



## **December 2018 – Update**

### **Residential Tenancy Legislation and Independent Supportive Housing for Seniors**

In British Columbia, consumer protection is provided through legislation for seniors living in assisted living and complex care residences. The Assisted Living Registrar provides oversight and complaints management for assisted living residences and Community Care Licensing does the same for residential care facilities. Additionally, each health authority is required to have a Patient Care Quality Review office that investigates and resolves complaints. More than one of these bodies can be called to action on the same matter.

Independent Supportive Housing (ISH) for seniors is comprised of Independent Living (IL) and Assisted Living (AL); however, only Independent Living falls under the Residential Tenancy Act (RTA) and Residential Tenancy Regulations: both of the Act and Regulations are a poor fit for retirement community living or ISH for a number of practical and financial reasons.

Many Independent Living communities include a combination of housing and hospitality services for functionally independent seniors capable of directing their own lives, yet who choose to live in a congregate setting with supportive hospitality services.

Assisted Living is a semi-independent form of housing that is regulated under the Community Care and Assisted Living Act (CCALA), in which housing, hospitality services, and at least one but not more than two prescribed services are provided to individuals who require regular help with daily activities. Revisions to the CCALA under Bill 16 may require retirement communities offering Assisted Living to increase the number of prescribed services to be provided.

Independent Supportive Housing models, whether IL and AL, have commonalities: a communal living environment, cost-effectiveness through economies of scale, and a supportive community of neighbours. They both enable socialization, respite for supporting caregivers, opportunities for ongoing observation of the resident and a platform for cost-effective delivery of home support and personal care services. Benefits of Independent Living are validated in satisfaction surveys, continued high demand for units and a decline in vacancy rates over the past years. Surveys also indicate that residents feel very safe and experience a high quality of life in Independent Living. Seniors in Assisted Living demonstrate improved health outcomes, and reduced use of hospital and physician services despite the fact that they may have multiple risks. Both Independent Living and Assisted Living reduce the reliance on higher cost residential care and unnecessary hospitalizations.

Owner/operators of Independent Living for seniors would agree that consumer protection within this housing tenure is desirous; however, they would argue that the Residential Tenancy Act does not fulfill consumer protection needs for tenants or the landlords offering housing.



## Areas of General Concern:

### 1. Tax implications:

- a. Independent Living for seniors is generally sold as a package: for a monthly fee, the senior receives accommodation and an array of services bundled together. If the accommodation and services are unbundled and paid for separately, the services attract tax thus increasing cost to the senior. The February 18, 2014 BC Budget would appear to have addressed PST concerns associated with this unbundling of accommodation and services but GST also applies to some services and has not as yet been addressed. Subsequent budgets are silent on this matter.

### 2. Accommodation vs services:

- a. Related to (1), the RTA applies to tenancy (accommodation), not to services sold with the accommodation. The RTA and Regulations do not extend jurisdiction over service packages to the Residential Tenancy Branch. Seniors view the accommodation and service package as one and would likely have difficulty understanding why the Residential Tenancy Board (RTB) could not assist them if a concern was related to the service portion of the monthly fee. A senior with a dispute over the service portion would not be able to address their concern to the RTB.
- b. The RTA governs rent increases but not service packages. Therefore, in order to implement a rent increase compliant with RTA, the operator would need to unbundle the accommodation portion of the rent from the services thereby attracting taxes as outlined in (1) above.

3. The RTA specifies notice periods which must be given when a tenant wishes to vacate a tenancy. One full month notice must be given from the 1<sup>st</sup> of the month. If operators of seniors housing were to strictly adhere to this RTA rule and were to hold seniors to this requirement it could present serious financial hardship for the senior. The primary reason a senior leaves Independent Living is to access a higher level of care. Under RTA the senior would need to give 30 days' notice from the 1<sup>st</sup> of the next month, which could represent almost two months' rent in some cases, depending on when they must vacate the premise. Presumably the senior is also paying a per diem in the acute care hospital and will need to pay over \$40 / day if they are discharged to a complex care facility before their notice period in the independent residence expires.

4. Under RTA, when a landlord wishes to evict a tenant there is a long and drawn out process that must be followed and there are specific conditions which may bring on a landlord's notice (RTA Part 4; Div 1; 46 – 49.1), none of which speak to health and safety concerns. The primary reason a landlord of seniors housing may elect to evict a senior is safety related to health status. Where a senior's health or cognition deteriorates to the point that they are no longer safe to live independently, the operator must evict them for their own safety, and the safety of others in the



building. Operators often assist in finding more suitable living arrangements which generally means assisted living or residential care. Under RTA, if the senior (or their family) did not wish to leave, the landlord would have difficulty enforcing an eviction for safety reasons and this is to the detriment of the senior and others in the building, including other residents, visitors and staff. Currently landlords address this issue by obtaining written consent from the senior / family related to eviction when it is related to safety and / or deterioration in health status. These consent provisions are included in the Tenancy Agreement.

5. In Independent Living the landlord frequently has occasion to enter a tenant's suite on both a scheduled and unscheduled basis to deliver services, respond to an emergency or simply to ensure a senior is in no need of assistance. Under RTA lengthy notice of entry is required which is not in the best interest of seniors who may require immediate assistance; for example, due to an emergency. The provision of Emergency Response Services provides tenants with peace of mind about their safety and well-being in Independent Living buildings and is generally included in the service package.
6. RTA prohibits charging a guest fee for overnight stays and a significant fine can be levied should a landlord charge for this service. Paid overnight guest stays in seniors housing buildings are common place and many residences offer a guest suite for rent as a service to seniors for their families and friends.
7. Independent Living often co-exists with Assisted Living in one building. Conceivably a senior may enter the building as independent and age in place into Assisted Living. With Independent Housing covered by RTA and Assisted Living falling under the Community Care and Assisted Living Act the senior would need to sign a new Residency Agreement should they move from independent living to Assisted Living within the same building. The former Assisted Living Registrar insisted that a new tenancy agreement needed to be reviewed and signed when a resident moved from IL to AL. The rationale was that this exercise reinforced the fact that the resident was moving from one regulatory regime (i.e. RTA) to another (i.e. CCALA). Practically speaking this has the potential to be quite confusing to the senior, particularly as their health status declines. It should also be noted that RTA permits a landlord to charge the tenant a fee when they move between rental units. The enforcement mechanism when the senior is moving from an RTA suite to a non-RTA suite in the same building is unclear and impracticable.
8. Submissions made to the BC Rental Housing Task Force suggest that rent increases be tied to the unit and not the tenant. In a recent release, the Urban Development Institute – Pacific Region warns that “[...] rental homes will be put at risk if the provincial government implements vacancy control measures tying rent control to the units and not tenants”. Attaching rent increases to the unit vs the tenant is problematic in Independent Living as the RTB has no jurisdiction over the service package component of the total lease. Likewise, flexibility to offer discounted rents for a select number of suites for a specified period as part of a deal with municipal governments on development permitting would be lost. Further, costs for the service component (which includes



wages, benefits, commodity costs, etc (that are unique in Independent Supportive Housing versus strict rental housing) can increase at a faster rate than inflation but are not taken into consideration when under the RTA allowable annual increases.

In many parts of the Residential Tenancy Act and Regulations one can find content that is either inappropriate for seniors housing or disadvantages seniors were a landlord to enforce their RTA rights. If a law is to apply, it must apply fully, not just where it is convenient. Neither seniors, nor operators of Independent Living, are adequately protected under RTA.

BCSLA is aware of several challenges brought to the Residential Tenancy Branch for resolution. Due to privacy issues, the names of the parties must remain confidential. In some cases rulings have gone in favour of tenants while in other cases the Board has ruled in favour of landlords. There does not appear to be a clear precedent; therefore, these rulings create uncertainty for both tenants and landlords in Independent Living as the RTB has decided, in many cases, that it does not have jurisdiction over the complaint.

It is the view of BCSLA that changes to the RTA are required in order to address all the above mentioned issues. If the RTA's intent is to provide consumer protection for tenants and direction / clarity for landlords, revisions to the legislation and regulations must take place immediately.

For further information contact the BC Seniors Living Association 604-689-5949 ext 3

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