

Protecting the Rights of Student Renters



Introduction:

The exemption of student housing from the BC Residential Tenancy Act (RTA) in 2002 left thousands of student tenants without rental rights. In the wake of this legislative change, student housing contracts have become one-sided, without due attention to procedural fairness, and often ignoring the rights of the tenant, in favour of the institution. These contracts treat student housing as university property and often overlook the fact that they are homes to the students who live there.

Examples of tenant rights absent in student housing range from their right to reasonable privacy in their own homes, to their right to an unbiased appeals process. These gaps are especially concerning in the context of the relationship between a post-secondary institution and their students, where significant power imbalances exist – the institution holds ultimate control over the academic future and living arrangements of the student.

For many reasons, the RTA is not suitable to the uniqueness of housing run by post-secondary institutions. The main reason for this is because the RTA does not allow the institution to reserve student housing for the exclusive use of students. This being said, student housing tenants should still receive the same protections afforded to their peers living off-campus. Separate legislation is therefore required to ensure equal protection under the law for students living in student housing, as all other tenants in BC.

The Alma Mater Society at UBC (AMS), in partnership with the University of Victoria Student's Society (UVSS) and the Simon Fraser Student Society (SFSS), have developed nine recommendations to be included in provincial legislation for student housing. The Alliance of BC Students (ABCS) have also extended formal support for these recommendations. This proposal now has the support of over 156,000 students in British Columbia who are eager to see change.

The nine recommendations are designed to balance the need for student tenant rights, with the administrative challenges that post-secondary institutions face as operators and landlords of student housing. In principle, each recommendation is based on rights guaranteed by the RTA, and adapted to fit the unique structure and environment of student housing.



Any legislation of student housing should require that:

- 1) Housing contracts explicitly list the rights of tenants, along with corresponding responsibilities of the tenant, similar to the UVic residence contract. For example, you have the right to feel safe here; you have a responsibility to act in a way that does not endanger yourself or others.
- 2) Housing contracts include an outline of a clear and specific process for tenants to report problems in their residence
- 3) Barring emergency or unforeseen circumstances, the institution must provide posted notice of entry to a unit at least 24 hours prior to said entry. The notice must also include a window of time in which that entry will occur. That window of time can be no greater than 72 hours. Housing may only enter rooms with less than 24 hours in the event that there is an emergency, and entry is necessary to protect life and/or property.
- 4) Transfers between housing units are only permitted for reasons of safety, extended repairs, or as requested by a tenant. In the event that a room switch is initiated by the institution, the tenant should not be required to pay new residence or meal plan fees. This rule does not apply in cases where an individual's conduct is the reason for the housing transfer.
- 5) All institutions have a Community Standards Appeals Process, which will be a transparent committee group, composed of students and the option of faculty or staff. Similar to the Residence Standards Appeal Committee at UBCO, the committee members must have no relation to the student or student housing administration. In the event that a committee member is found to be in a conflict of interest, they can be removed from that particular committee hearing. When resident security and safety is at risk, the appeal committee process can be expedited using a pre-designated university official.
- 6) In the event that a student is served with an eviction notice, they must receive at minimum, one month's posted notice, regardless of the violation. If a resident has not paid their rent, the notice period is shortened to 10 days. The one month notice period can be waived only by a pre-designated university official, in situations where safety and wellbeing of residents is at risk. In all cases, students still have the right to appeal the eviction through the Community Standards Appeals Process.
- 7) The housing contract must explain what tenants can expect during a maintenance disruption, in addition to repair timelines. If residents believe that an outage has not been adequately addressed, they can file a complaint and request for compensation with the institution. If the institution does not approve the request, the decision can be appealed to the Community Standards Appeals Committee.

8) The housing contract state that on continuing tenancies, the rate increases can be no more than that year's inflation rate + 2%, and can only happen once every 12 months. Tenants must receive 3 whole months' notice, in writing, of any rent increases. In the event of a proposed increase that is larger than the allowable rate, schools must engage in student consultation, and submit a proposal to the BC Ministry of Advanced Education.

9) Housing contracts must explicitly list a calendar date as to the start and the end of the tenancy agreement. Institutions cannot evict residents prior to the end of the tenancy agreement, unless the student is served with eviction notice for community infractions. The contract end date must be at least 24 hours after the end of the official examination period as determined by the institution's academic calendar. In the event that a student must stay past the contract end date, the University must provide explicit directions on how to temporarily extend the length of the contract.

Recommendations:

1) Have explicit rights listed in the residency contract, along with corresponding responsibilities of students.

Residence contracts from major post-secondary institutions across British Columbia such as UBC and SFU do not list any explicit rights for students, despite the fact that ACUHO-I best practices state that "clear and thorough written terms between the resident and the institution that conveys mutual commitments"¹ is a key ethical principle for college and university housing professionals.

The University of Victoria's 2016/2017 Residence contract currently lists 9 explicit rights and corresponding responsibilities. A brief example can be found below.

- "You have the right to be safe here. You have the responsibility to conduct yourself in a way which doesn't endanger yourself and others.
- You have the right to expect fair and consistent service from Residence Services staff. You have the responsibility to treat Residence Services staff with respect and to address any questions or inconsistencies through the appropriate channels."²

While we agree that it is important for students to accept some responsibility for their experience in residence, it is equally important that post-secondary institutions recognize they have a responsibility as landlords to provide basic rights to student tenants who live in housing. Currently, there is an extreme emphasis on students to take responsibility (financial or otherwise) for anything that could happen in residence. Explicitly listed rights for students will help to distribute responsibilities in a reasonable and equitable way between students and post-secondary institutions.

¹ACUHO-I, *Standards and Ethical Principles for College and University Housing Professionals* (2015),

² University of Victoria Residence Services, *Residence Contract 2016/2017* (2016), s. C 1.1

The AMS, UVSS, SFSS, and ABCS believe that all students benefit from having clear, defined rights in their residence contracts. As such, we recommend that rights and corresponding responsibilities of students are explicitly listed in the residence contract.

2) The residence contract must include an outline of a clear and specific process for students to report problems in residence

While post-secondary institutions always strive to promote healthy environments, it is inevitable that problems will arise in residence. For this reason, it is important that students know exactly who they can report problems to, in addition to knowing what to expect out of the reporting process.

It should never be assumed that this information is “currently is offered via both formal and informal mechanisms”³, given that the level of interaction that a resident may have with Residence Life staff can vary greatly with their degree of involvement and participation in the residence community. Even for residents who do interact with the residence life community, current UBC, UVic, and SFU residence contracts do not outline a reporting process in situations where students are experiencing conflict with Residence Advisors or other Residence Life staff.

The AMS, UVSS, SFSS, and ABCS believe a clear and specific process outlying a neutral third party (such as an Ombudsperson) that students can report residence problems to is in the best interest of all students, and we recommend this process be outlined specifically in all residence contracts.

3) Barring emergency/unforeseen circumstances, schools must provide some sort of confirmation which includes a window that maintenance will be accessing their unit (i.e a 2-3 day window where they can expect maintenance workers to show up)

Under Section 8 of the Canadian Charter of Rights and Freedoms, “everyone has the right to be secure against unreasonable search or seizure”⁴. An action is determined unreasonable on the basis that it violates the expectation of privacy that a reasonable individual would have. Therefore, all Canadians have the right to a reasonable expectation of privacy, with the expectation of privacy being highest in one’s home. For the tens of thousands of students who reside in on-campus student housing across BC, they are at home in their residence rooms.

Despite the fact that these rooms are home for students, they are not afforded the same right to a reasonable expectation of privacy as other Canadians. In the residence contracts of UBC, SFU and UVic, student housing reserves the right to enter any room at any time, for any reason- with no notice.

³ UBC Student Housing & Hospitality Services, *Response to AMS Contract Assessment* (2016)

⁴ Government of Canada, *Canadian Charter of Rights and Freedoms* (1982) s. 8

While we understand that post-secondary institutions must be able to enter a student's room in emergency situations such as a flood, fire, or serious medical emergency, this should not come at the expense of fundamental, charter rights which are promised to all Canadian citizens.

For this reason, we recommend that post-secondary institutions must provide posted notice which includes a 24-72 hour window of when the student can expect their room to be entered for maintenance or inspection purposes. We recommend a 24-72 hour window because we recognize that post-secondary institutions have a wide range in the number of students living in residence, and what is possible for an on-campus population of 1,000 students may not be possible with an on-campus population of 10,000 students.

The AMS, UVSS, SFSS, and ABCS believe that entry without notice to the student should only occur when there is an emergency and entry is necessary to protect life or property. Therefore, we recommend that all residence contracts include 'mandatory notice of entry' provisions, including a 2-3 day window where maintenance workers will arrive.

- 4) Housing switches are only permitted for reasons of safety, extended repairs, or as requested by a student. In the event that a room switch is initiated by the University, the student should not be required to pay new residence or meal plan fees. This rule does not apply in cases where an individual's conduct requires them to move to a different unit

In the majority of cases, when a student moves into a residence room, they do so with the expectation that they will live there for the duration of their contract. When the university decides to switch a student's room for reasons of safety, or extended repairs such as renovations, this imposes major stress and inconvenience on students, regardless of the time of year or reason for the housing switch. Currently, UBC's residence contract allows student housing to change accommodation type (residence area, floor, building, or different type of room or unit) for any reason, without notice⁵.

To further contribute to the stress and inconvenience, housing contracts from UBC, SFU, and U Vic require students living in residence who undergo a room switch to pay new residence or meal plan fees, which are often more than the costs in their original unit, as well as covering all necessary moving and storage costs out of their own pockets- even when the student did not want to switch rooms in the first place.

As such, the AMS, UVSS, SFSS, and ABCS recommend that room switches are only permitted when absolutely necessary, such as reasons of safety, extended repairs, or as otherwise requested by a student. When a room switch is initiated by the university, the student should not be required to pay new residence or meal plan fees, and the cost of their current unit should be set as the maximum cost for the unit they are transferring into.

⁵UBC SHHS, *Residence Contract 2015/2016 One term only and winter session* (2015), s. 1.09

However, we recognize that there are times where schools need to transfer students to a different room as a result of their conduct; for example, a student may be transferred to a single unit if it becomes clear that the individual can no longer live with roommates. For this reason, we recommend that in cases where the room switch is as a result of an individual's conduct, they will be responsible for new residence plan or meal plan fees.

- 5) All institutions have a Community Standards Appeals Process, which will be a transparent committee group, composed of students and the option of faculty or staff. Similar to the Residence Standards Appeal Committee at UBCO, the committee members must have no relation to the student or student housing administration. In the event that a committee member is found to be in a conflict of interest, they can be removed from that particular committee hearing. When resident security and safety is at risk, the appeal committee process can be expedited using a pre-designated university official.

Students who live off campus are afforded protection and mediation by the neutral third party of the residential tenancy board (RTB). This ensures that both tenants and landlords receive fair and equal treatment during appeals and other processes. Unfortunately, students who live on campus are subject to a lack of an impartial decision maker, which means they do not have access to a fair appeals process.

For example, at UBC, "the Standards Appeal Officer is a SHHS senior administrator" . As an employee, this individual has a fiduciary responsibility to act in the best interest of UBC student housing. This renders the appeals officer unable to issue a fair appeal to any student because the conflict of interest is inherent.

We recommend that the appeals process should be a transparent committee group, composed predominantly of students who live in residence. Given that residence standards are based off a community guidelines approach, the residence community should be the ones to hear appeals on residence conduct. It should be noted that UBC Okanagan and U Vic already use committee groups composed of students to appeal residence standards violations.

- 6) In the event that a student is served with an eviction notice, they must receive at minimum one month's posted notice, regardless of the violation. If a resident has not paid their rent, the notice period is shortened to 10 days. The one month notice period can be waived only by the Managing Director of Student Housing Hospitality Services, in situations where safety and wellbeing of residents is at risk. Even when the one month notice is waived, students still have the right to appeal the eviction.

As previously discussed, when a student must vacate their residence room for any reason, it is an extremely stressful and inconvenient process. In cases where a student is facing eviction, they also must worry about finding a new place to live in an extremely short period of time, further compounding the existing stress. Given the low vacancy rates across BC, new accommodations can be extremely difficult for students to find on a short timeline.

The AMS, UVSS, SFSS and ABCS recommend that students must receive at minimum 1 month's posted notice, regardless of the reason for eviction. We believe that one month is a reasonable time for students to find new accommodations, pack their things, and file an evictions appeal if they so choose. Furthermore, we recommend that there is a consistent standard applied to all evictions, documenting that a student has had at least three interactions with housing to discuss their problematic behavior, and being explicitly told that continuing the behavior will lead to an eviction. A resident may not be evicted if they have had less than three interactions with housing. Exceptions to this rule include cases where a resident has committed a criminal offence, such as theft, harassment, or assault, in which case one 'interaction' with housing is sufficient to warrant eviction.

The minimum notice period of one month may be waived in circumstances where resident safety and well-being is severely compromised, but the offending resident must be moved into alternate housing provided by the school for the 1 month period, allowing them a suitable amount of time to find a new place to live, and appeal the decision if they so choose.

- 7) The residence contract should explain what students can expect during an outage, in addition to repair timelines. If residents believe that an outage has not been adequately addressed, they can file a complaint and request for compensation with housing. If housing does not approve the request, the decision can be appealed to the community standards appeals committee.

With any residential building, things will break down and require repairs, which results in inconvenient outages of basic necessities that are detrimental to students. Currently, UBC, SFU, and U Vic Residence contracts explicitly state that no resident is entitled to compensation for any outage or deficiency. This means that serious issues like a lack of hot water, or no elevator access in a 16 storey building receive no special accommodations or compensation, even though students living off-campus would be entitled to compensation for the same issues. In addition to compensation for new issues, we also recommend that institutions include disclosures of ongoing deficiencies, such as construction or loud neighbors, so that residents can make an informed decision about which residence they choose to move into.

Currently UBC's residence contract allows for students to submit requests for compensation to housing. The AMS, UVSS, SFSS, and ABCS recommend implementing or continuing the practice of submitting requests to housing, but add that any denied

requests for compensation can be appealed to the community standards appeals committee, in order to provide students with a non-biased, third party decision maker.

- 8) The residence contract should state that rent increases can be no more than that year's inflation rate + 2%, and can only happen once every 12 months. Residents must receive 3 whole months' notice, in writing, of any rent increases. In the event of a proposed increase that is larger than the allowable rate, schools must engage in student consultation, and submit a proposal to the BC Ministry of Advanced Education.

We recognize that rent increases must occasionally occur in order to continue to provide high levels of service to students. However, we believe that rent increases should be strictly controlled and monitored for the benefit of students. UBC, SFU, and UVic residence contracts currently do not explicitly state how much rent will increase each year. By clearly stating it in a contract, this will provide transparency to students so they know exactly what the long-term financial commitment will be. By limiting rent increase amounts and frequency, we hope to eventually achieve a long-term, aspirational goal of housing costs exceeding no more than 30% of the income of an individual or family living in housing run by their post-secondary institution.

Furthermore, we recommend that in the event of a proposed increase that is larger than the allowable rate, schools must take the rent increase to the BC Ministry of Advanced Education, and prove that they are in severe financial need of the additional revenue, and will run a deficit if they do not increase rents. Only if this condition is satisfied should rents be increased beyond inflation + 2%. In the event that the increase that is larger than the allowable rate is approved by AVED, students will be given the option to terminate their contracts without penalty, within 30 days of the increase taking effect.

- 9) Housing contracts must explicitly list a calendar date as to the start and the end of the tenancy agreement. Institutions cannot evict residents prior to the end of the tenancy agreement, unless the student is served with eviction notice for community infractions. The contract end date must be at least 24 hours after the end of the official examination period as determined by the institution's academic calendar. In the event that a student must stay past the contract end date, the University must provide explicit directions on how to temporarily extend the length of the contract.

The U Vic residence contract currently states that students must move out 24 hours after their last exam. This rule imposes an extreme time crunch on students, as many find it difficult to undertake the substantial task of packing up their rooms while simultaneously studying for their exams. To ensure that no student is faced with such a task, the AMS, UVSS, and SFSS recommend that universities list an explicit calendar date to indicate the start and end of the tenancy agreement.

Another possible alternative could be similar to the methods used at UBC, where the start of the tenancy is the date that students sign their 'contact card' information (which they must do in order to receive the keys to their room), and the end date of the tenancy is the "move out date" which is assigned in the contract as the calendar date of April 28th, 2016. (cite winter session housing contract, 15/16). This method reduces the likelihood of a student needing to move out right after their last exam, while still providing the University with the ability to be flexible when necessary with the contract dates.

In the event that a student needs to extend their contract beyond the end date of the tenancy, the residence contract must state that extensions are possible, and include a set of explicit instructions on how to extend the end date of the tenancy.

Conclusion:

Overall, these recommendations are designed to balance the need for student tenant rights, with the administrative challenges that post-secondary institutions face as operators and landlords of student housing. In principle, each recommendation is based on rights guaranteed by the RTA, and adapted to fit the unique structure and environment of student housing. As on-campus student housing continues to grow in the coming years, it is important that all renters of on-campus student housing are afforded the same rights and protections that is given to renters across B.C.