decision was that despite having a bundled agreement, the arbitrator ruled that the hospitality and service package could be considered separate from rent, and as such, subject to an increase outside the allowable regulated amount set by the RTA. Diane shared that she felt very intimidated by the whole process with the RTB. She found the application process very onerous, time-consuming and required computer skills. She felt unprepared at arbitration as she represented herself whereas the landlord had utilized experienced corporate legal counsel.

Diane was upset by the decision and decided to opt out of the dining package and meal tray services. When she informed the administration (at the retirement home) of this decision, she and Hugh were threatened with eviction. Diane felt this was unfair as the RTB had ruled that these services were considered separate from rent, yet the landlord was now stating they could not live there without purchasing these services. Diane wanted to pursue these new concerns with RTB but felt discouraged from her previous experience and again found the situation very stressful while dealing with her husband's health challenges. Diane continued to refuse to pay for the meal services and received several eviction notices as a result.

Diane consulted with a lawyer who wanted a significant retainer to take her case on. She also received another notice of an additional 9% rate increase for the mandatory service package for the upcoming year.

Diane worries that soon they will be priced out of the residence they have called home and finds this very upsetting as she has developed close relationships at the residence and worries how traumatic moving would be.



BACKGROUND

Every renter in B.C. regardless of age is subject to the BC Residential Tenancy Act (RTA). The RTA and regulations detail the rights and responsibilities of both landlords and tenants. Issues such as proper notice for rent increases and evictions, how to manage security deposits, the right of tenants to peaceful enjoyment, the need for landlords to indicate what is and is not included in rent, and when and how to involve the Residential Tenancy Branch (RTB) are some of the many landlord/tenant issues that are covered. The RTA is designed for a typical rental where the landlord is providing the living space and things such as utilities, internet and parking either form part of the rent or the tenant pays for them separately.

Over the last 40 years in British Columbia, with the growth in the seniors population, there has been a corresponding increase in the seniors rental housing market for people who may need or want some support with housekeeping, meals, companionship and personal care, but they do not require the medical services provided in long-term care. To date, there has not been a review of the RTA with the specific view of how to manage issues emerging from this form of rental housing. In particular, the issue of how cost increases to mandatory service fees are regulated.

The basic principle of what fees a landlord can increase has been well canvassed as evidenced by RTB rulings. It is generally accepted and enforced that if a landlord includes a service as part of the rent (i.e., internet), they cannot unilaterally remove that service without offering a compensatory reduction in rent. It has also been enforced that if a landlord provides a service such as parking at an additional fee, and that fee is increased by more than the allowable rent increase, the tenant can opt out of the parking spot, otherwise it forms part of the rental agreement and is subject to the allowable rent increase.

The natural extension of the decisions to date from the RTB is to enforce that if a landlord requires the tenant to pay a mandatory service fee that the tenant cannot opt out of, then it is part of the rental agreement and subject to the allowable rent increase. However, in a review of RTB decisions on the issue of seniors housing, the OSA found that arbitrators were ruling for the landlord in cases where there was a separate service agreement (as a condition of the tenancy). There is also further concern regarding the automatic exclusion of designated assisted living units from the cost protections of the RTA.

In B.C., there was a decision in 2002 to create the Community Care and Assisted Living Act. Captured under this Act are both long-term care facilities and formally registered assisted living units. The latter was intended to allow landlords/operators to directly provide personal care services for seniors who retained the ability to direct their own care. Seniors who lived in unregulated assisted living-type facilities could still receive personal care services, however they could not be provided by the landlord/operators and they could not be advertised or described as assisted living. These became known as “independent living” or “retirement communities”. With the creation of the Community Care and Assisted Living Act, there was a commonly accepted belief on the part of the Ministry of Health and the RTB that assisted living was excluded from the RTA. In a legal review commissioned by the Office of the Seniors Advocate, it was found that no language existed in either the RTA or the Community Care and Assisted Living Act to support the exclusion of assisted living.



CURRENT TENANCY PROTECTIONS IN PRACTICE

Independent living and private-pay assisted living residents are, in practice, living without the protection of tenancy laws. In the June 2023 report, *It's Time to Act: A Review of Assisted Living in B.C.*, the Seniors Advocate identified independent living and assisted living rent and service cost increases and lack of protections as a systemic challenge facing seniors. The Advocate also stated that the application of the RTA needs to be enforced for all tenancy matters as no seniors should be left without regulatory protection.

In response to the Advocate, the RTB stated government agrees that assisted living residents need to be better protected and is committed to ensuring assisted living residents have those tenancy protections and is currently working through the process to see how this can be achieved. While tenancy protections for seniors living in assisted living is important, those protections must recognize that the mandatory service package forms part of the tenancy agreement or the core issue of cost protection will not be addressed. The OSA looks forward to an update, by December 31, 2024, on the progress made.

The RTB also stated that independent living is already clearly under the authority of the RTA. However, the rulings of arbitrators and complaints from seniors would indicate that the law is not being applied. Based on what the Advocate has heard from seniors and their families, residents in independent living are regularly told by their landlords that the RTA does not apply to them. Furthermore, the practical barrier of having to go to a dispute resolution hearing to ensure their landlord complies with the law means many seniors are not being afforded the same tenancy protections as other renters in B.C.

As the government has committed to ensuring private-pay assisted living residents have tenancy protections and is currently working through the process, the remainder of this report will focus on seniors in independent living and the lack of enforcement of tenancy protections as serious cost concerns persist and government has made no commitment to resolve these issues.

"My mother has been paying \$3,145 per month since May 2023 when she moved from a rental apartment to assisted living (private). She was supplementing the difference between her income and rent through SAFER, a dwindling savings account and financial support from myself. I have recently had some health issues and am worried I can no longer contribute to the shortfall between her income and the assisted living rent."

- DAUGHTER OF ASSISTED LIVING RESIDENT



BARBARA'S STORY

Barbara contacted the OSA when she received a second notice within a year that her rent, which included hospitality services, would be increasing in her retirement residence. When Barbara reached out to us, the RTA had capped the annual allowable rental increase to 1.5%. However, the increase Barbara faced within a 12-month period amounted to 14.3%. When she disputed the second increase with the landlord, they advised Barbara that the RTA did not apply. Furthermore, the landlord stated that she must abide by their policies and procedures, which may change from time to time, with terms and conditions completely set at the discretion of the landlord, if she wanted to remain at the residence.

Barbara refused to sign a new rental agreement that the landlord required and was served a notice of eviction with 60 days to vacate the residence. Barbara had consulted two non-profit organizations that advised her the landlord was likely entitled to the actions taken. She also contacted the RTB on two different occasions and was given conflicting information.

Our office confirmed that while her residence had some publicly-subsidized assisted living suites, all others were considered independent living and she could pursue dispute resolution services through the RTB. However, by this point, Barbara was too frustrated by the lack of clear and transparent information and felt intimidated by the landlord. In order to find a home she could afford, she was forced to move to another retirement residence far outside of her community.

THE RESIDENTIAL TENANCY BRANCH

The Residential Tenancy Branch (RTB) is a government office that provides information, resources and dispute resolution services for tenants and landlords. RTB staff provide information about the law to tenants and landlords in B.C. and hold dispute resolution hearings for both parties when they cannot settle disputes on their own.

A tenant can access the RTB either through their website or by telephone. In the recent past, there have been issues with the ability to connect with the RTB due to staffing shortages. There has been progress made on response times, but seniors still report receiving confusing and contradictory information.

While the RTB website states that independent living “tenancies generally fall under the Residential Tenancy Act”, we know from many seniors contacting the OSA, as well as from RTB staff directly, that the RTB will not confirm whether an independent living unit falls under the RTA. Rather, RTB staff will advise that the only way to know if the independent living unit is covered is to apply for dispute resolution, pay the \$100 filing fee, wait for a hearing date, and then an arbitrator will decide if the unit is covered.

In cases where a tenant is successful in arguing that the unit is covered by the RTA, the decision applies only to that unit, and the landlord is free to assert that the RTA does not apply to the other units. This also means if other tenants in the same building receive notice of a rent increase above what is allowed under the RTA and want to dispute it, they would each need to file, pay and wait for another arbitrator ruling.

“Marjorie is my 98-year-old mother-in-law. She lives in an independent living facility in the Lower Mainland. In October, she was given a rent increase letter stating that her rent would be going up \$450 per month beginning in February. At first my husband and I thought there was no way that this type of increase was possible. And yet seemingly it is...”

I contacted the landlord to question the amount of rental increase. He said he had done his homework. “We are not regulated by the BC Residential (Tenancy) Branch or the Act...our business classification is not rent controlled by the government or any other form of legislation.”

I contacted the RTB and started a file for dispute resolution but was cautioned by the RTB that they may not have jurisdiction over this situation and that it may fall under the umbrella of Community Care and Assisted Living Act.”

- DAUGHTER-IN-LAW OF INDEPENDENT LIVING RESIDENT

From our discussions with seniors who have contacted our office and after reviewing the decisions of RTB arbitrators, we are aware of another argument being attempted by some landlords to exclude their independent living residences from the RTA. This involves arguing that a residential complex is registered as an assisted living residence under the Community Care and Assisted Living Act for a portion of the total number of units, with some residents transitioning from independent living to assisted living, and the landlord asserts the entire complex must be considered an assisted living residence and is not included in the RTA.



This is an incorrect interpretation of the Community Care and Assisted Living Act and not in compliance with the legislation. When a building has mixed independent living and assisted living units, the assisted living registrar under the Community Care and Assisted Living Act has no jurisdiction over the independent living units. If seniors renting independent living units in a building in which part of the premises is regulated under the Community Care and Assisted Living Act were exempt from the RTA, they would be left no regulatory protection at all; they would be exempt from both the Community Care and Assisted Living Act and the RTA. Unfortunately, the result of some RTB decisions is that seniors signing tenancy agreements for independent living receive no regulatory protection simply because the landlord registered other units in the building as assisted living.

"This entire scenario has been a very taxing, and exhausting, process for any able-bodied person, let alone seniors, such as ourselves, who are battling ongoing health issues, and who have been attempting to navigate a system that is full of loopholes. Seniors independent living is not recognized in any form of provincial legislation, leaving opportunistic landlords open to take advantage of their senior tenants. There appears to be little, if any, coordination of legislation between the two ministries, which is becoming quite problematic in these mixed-use seniors' buildings."

*- INDEPENDENT LIVING
RESIDENT*



RTB DISPUTE RESOLUTION SERVICES CASE DECISION

RTB decision 122020-6568¹ provides an example of a senior who appealed to the RTB about a rent increase while the landlord argued that the tenancy was exempt as the senior's rental unit is designated "assisted living" accommodation under the Community Care and Assisted Living Act. In the background and evidence provided during dispute resolution, the senior's rental unit was described as a two-bedroom apartment on the fourth floor of a four-story building. The evidence further states that the fourth floor is occupied by persons who do not require any assistance to carry on their lives, whereas the second floor is occupied by those who do require significant assistance, and the third floor appears to be a combination of independent living and assisted living accommodation.

The senior tenant further testified that she had no need for the landlord's assistance in her life and that the rental unit was marketed to her as an independent living accommodation. She produced floor plans published by the landlord which showed the fourth floor to be designated "independent living".

The tenancy agreement refers to "senior living" but did not designate or indicate that the rental unit is assisted living accommodation, although in the fine print the document indicates that a suite could be inspected pursuant to the Community Care and Assisted Living Act.

Legal counsel for the landlord indicated the tenancy was advertised as an "age in place" accommodation, where, as people age and their health declines, they can transition from independent living to buying some additional support from the landlord, to buying extensive medical and living support. The legal counsel produced documentation showing the entire building designated as assisted living accommodation under the Community Care and Assisted Living Act.

The arbitrator in this case ruled that the RTA does not apply to this tenancy and therefore the tenant's application was dismissed.

¹ http://www.housing.gov.bc.ca/rtb/decisions/2020/12/122020_Decision6568%20.pdf



DON'S STORY

Don contacted our office about an eviction notice his parents received from their independent living landlord and our office referred him to contact legal advocacy services and the RTB. His parents were 93 and 94-years-old and had nowhere else to go if they were evicted.

When we followed up with Don, he advised that they did not escalate concerns around the eviction notice with the independent living landlord as they were cautioned by the RTB they may not have jurisdiction over this situation. Don was aware of the lengthy process entailed to dispute the eviction notice and given the advice from RTB that the RTA may not apply to their situation, he had to focus his limited time to find a suitable alternate living arrangement for his parents as they had only been given 30 days notice to vacate. At the end, Fraser Health was able to place his parents in long-term care together. Don shared that his father passed away soon after and he believes the stress of the eviction shortened his father's life.

THE DISPUTE RESOLUTION PROCESS

When a senior contacts the RTB and they cannot have their issue resolved, they are referred to Dispute Resolution and an RTB arbitrator will hear from both the tenant and the landlord and issue a ruling and enforceable orders.

Each case that goes before an RTB arbitrator is decided based on the merits of that particular application. The arbitrator is considered neutral, and it is completely dependent on the parties' ability to provide adequate evidence and articulate their case. This can be challenging for people who lack financial resources to get legal advice or help, who are not familiar with the dispute resolution process, what is entailed in gathering evidence and documents and how best to represent and dispute their case. Seniors who have experienced this process shared with the OSA how unprepared they felt representing themselves, while the landlord retained experienced legal counsel.

The inequities faced by seniors who must go before the RTB are significant; on the one side, the often-large companies running independent living residences have the capacity to hire lawyers, while most seniors do not. The process is inherently challenging, particularly for many seniors with limited ability to do legal research online, organize evidence, and present and prepare their cases.

"The residents moving out and their families are under tremendous stress and have bigger issues to deal with than going through the tedious and time-consuming process of filing a claim with the RTB and the hearing process. Most of this process is computer or internet based and the majority of seniors lack the skills necessary to navigate it."

*- INDEPENDENT LIVING
RESIDENT*

Seniors that did not get their desired outcome during the arbitration when going against the landlord's legal counsel felt the process was neither neutral nor fair. We must also recognize seniors attempting to access dispute resolution processes differ in their abilities and experiences and many are unable to access free legal counsel or lack the financial resources to hire their own lawyer.



SANDY'S STORY

Sandy contacted our office when her 95-year-old father received a notice from the landlord of a significant increase to his independent living rate. Contrary to the original tenancy agreement which included dinner and housekeeping services in one rental rate, the notice of rate increase was now separated into two fees: "services" and "rent".

Sandy shared that the proposed increase to the service side was 8.5%, well above the 2% allowable rental increase regulated by the RTA at that time. She said her father was very stressed about this situation and he was unable to find an organization to help him. She also shared her concerns that over 1,100 residents across the landlord's retirement homes would be impacted by this rate increase and it did not seem fair or appropriate for each of those seniors to pursue their own dispute resolution process, given that not all residents would have the ability to navigate the complexities of that process.

OSA staff provided Sandy with information about the Compliance and Enforcement unit within the RTB and shared information about other organizations that may be able assist with the legal side of the RTB processes. However, there are very few organizations that can provide legal representation to seniors for an RTB hearing, and those organizations cannot serve the majority of individuals seeking help.



MONITORING OF COMPLAINTS AND CONCERNS BY THE RTB

Our office contacted the RTB to determine how many complaints they receive about independent living tenancy issues, such as rent or service increases, evictions and other tenancy matters. The RTB advised that while it is attempting to build up its data capacity, it does not collect this kind of information. The lack of data and monitoring on these issues is incongruent with assurances from the Ministry of Housing that it is taking this issue seriously.

The limited data we were able to obtain from the RTB was insufficient to determine the magnitude of these particular issues or identify trends. However, the OSA tracks data related to contacts about independent living and assisted living cost increases and we have seen a significant increase in calls and emails. In fact, the number of complaints we heard on these issues has more than doubled over the past year.

Even with concrete data from all sources, it is likely the true magnitude of these issues would be underrepresented. For each person our office hears from, it is likely that all other residents in the same building or other locations owned by the operator are also being impacted by the same issue. For instance, our office recently heard from one resident impacted by a seemingly illegal rent increase, but the landlord had a total of 1,100 residents across the province who likely faced the same increase.

In another case reported to our office, a resident was successful at dispute resolution when an RTB arbitrator agreed that an increase in the service portion of rent outside the allowable annual amount was illegal. However, the same landlord oversees thirteen retirement residences across B.C. We confirmed the same increase was proposed in at least two other residences, if not all of the operator's residences, thereby impacting hundreds of vulnerable seniors. In the latter case, our office heard from only five residents. Many of the others likely would not have known what recourse was available to them and the RTB advised they would each be expected to pursue dispute resolution services individually.

Many seniors are also afraid to 'rock the boat' and fear repercussions from landlords and are therefore not willing to make a complaint. They do not want to risk endangering the community and relationships they have built at their residence. Others are simply unaware of what rights they have to a complaints process. Many are frustrated by the misinformation they experience from many sources when they try to escalate concerns which further reinforces the lack of clarity on allowable rent and service increases experienced by all parties.

Seniors also know that if they must find alternate housing, appropriate options are limited, and the onus may fall on adult children to either supplement their parent financially or become a caregiver. Our office was recently included on an email between two sisters where one warned the other not to antagonize the management of their mother's independent living residence and to discourage any actions that may provoke the need for her to have to move.

As seniors are generally living longer and have healthier lives, outliving retirement savings is a concern for many older British Columbians and their families. Clear and transparent regulations and oversight for all tenancy matters in independent living will allow for seniors and their loved ones to prepare for their futures while affording them the same rights and protections as other renters, including equitable access to complaint processes.

CLARA'S STORY

Our office was contacted by a local non-profit organization that assists seniors to find appropriate housing. They called us to share the situation about Clara, a 100-year-old woman living in an independent living residence for the last 15 years, who needed to find a new place to live immediately. Clara's low income and retirement savings covered her monthly costs at the residence, but due to rising costs at her retirement home over the last few years, her savings were depleted faster than expected. Clara was left with a budget primarily from her government pension income of less than \$1,900 per month. She could no longer afford to live at the residence and the thought of moving from the place she called home was both traumatic and stressful.

Clara reached out to the non-profit organization for assistance to find an affordable independent living residence, as she only required housekeeping and hospitality services at her residence to remain independent, not an additional level of services like those associated with assisted living. Clara's adult children, seniors themselves, were in significant distress over their mother's situation, as they too were faced with the rising costs of living and did not have the space to have their mother live with them and were unable to supplement her income.



CURRENT STATUS OF INDEPENDENT LIVING ISSUES

RESIDENTS' FEES

The initial fees charged to live in independent living for both the rent and services have no restrictions. Landlords are free to set the rent and service fees at whatever amount they wish. Once set, the rent portion is subject to the regulated annual allowable rent increase. Over the last decade, the allowable rent increase under the RTA has generally been higher than the rate of inflation. In 2019, the RTA was amended and the default rate for the annual allowable rent increase is equal to the rate of inflation.

While the RTA defines services provided by the landlord as “rent” and includes them within its general cap on rent control, the OSA has seen some landlords charge a monthly fee that covers both rent and service fees, while others charge separately and may increase both by the same percentage, or a different amount for each. Regardless of how the increase is framed, our office has heard independent living residents have been subjected to increases in their living costs that are significantly higher than the amount allowed under the RTA and much higher than the rate of inflation.

“Contrary to my father's rental agreement, which included daily dinner and weekly housekeeping services in his rental rate of \$3,895 per month, his rental increase notification out of the blue divided this rental rate into 'rent' and 'services', with a 70/30% divide. Management increased the services side by 8.5%, when the allowable increase should be 2% for the entire \$3,895 (in accordance with the government ceiling for rent increases in 2023). This represents a significant cost difference.”

- SON OF INDEPENDENT LIVING RESIDENT

EXISTING LEGAL PROTECTIONS

The RTA applies to all agreements to rent living accommodation,² with the exception of certain narrow categories.³ For example, the RTA does not apply to vacation rentals,⁴ emergency shelters,⁵ or community care facilities regulated under the Community Care and Assisted Living Act.⁶ If there is no specific exception written into the law for a type of rental housing, the RTA applies to that housing. As mentioned, in rental housing regulated by the RTA, a landlord cannot raise rent more than the regulated allowable rent increase.⁷

Nowhere in the RTA does it state that independent living is exempt from the RTA. However, significant confusion persists as to whether independent living facilities fall under the RTA. Also, while there is currently no language in the RTA to support an exclusion, historically it has been assumed that assisted living did not fall under the RTA. As both independent living and private-pay assisted living typically offer similar hospitality and other services, and are often co-located on the same site, there is significant confusion distinguishing between the two.

² Residential Tenancy Act, S.B.C. 2002, c. 78, s. 1 “rental unit”, “tenancy agreement”; s. 2

³ RTA, s. 4

⁴ RTA, s. 4(e)

⁵ RTA, s. 4(f)

⁶ RTA, s. 4(g)(i)

⁷ RTA, s. 41

"I just received a notice of an 11% increase from the new owners of a private-pay assisted living home where my mother is a disabled resident. We have been on a waiting list for a government subsidized unit for over a year. The notice is effective at the end of this month - not even a months notice. How are we to find a replacement with such short notice? What protections does the Province have in place for our most vulnerable seniors on fixed income regarding these sudden and significant cost increases?"

- SON OF ASSISTED LIVING RESIDENT

The RTA says a "housing based health facility that provides hospitality support services and personal health care" is exempt from tenancy laws.⁸ Some housing providers have taken the position that their independent living units are "housing based health facilities" to which the RTA does not apply even though regular health services are not provided on-site. Furthermore, if a landlord were to claim the building as exempt because it is a "housing-based health facility" then the building and the landlord would need to be licensed under the Community Care and Assisted Living Act or the Hospital Act.

As well, even though the RTA applies to independent living, we are aware of cases where an RTB arbitrator has decided it does not apply to hospitality services—such as laundry, housekeeping and meals—unless the services are provided as a term of the tenancy agreement.⁹ If a landlord separates out the cost

of housing and the cost of services into two distinct agreements, tenants are often told they have no protection from significant increases to the service amounts, even if the services are essential to why they chose to move into the residence in the first place.

The current situation regarding tenancy protection rights in B.C. for seniors living in independent living is a stalemate; many seniors are faced with unregulated rent and service fee increases, they do not practically enjoy the tenancy rights they should under the RTA and there is a lack of supply in the market resulting in very little consumer choice during a housing crisis.

PROBLEMATIC TENANCY AGREEMENTS

A review of a sample of independent living and private-pay assisted living tenancy agreements shared with our office from residents found clear stipulations by the landlord that the RTA does not apply. Further review found independent living tenancy agreements that contradicted the RTA, including parameters around eviction and damage deposits. While the RTA explicitly says that a landlord cannot contract out of the RTA,¹⁰ and the RTB has confirmed that language in a tenancy agreement cannot supersede one's rights or protections under the RTA, many independent living residents have assumed they are not protected by the RTA because they have signed agreements with their landlords stating they are not covered.

⁸ RTA, s. 4(g)(v)

⁹ RTA, s. 1 "service or facility"; s. 27

¹⁰ RTA, s. 5



The following are excerpts from a current independent living residence agreement that contravenes the RTA multiple times.

EXCERPTS FROM TENANCY AGREEMENT	CONTRADICTION TO RTA
<p>TOTAL MONTHLY FEES: The Accommodation Fee and Second Resident Fee (if applicable) may be increased by a minimum of 5% every twelve (12) months, calculated on the anniversary of the Commencement Date, with 60 days’ written notice of the increase to the Resident. Such an increase is anticipated by the Landlord to cover the cost of annual inflation and cost of living. Additionally, however, the Landlord reserves the right to increase the Accommodation Fee and Second Resident Fee should the Landlord be subjected to extraordinary cost increases outside its control that significantly impact the Landlord’s ability to continue to operate. Such an increase shall take effect upon thirty (30) days’ written notice to the Resident.</p>	<p>This is not permitted under Part 3 of the RTA, which imposes different limits on how, when, and by how much rent can be increased. Under Section 41, a landlord must not increase rent except in accordance with this Part.</p>
<p>SECURITY DEPOSIT: The Resident agrees to pay a security deposit of one-half month’s rent equal to \$_____ for the Suite (the “Security Deposit”). The Security Deposit is subject to deductions as outlined below: \$250.00 for administration services at move-in; \$250.00 for suite rejuvenation at the end of tenancy provided there is no extraordinary damage in the Suite. Resident agrees that the Security Deposit shall not be subject to interest for the account of the Resident.</p>	<p>This is not permitted under Section 38 of the RTA, which limits the circumstances in which a landlord can retain a security deposit to certain situations at the end of a tenancy.</p>
<p>DISRUPTION / INTERFERENCE: The Landlord can terminate this Agreement immediately on written notice, if: The Landlord determines, at its sole discretion, that the Resident or a person permitted at the residence by the Resident has: significantly interfered with or unreasonably disturbed another resident, invitee or guest of the Landlord including its employees, contractors or agents.</p>	<p>This is not permitted under Section 47 of the RTA, which specifies that for cause termination of a tenant’s lease must take place on at least one month’s written notice. Section 47 also ensures the tenant’s right to dispute an eviction by making an application for dispute resolution.</p>

NOTE(S): Some language in the tenancy agreement excerpts above have been modified to protect the anonymity of the Landlord while preserving the context.

The OSA has also heard from seniors in independent living who have a single agreement which includes tenancy and services, but the landlord is attempting to convince residents to sign two new agreements separating the rent from services. This, of course, would open the door for the landlord to argue before an arbitrator that while the tenancy agreement may be protected under the RTA, services are not covered, and therefore there should be no limit on the amount of service cost increases. Clearly, there continues to be a significant amount of confusion for seniors and their family members as they try to figure out whether their units are subject to the RTA and what protections apply to their situation.



TONY'S STORY

After Tony's mother passed away, the landlord withheld the security deposit, also known as a damage deposit. The landlord did not state that any "damage" occurred in the unit, but their contract policy was to retain deposits in order to restore the suite to its original condition. Tony questioned how this was legal as he understood under the RTA that landlords must apply to the RTB to keep a damage deposit and demonstrate that damages were beyond regular wear and tear.

When Tony approached the landlord, he was told that the RTA did not apply as the residence provided à la carte health care services. The landlord also noted the tenancy agreement stated that the RTA did not apply. While Tony shared that the landlord's comments had discouraged others from pursuing their complaints, he decided to pursue dispute resolution services through the RTB.

When our office followed up with Tony we learned that he was successful at the RTB and the arbitrator had ruled the landlord to pay back the withheld deposit. Unfortunately, the landlord still refused to pay them back despite 14 other residents having similar outcomes through the RTB dispute resolution process. Tony and the other residents had now escalated to small claims court where the landlord was still arguing exemption from the RTA.

CONCLUSIONS AND RECOMMENDATIONS

Approximately 30,000 seniors live in independent living units throughout B.C. and they should be afforded the same protections as other renters. With an ageing population and an increasing number of seniors needing independent living to support healthy ageing, government should have the foresight to see the risk of continued inaction is considerable. The challenges with affordability in the sector appear to be on the same trajectory as the broader housing crisis, and the implications are sobering.

While many of the people impacted are currently seniors living in independent living, people with parents and/or grandparents will also be impacted in the future if these tenancy issues are left unaddressed. It is reasonable for seniors entering independent living to think they will be able to call it home for the rest of their lives, but increasing costs can exceed income and seniors can outlive their retirement savings. We must also remember that in addition to the costs seniors are paying for rent and services, they must also pay for drug prescriptions, non-included meals, transportation, activities, personal care, mobility aids, parking and other miscellaneous expenses.

In response to the Seniors Advocate's 2023 report, the RTB said it would "look for opportunities to educate landlords on the rules surrounding independent living tenancies" and "provide additional information to arbitrators". However, the OSA is concerned these measures will not go far enough to reducing the significant challenges seniors in independent living face with some landlords who are disregarding their tenancy rights.

Through this review, we reached the following conclusions:

1. Seniors are frequently subject to actions from landlords that are prohibited by the RTA, such as unlawful rent and hospitality service cost increases. These actions have serious consequences, for example, seniors are losing their housing as it becomes too expensive and they are at risk of homelessness. While the RTA currently applies to independent living, seniors are frequently told their independent living units are exempt. Independent living landlords, non-profit organizations and, most importantly, the RTB are commonly passing on this message to seniors.
2. The existing processes for enforcing the RTA are ineffective for seniors. Seniors' only option for holding landlords accountable is to pursue dispute resolution at the RTB, which is not feasible for most seniors given the cost of hiring a lawyer, the mental and emotional burden of litigation, the technological, research and presentation skills required, and the particularly drastic consequences for seniors that will occur if they lose their housing. The inequities faced by seniors stem from the very design of RTB dispute resolution process and the inherent power imbalance: on the one side, the often large, companies running independent living residences have the funds and organizational capacity to hire lawyers and present strong cases, and on the other, is a senior who is attempting to present their case before the arbitrator, usually by themselves.



Given the trajectory we are on, it is becoming more and more critical for government to address the challenges facing seniors living in retirement homes. Several mechanisms are needed to address this serious problem. It is critical that the Ministry of Housing, in partnership with the Ministry of Health, commits to fully implementing the following recommendations:

1. The government take immediate steps to ensure the Residential Tenancy Branch (RTB) consistently enforces the Residential Tenancy Act (RTA) in recognizing seniors living rental units are covered by the RTA as are any service fees they pay that are a requirement to rent their unit.
2. The government review the practices, capacity and expertise of the Residential Tenancy Branch (RTB) to address the issues raised in this report regarding the intimidation and vulnerability many seniors feel when trying to address legitimate residential tenancy issues with both the RTB and landlords.

The OSA will be monitoring the implementation of these recommendations and looks forward to receiving an update, from the Ministry of Housing and the Ministry of Health, on the progress made towards full implementation.

APPENDIX 1 - SOURCES

DATA SOURCES

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APPENDIX 2 - HISTORICAL ATTEMPTS TO ENSURE TENANCY PROTECTIONS TIMELINE

- 1999 The Inter-Ministerial Supportive Housing Review Committee recommends specific consumer protection measures for seniors living in supportive housing.
- 2002 Community Care and Assisted Living Act passes without including assisted living-specific tenancy protections measures.
- 2006 Bill 27, Tenancy Statutes Amendment Act (an Act to amend the Residential Tenancy Act). This legislation included provisions that would have specifically referred to assisted living and supportive housing in the RTA and clarified they are covered by that statute. The Act was passed but never brought into effect, leaving residents without that additional clarity.
- 2012 BC Ombudsperson Report - The Best of Care: Getting it Right for Seniors in B.C. (Part 2) recommends the unproclaimed sections of the Residential Tenancy Act be brought into force.
- 2013 The British Columbia Law Institute and the Canadian Centre for Elder Law recommend the Assisted Living legislation adopt rent control provisions for private-pay residents and require operators of assisted living facilities to give prospective residents advance disclosure about the facility before entering into an occupancy agreement.
- 2015 BC Ombudsperson Update on Status of Recommendations: No specific action has been taken towards implementation. This recommendation is in Year 4 of the Ministry of Health's four-year work plan.
- 2016 BC Ombudsperson Update on Status of Recommendations: The Ministry of Health told us it would be reviewing Recommendations 82-84 regarding tenancy in assisted living as it developed and reviewed amendments to the Community Care and Assisted Living Act, in consultation with the Office of Housing and Construction Standards.
- 2017 BC Ombudsperson Update on Status of Recommendations: The Ministry of Health told us that it continues to engage with the Housing Policy Branch, Office of Housing and Construction Standards at the Ministry of Municipal Affairs and Housing to respond to this recommendation. This work is currently in Year 4 of the Ministry of Health's work plan.
- 2019 BC Ombudsperson Systemic Investigation Update on The Best of Care: Getting it Right for Seniors in BC (Part 2): Seven years after our report, government has taken no action on these recommendations. The lack of action on such a long-standing issue is disappointing, and we urge government to take another look at this issue as soon as possible in order that assisted living residents are not afforded fewer protections than tenants in other types of residences.
- 2019 Amendments to the Community Care and Assisted Living Act and regulation came into effect but do not address tenancy issues.
- 2023 Office of the Seniors Advocate Report - It's Time to Act: A review of Assisted Living in B.C. recommends including providing explicit tenancy protection under the Residential Tenancy Act for all residents in all congregate living settings.
- 2024 The Residential Tenancy Branch responds to the BC Seniors Advocate's recommendations confirming that it maintains its long-held interpretation that assisted living is exempt from the RTA and that independent living is already clearly under the authority of the RTA.

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