

REPORT

Planning and Development Department

To: Mayor Johnstone and Members of Council
Date: May 12, 2025

From: Jackie Teed, Director
Planning and Development
File: #2689980

Item #: 2025-137

Subject: **Business Regulations and Licensing (Rental Units) Bylaw Cooling Amendments and Next Steps**

RECOMMENDATION

1. *THAT City of New Westminster Business Regulations and Licensing (Rental Units) Bylaw No. 6926, 2004, Amendment Bylaw No. 8525, 2025, City of New Westminster Bylaw Notice Enforcement Bylaw No. 7318, 2009, Amendment Bylaw No. 8526, 2025, and City of New Westminster Municipal Ticket Information Bylaw No. 8077, 2019, Amendment Bylaw No. 8527, 2025 each be given first, second, and third readings.*
 2. *THAT an operating budget enhancement for three regular full-time positions to support tenant-related enforcement, support and life-safety work be included for consideration as part of the 2026 Budget process.*
-

PURPOSE

This report: 1) presents bylaw amendments necessary to implement a requirement to allow cooling equipment in existing rental buildings, for Council's consideration of first, second, and third readings; and 2) seeks Council endorsement for including the resource enhancement necessary to implement this and other tenant-related enforcement and life-safety work, in the 2026 Budget process for Council's consideration.

SUMMARY

At the January 13, 2025 Regular meeting, the following motion was passed by Council:

BE IT RESOLVED that staff proceed with the work to bring forward the necessary bylaws and/or policies to require cooling in existing rental buildings, for consideration by Council by end of May 2025, as outlined in the Next Steps section of the January 13, 2025 report titled "Follow-up Report on Council Motion: Strategy and Resources to Require Cooling in Existing Rental Residential.

BACKGROUND

Since the 2021 western Canada heat dome and the subsequent trend toward hotter summer temperatures, cooling in rental apartments have become an area of concern. As such, Council requested that cooling requirements be considered and staff, working with legal counsel determined that the most effective path is to amend the City's Business Regulations and Licensing (Rental Units) Bylaw to address both existing and new buildings.

The work to require habitable temperatures in existing purpose-built rental buildings is multi-phased and, using a streamlined approach, staff have brought forward bylaw amendments (Attachments 1, 2 and 3) for Council consideration that restrict landlords from prohibiting air conditioning and/or heat pumps in rental units, unless an exemption has been granted, along with associated fines for non-compliance.

In addition to the bylaw amendments, a more robust pilot project is simultaneously being done, as directed by Council, through the Vulnerable Building Assessment, which will incorporate broad engagement with interest holders, economic analysis, and a pilot project to trial potential methods for achieving cooling in existing buildings (see Attachment 4 for project overview).

DISCUSSION**Proposed Cooling Requirements**

Cooling requirements are a new area that the Ministry of Housing and Municipal Affairs is exploring as the Residential Tenancy Act (the "Act") currently only covers heating requirements. Therefore, a provision in the Business Regulations and Licensing (Rental Units) Bylaw No. 6926, 2004 is proposed to addresses cooling in existing rental buildings, by prohibiting a prohibition on tenants using air conditioning units ("AC") or heat pumps to cool their residential units.

The August 2024 Residential Tenancy Branch (the "Branch") Air Conditioning Units resource (Attachment 5) and the Residential Tenancy Policy Guideline 8: Unconscionable, Unlawful, and Material Terms resource (Attachment 6) provide the framework for this approach. These resources note that:

- the Act does not have maximum temperatures for rental units and does not require landlords to allow AC in rental units;
- a ban on AC units could be considered unconscionable (which means it is unenforceable) if it grossly impacts the health and quality of life of the tenant;
- if a landlord shows there are safety or building issues around having AC units, a ban may be enforceable.

Therefore, in a residential property where cooling is not provided, and there are no safety or building issues related to use of cooling units, it is reasonable to infer that the landlord should not prevent a tenant from using a portable device designed to cool internal temperature in a rental unit. The Branch encourages landlords to find solutions that consider the health and quality of life for tenants if an AC unit is not a viable option. They have suggested cooling rooms and investments in electrical upgrades to accommodate the use of AC units.

Future Phases of Work

Staff are working on future phases of this regulatory effort which are anticipated to include such reasonable accommodations as may be necessary to support the health and quality of life for tenants. For example, in March 2024 updates to the BC Building Code include a new cooling regulation that requires new buildings to provide one indoor living space, in each dwelling unit, that does not exceed 26 degrees Celsius. Therefore, a related cooling requirement may be added to appropriate City bylaws to require cooling in buildings that are subject to this March 2024 BC Building Code amendment. This is intended to be addressed in a future amendment to the Business Regulations and Licensing (Rental Units) Bylaw No. 6926, 2004.

Enforcement

Enforcement provisions for the proposed bylaw amendments are proposed to be included in the Bylaw Notice Enforcement Bylaw No. 7318, 2009, Amendment Bylaw No. 8526, 2025 and the Municipal Ticket Information Bylaw No. 8077, 2019, Amendment Bylaw No. 8527, 2025.

NEXT STEPS

Staff continue to work interdepartmentally to prepare recommendations for additional methods to support habitable space in rental buildings and will bring such work forward for Council's consideration at a future meeting. Below is the outline of next steps from the January 13, 2025 Council Report:

1. Research and analysis with external consultants to establish an approach;
2. Write a letter to the Minister of Housing to request clarification and confirmation that the approach would not trigger legal renovations or the Above Guideline Rent Increase permissible by the Province;

3. Develop and bring forward bylaws, policies, and/or new enforcement resources necessary for implementation to Council for consideration of adoption/endorsement; and, **(we are here)**
4. Review outcomes and propose amendments as necessary, based on the recommendations of the Vulnerable Building Assessment project.

SUSTAINABILITY IMPLICATIONS

Municipal rental maintenance bylaws can support sustainability by providing the authority to ensure buildings are well-maintained, which reduces energy consumption, waste, and the need for frequent repairs and replacements, ultimately minimizing environmental impact. These bylaws can also contribute to healthier living environments and the preservation of property, aligning with sustainable development goals.

FINANCIAL IMPLICATIONS

Council's Strategic Priorities Plan includes a focus on prioritizing homes for those with the greatest need. A significant part of this work relates to supporting current tenants in existing rental buildings. This work includes, but is not limited to, such tasks as: enforcement of BC Building Code (particularly life-safety) issues; supportive in-reach to the most vulnerable tenants with intersecting challenges including living in poorly maintained dwellings; research/analysis and enforcement of improper rental building operations; responding to tenant complaints; administering regulations, such as the proposed cooling requirements; annual inspections under the standards of maintenance bylaw.

Currently, the City has three regular full time positions who must cover all property use (unsightly, zoning, building code, etc.) and tenant support, as well as supporting departmental enforcement of a broad range of other City bylaws, and overseeing some directly such as light intrusion, noise, etc. This staffing complement is at the same level as they have been since 2007, despite the city population increasing by about 1/3 in that time. At the same time, multiple crises have impacted the community, including affordable housing, and the three crises of homelessness, substance use, and mental health. This City has been taking on a more proactive role to support the community in this regard, and the scope of work for these staff has increased significantly.

At this time, the current staff complement is unable to consistently undertake the scope of work outlined above, including proactive annual rental building inspections, consistent in-reach with vulnerable tenants, timely research/analysis and advancement of enforcement files. The addition of cooling requirements will further add to this backlog. To proactively advance the work, including the cooling requirements proposed and under development, additional resources will be required.

Staff has identified that three regular full-time positions are needed to support this overall work: two bylaw officers focused on tenant support and life safety, and one outreach worker to provide in-reach support to vulnerable tenants who are at risk of homelessness. Staff recommends these positions be forwarded to the 2026 budget process for Council's consideration.

INTERDEPARTMENTAL LIAISON

The work to prepare the regulatory approach is interdepartmental and involves senior staff from Planning and Development including Building, Integrated Services, Development Planning, and Social Planning as well as senior staff from Climate Action, Community Services (Licensing), and Fire and Rescue.

OPTIONS

1. That City of New Westminster Business Regulations and Licensing (Rental Units) Bylaw No. 6926, 2004, Amendment Bylaw No. 8525, 2025, City of New Westminster Bylaw Notice Enforcement Bylaw No. 7318, 2009, Amendment Bylaw No. 8526, 2025, and City of New Westminster Municipal Ticket Information Bylaw No. 8077, 2019, Amendment Bylaw No. 8527, 2025 each be given first, second, and third readings.
2. That an operating budget enhancement for three regular full-time positions to support overall tenant-related enforcement, support and life-safety work be included for consideration as part of the 2026 Budget process.
3. That Council provide other direction.

Staff recommend Options 1 and 2.

ATTACHMENTS

- Attachment 1 - Business Regulations and Licensing (Rental Units) Bylaw Amendment No. 8525, 2025.
- Attachment 2 - Bylaw Notice Enforcement Bylaw No. 7318, 2009, Amendment Bylaw No. 8526, 2025
- Attachment 3 - Municipal Ticket Information Bylaw No. 8077, 2019, Amendment Bylaw No. 8527, 2025
- Attachment 4 - Vulnerable Buildings Assessment Project Overview
- Attachment 5 - Rental Tenancy Branch Information Sheet: AC Units
- Attachment 6 - Residential Tenancy Policy Guideline GL08: Unconscionable, Unlawful, and Material Terms

APPROVALS

This report was prepared by:

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This report was reviewed by:

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This report was approved by:

Jackie Teed, Director, Planning and Development
Lisa Spitale, Chief Administrative Officer

Attachment 1

*Draft Business Regulations and Licensing
(Rental Units) Bylaw Amendment
No. 8525, 2025*

CORPORATION OF THE CITY OF NEW WESTMINSTER

BYLAW NO. 8525, 2025

A Bylaw to Amend Business Regulations and Licensing (Rental Units)

Bylaw No. 6926, 2004

WHEREAS the *Community Charter* section 8(6) authorizes a local government to regulate in relation to business.

WHEREAS the *Community Charter* section 8(3)(i) authorizes a local government to regulate, prohibit, and impose requirements in relation to public health.

WHEREAS the *Community Charter* sections 8(3)(g) and 63(f) authorizes a local government to regulate, prohibit, and impose requirements in relation to the health, safety or protection of persons or property in relation to rental units and residential property, as those are defined in the *Residential Tenancy Act*, S.B.C 2002, c. 78, that are subject to a tenancy agreement, as defined in that Act;

WHEREAS climate change is increasing the occurrences of prolonged periods of hot temperatures with minimal overnight cooling in the City;

WHEREAS in 2021, 28 people in the City died from causes related to a heat event; and

WHEREAS many rental units in the City do not have air conditioning systems or cooling measures in place.

NOW THEREFORE THE CITY COUNCIL of the Corporation of the City of New Westminster in open meeting assembled ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as “Business Regulations and Licensing (Rental Units) Amendment Bylaw No. 8525, 2025.”

2. Business Regulations and Licensing (Rental Units) Bylaw No. 6926, 2004 is amended as follows:

a. By adding the following in alphabetical order to Section 2:

“Building Official” means the individual designated by the City as the Manager of Building Inspections (as that title may be changed from time to time) and such person or persons as he or she may designate from time to time as his or her assistants.

b. By adding the following the following regulations to Section 34:

“34. Heating and Cooling Systems

34 (c) No Prohibiting Portable Cooling Devices

- i. Where air conditioning, or another form of installed cooling system, is not already provided, no *owner* shall prohibit or prevent a *tenant* from using a portable device designed to cool internal temperature in a *rental unit*.
- ii. Subsection (i) applies despite any strata bylaws adopted under the *Strata Property Act*, 1998, c. 43 that directly or indirectly prohibit a *tenant* from using a portable device designed to lower the temperature of a *rental unit*.

34 (d) Application for Exemption from Section 34 (a)

- i. An owner who is subject to section 34 (c)(i) may apply to the *Building Official* for an exemption from that section in respect of a *rental unit*, on the grounds that the *owner* cannot reasonably comply with section 34 (c).
- ii. An application under subsection (i) shall be submitted by the *owner* to the *Building Official* and must be accompanied by documentation from a licensed professional that outlines the unreasonable physical barriers that would need to be overcome in order to allow the *dwelling unit* to support a portable device designed to cool internal temperature in a *rental unit*.
- iii. An exemption granted under this section, is valid for 2 years from the date granted and must be reapplied for to maintain the exemption.

34 (e) Dwelling Units with Cooling Devices or Systems

Where air conditioning, or another form of installed cooling system is provided by the *owner*, the *owner* shall maintain the system to be in good working condition.

GIVEN FIRST READING this day of , 2025.

GIVEN SECOND READING this day of , 2025.

GIVEN THIRD READING this day of , 2025.

ADOPTED this day of , 2025.

Mayor Patrick Johnstone

Hanieh Berg, Corporate Officer

Attachment 2

*Draft Bylaw Notice Enforcement Bylaw No.
7318, 2009 Amendment Bylaw
No. 8526, 2025*

CORPORATION OF THE CITY OF NEW WESTMINSTER
BYLAW NO. 8526, 2025

Bylaw Notice Enforcement Bylaw No. 7318, 2009,
Amendment Bylaw [Business Regulations and Licensing (Rental Units)] No. 8526, 2025

WHEREAS the Council of the Corporation of the City of New Westminster has adopted Bylaw Notice Enforcement Bylaw No. 7318, 2009;

AND WHEREAS the Council of the Corporation of the City of New Westminster wishes to amend Bylaw Notice Enforcement Bylaw No. 7318, 2009;

NOW THEREFORE the Council of the Corporation of the City of New Westminster in open meeting assembled ENACTS AS FOLLOWS:

Citation

1. This Bylaw may be cited for all purposes as “Bylaw Notice Enforcement Bylaw No. 7318, 2009, Amendment Bylaw [Business Regulations and Licensing (Rental Units)] No. 8526, 2025”.

Amendments

2. Bylaw Notice Enforcement Bylaw No. 7318, 2009 is hereby amended by:
 - i) Adding 34 (c)(i) and 34 (e) to Part 5 of Schedule A, Contraventions and Penalties of “Business Regulations and Licensing (Rental Units) Bylaw No. 6926, 2004” attached to and forming part of this Bylaw as Schedule A.

GIVEN FIRST READING this day of , 2025.

GIVEN SECOND READING this day of , 2025.

GIVEN THIRD READING this day of , 2025.

ADOPTED this day of , 2025.

Mayor Patrick Johnstone

Hanieh Berg, Corporate Officer

Schedule A to Bylaw No. 8526, 2025

SCHEDULE A – CONTRAVENTIONS AND PENALTIES						
Part 5						
Business Regulations and Licensing (Rental Units) Bylaw No. 6926, 2004						
A1	A2	A3	A4	A5	A6	A7
Bylaw No.	Section	Description	Penalty (\$)	Early Payment Penalty (\$)	Late Payment Penalty (\$)	Compliance Agreement Available (50% of Penalty)
6926, 2004	34 (c)(i)	Prohibit/prevent a portable cooling device	200.00	150.00	225.00	NO
6926, 2004	34 (e)	Failure to maintain cooling system in good working condition	200.00	150.00	225.00	NO

Attachment 3

*Draft Municipal Ticket Information Bylaw
No. 8077, 2019 Amendment Bylaw
No. 8527, 2025*

CORPORATION OF THE CITY OF NEW WESTMINSTER
BYLAW NO. 8527, 2025

Municipal Ticket Information Bylaw No. 8077, 2019,
Amendment Bylaw [Business Regulations and Licensing (Rental Units)] No. 8527,
2025

WHEREAS the Council of the Corporation of the City of New Westminster has adopted Municipal Ticket Information Bylaw No. 8077, 2019;

AND WHEREAS the Council of the Corporation of the City of New Westminster wishes to amend Municipal Ticket Information Bylaw No. 8077, 2019;

NOW THEREFORE the Council of the Corporation of the City of New Westminster in open meeting assembled ENACTS AS FOLLOWS:

Citation

1. This Bylaw may be cited for all purposes as “Municipal Ticket Information Bylaw No. 8077, 2019, Amendment Bylaw [Business Regulations and Licensing (Rental Units)] No. 8527, 2025”.

Amendments

2. Municipal Ticket Information Bylaw No. 8077, 2019 is hereby amended by:
 - i) Adding 34 (c)(i) and 34 (e) to Part 5 of Schedule B, Contraventions and Penalties of “Business Regulations and Licensing (Rental Units) Bylaw No. 8527, 2025” attached to and forming part of this Bylaw as Schedule A.

GIVEN FIRST READING this day of , 2025.

GIVEN SECOND READING this day of , 2025.

GIVEN THIRD READING this day of , 2025.

ADOPTED this day of , 2025.

Mayor Patrick Johnstone

Hanieh Berg, Corporate Officer

Schedule A to Bylaw No. 8527, 2025

SCHEDULE B – CONTRAVENTIONS AND PENALTIES			
Part 5			
Business Regulations and Licensing (Rental Units) Bylaw No. 6926, 2004			
1	2	3	4
Bylaw No.	Section	Description	Penalty (\$)
6926, 2004	34 (c)(i)	Prohibit/prevent a portable cooling device	750.00
6926, 2004	34 (e)	Failure to maintain cooling system in good working condition	750.00

Attachment 4

Vulnerable Buildings Assessment Project Overview

Vulnerable Buildings Assessment Project

The vulnerable buildings assessment project is focused on identifying rental buildings in New Westminster which demonstrate high risk of overheating. This project will also identify cooling measures, both active and passive, that could mitigate the risk within the specific building archetypes which make up the rental building stock. The City is leveraging the recently released Rental Apartment Retrofit Accelerator (RARA) program which is providing direct support to rental building owners to navigate, and participate in, existing incentive programs. The City is collaborating with FRESCo and Landlord BC, the RARA program administrators, to support amplifying the program within New Westminster to drive buildings owners to participate in energy assessments and implementation of retrofits. Staff are aiming to augment the program to include explicit inclusion of identifying cooling measures.

The vulnerable buildings assessment project is being delivered in three phases: 1) Local Research and Data Collection, 2) Pilot Program Development and Deployment, and 3) Full Scale Vulnerable Building Cooling Program Design. Once the research and data collection phase is completed, the second phase of the project will aim to deploy a retrofit pilot program. Staff will assess the implications (technical, financial, etc.) of delivering a pilot program to support low carbon resilience retrofits for up to 5 buildings. The goal of the pilot program will be to gather real information on technical, financial and other resource challenges and opportunities for rental building owners undertaking major building upgrades. Prior to launch of this pilot program, staff will report to council to present the program elements and financial implications.

The final phase will take learnings from phase 2 to determine the feasibility of developing an electric utility incentive program to accelerate the implementation of cooling measures in rental buildings. Beyond cooling measures, the incentive program will also aim to integrate energy efficiency upgrades, recognizing that improved building performance not only enhances thermal comfort but also reduces energy costs while supporting the City's 2030 climate targets. Overall the learnings from this project will serve as a strong knowledge base when conducting retrofits of non-rental multi-unit residential buildings.

Going beyond the deployment of cooling options, the overall project outcomes will result in improved health and safety of tenants, reduced energy demand, increased energy efficiency, and drive down operational emission footprint of buildings (aligning to Bold Step #3 Carbon Free Homes and Buildings). Furthermore, the project will underpin the City's targets in the Community Energy and Emission Plan 2050, wherein 50% and 95% of existing buildings are to be retrofitted by 2030 and 2050 respectively, to achieve reductions in heating demand and facilitate fuel switching for heating applications. Learnings gathered will provide context on how best the City can address housing affordability, leverage existing Federal and Provincial resources, and curate communication approaches for better community engagement.

Project Approach and Current Status

The approach taken to execute the project and its objectives is outlined in the table below:

Steps	Description
Phase 1: Scoping (Complete (a, b) In Progress (c, d))	<ul style="list-style-type: none"> a) Incentive Gap Assessment: Review existing incentive and support programs for rental buildings provided by BC Hydro, CleanBC, Fortis BC, City of New Westminster and the Federal government to identify gaps and barriers to participation. b) Rental Buildings Mapping: Using internal data sources, create a map of 230 rental buildings in New Westminster, superimposed with surface temperature data. c) Data Consolidation: Evaluate publicly available resources to source temperature data to create a baseline and future temperature scenarios considering climate change (2030, 2050, and 2080). Collate equity indicators to highlight intersectional risks within specific buildings. d) GIS Mapping: Create heat maps using climate data to help shortlist buildings located in identified heat zones.
Phase 1: Outreach (In Progress)	<ul style="list-style-type: none"> • Partnership Scoping: Collaborate with FRESCo and Landlord BC on RARA to support project actualization from creating awareness to final retrofit implementation. • Communication Packages: Identify targeted communication channels, design and distribute communication packages to generate awareness within the community.
Phase 1: Project Enablement (Not Started)	<ul style="list-style-type: none"> • Program Engagement: Facilitate targeted engagement with buildings that have currently been identified as vulnerable to extreme heat and, if available, demonstrate intersectionality with additional equity indicators. • Assessment Studies: Provide support to RARA program delivery partners conduct assessment studies. Support could include data provision, site visits, top-up funding for cooling focused data gathering, and other relevant administrative support.
Phase 2: Pilot Program	<ul style="list-style-type: none"> • Pilot Study: Scope out up to 5 buildings to be part of a pilot study that will receive support from the City and FRESCo with implementation of assessment study recommendations.
Phase 3: Implementation Program	<ul style="list-style-type: none"> • Implementation Program: Based on pilot project outcomes, design a comprehensive implementation roadmap for other building archetypes, based on priority.

	<p>Explore partnerships or City programming opportunities to provide supports where needed for additional buildings and archetypes.</p> <ul style="list-style-type: none"> • Way Forward: Reassess approach to be taken to help inform future program outcomes, assess the need for policy support, optimize City’s incentive provisions, explore options for project monitoring and verification, and consolidate learnings to help other complementary initiatives.
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Financial Implications

Included within the adopted 2025 Capital Plan, a budget of \$50,000 was allocated to this project, within the Climate Action Team’s implementation of the Community Energy and Emissions Plan. These funds are aimed at supporting the delivery of phase 1 of this project, particularly supporting data collection in vulnerable buildings. Through phase 1 of the project, staff will develop the estimated budget of the rental building pilot program, and will bring a report to council for inclusion in the 2026 budget process.

Next Steps

Staff will observe and track participation in the RARA program. Identify and formalize strategies to drive better participation, if required and curate engagement pathways for buildings that have been identified as high heat risk or vulnerability. Through the outcomes of the participant building energy assessments, staff will continue to identify opportunities to augment the RARA offerings to address the City’s goal of reducing the risk of building overheating. Additionally, staff will continue to enhance and analyze GIS maps, to ascertain the overlap between temperature and key socio-economic variables and scope buildings that are likely to become susceptible in the future, due to the changing climate. In the medium term, alternate pathways for the City to provide support (financial, knowledge, technology implementation) to rental building owners for implementation of low carbon resilience measures, will be identified and a roadmap designed to help scale the cooling solution deployment across the City.

Attachment 5

Rental Tenancy Branch Information Sheet: AC Units

AIR CONDITIONING (AC) Units



Residential Tenancy Branch

Landlords and tenants are encouraged to work together to ensure AC units are safely installed, operated, and do not cause damage.

Temperature Requirements

- The *Residential Tenancy Act* does not have maximum temperatures for rental units
- The *Act* does not require that landlords allow AC units in rental units
- Starting March 2024, [BC Building Code 2024](#) requires all new residential buildings to provide one living space that does not exceed 26 degrees Celsius
- This requirement does not apply to existing residential buildings

Prohibitions & Limitations on AC Units

Tenants may install and use AC units if it is not prohibited or limited by their tenancy agreement.

A ban on AC units could be considered unconscionable (which means it is unenforceable) if it grossly impacted the health and quality of life of the tenant. However, if a landlord shows there are safety or building issues around having AC units, a ban may be enforceable.

The following limitations on AC units would likely not be considered unconscionable:

- ⇒ Restricting the number of AC units that a tenant can have
- ⇒ Limiting AC units to a certain number of BTU (cooling power)
- ⇒ Prohibiting window-installed AC units in rental units above the ground level for safety reasons

See [Policy Guideline 8: Unconscionable, Unlawful, and Material Terms](#) for more information

AIR CONDITIONING (AC) UNITS

Installing AC Units

- Terms around the installation and use of AC units should be set out and agreed to in the tenancy agreement
- Landlords and tenants are encouraged to work together to ensure AC units are safely installed, operated, and do not cause any damage to the unit
- Recognizing the roles and responsibilities of both landlords and tenants around AC units can help support the needs of both parties

Where an AC unit is not a viable option, landlords are encouraged to find solutions that consider the needs of tenants. This includes providing access to cooling rooms and investments in electrical upgrades to accommodate the use of AC units.

Tenants are encouraged to educate themselves on heat preparedness and response.

Resources

- ◇ Find out more about [how to prepare for extreme heat and drought](#)
- ◇ [Policy Guideline 8: Unconscionable, Unlawful, and Material Terms](#)
- ◇ [BC Hydro's Free Portable Air Conditioners](#) for income qualified households and individuals referred by regional health authority programs
- ◇ Local governments can establish and enforce standards of maintenance bylaws for existing buildings. This may include provisions to ensure that rental units have adequate cooling systems in place or allow AC units

Attachment 6

Residential Tenancy Policy Guideline GL08: unconscionable, Unlawful, and Material Terms

8. Unconscionable, Unlawful, and Material Terms

August-
24

In This Guideline:

A. Takeaway	1
B. Legislative Framework	1
C. Unconscionable Terms	2
Prohibitions and limitations on air conditioning units and passive cooling	2
Restricting a tenant from having guests	3
Rent increases higher than the prescribed amount	4
Excluding liability of landlord	4
D. Unlawful Terms	4
E. Material Terms	4
F. Ending a Tenancy Agreement for Breach of a Material Term	5
G. Case Law	6
H. Policy Guideline Intention	6
I. Changes to Policy Guideline	6

A. Takeaway

This policy guideline addresses unconscionable, unlawful, and material terms in a tenancy agreement.

B. Legislative Framework

The following sections describe how to determine whether terms in a tenancy agreement are unconscionable or material and the process for ending a tenancy on the basis of a landlord or tenant breaching a material term of the tenancy agreement.

<i>Residential Tenancy Act (RTA)</i>	<i>Manufactured Home Park Tenancy Act (MHPTA)</i>
<ul style="list-style-type: none"> • section 6(3) • section 27(1)(b) 	<ul style="list-style-type: none"> • section 6(3) • section 21(1)(b)

8. Unconscionable, Unlawful, and Material Terms

August-
24

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|--|--|
| <ul style="list-style-type: none">• section 45(3)• section 47(1)(h) | <ul style="list-style-type: none">• section 38(3)• section 40(1)(g) |
|--|--|

C. Unconscionable Terms

The Residential Tenancy Regulation and the Manufactured Home Park Tenancy Regulation establish that a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party. Unconscionable terms are not enforceable. Whether a term is unconscionable depends upon a variety of factors.

One factor in determining whether a term is unconscionable is whether it grossly impacts the health and quality of living of one party, especially when there is no rational basis for such a term to exist in the tenancy agreement.

Another factor in determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party such as a clause limiting damages or granting a procedural advantage, or exploiting the age, infirmity or mental weakness of a party. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

The burden of proving a term is unconscionable is upon the party alleging unconscionability.

Prohibitions and limitations on air conditioning units and passive cooling

Extreme heat events may adversely impact tenants living in units with poor cooling and ventilation systems. Vulnerable populations, such as the elderly, persons with disabilities and/or chronic health conditions, and persons living in neighbourhoods without access to cooling or green space are more susceptible to the negative impacts (including death) of extreme heat events.

Air conditioning units

An outright prohibition of air conditioning units in a tenancy agreement without a rational basis for such a term to exist could be considered unconscionable if it grossly impacts the health and quality of life of a tenant. However, if a landlord can show there were safety or building issues around having air conditioners for a particular property or unit, a term prohibiting them may not be considered unconscionable.

8. Unconscionable, Unlawful, and Material Terms

August-
24

While a blanket prohibition would often be unconscionable, terms in a tenancy agreement that create limitations surrounding air conditioners, such as the following, would likely not be considered unconscionable:

- Restricting the number of air conditioning units that a tenant is permitted to have based on the size of the rental unit (either with respect to number of rooms or square footage);
- Limiting air conditioners to a certain number of BTU (cooling power); and
- Prohibiting window-installed air conditioning units in rental units above the ground level for safety reasons.

An unconscionable term is not simply unfair in the abstract but will always turn on the specific circumstances in question.

Passive cooling

In circumstances where heat levels are not excessive, passive cooling can offer an approach for indoor heat control and heat dissipation that requires low or no energy consumption. Examples of passive cooling strategies to block out direct sunlight and heat include umbrellas, awnings, and reflective window coverings.

An outright prohibition or limitation of such cooling strategies in a tenancy agreement without a rational basis for such a term could be considered unconscionable if it grossly impacts the health and quality of life of a tenant.

Restricting a tenant from having guests

The standard terms found in the Schedule of the regulation provide that a landlord must not stop a tenant from having guests under reasonable circumstances in their rental unit and must not impose restrictions on guests.

Unless there are compelling circumstances to justify it, terms in a tenancy agreement that prohibit or limit the number of days in a year a tenant can have overnight guests (e.g., "no overnight guests" or "tenants can only have overnight guests 14 times in a year") could be considered unconscionable.

However, a request by the landlord to limit a tenant's guests whose behaviour may be deemed unsafe on the rental premises (e.g., violence, harassment) would likely not be considered unconscionable.

8. Unconscionable, Unlawful, and Material Terms

August-
24

Rent increases higher than the prescribed amount

Terms in a tenancy agreement that impose a significant rent increase on an ongoing basis where there is no compelling reason to justify it (e.g. an initial reduction in the rent being charged in relation to market value) could be considered unconscionable.

Excluding liability of landlord

Terms that exclude the landlord from being liable for any damages and loss caused to the tenant by the landlord, including through the landlord's negligence, are likely to be considered unconscionable. Even if these terms are only intended to capture what cannot be excluded because of the RTA provisions relating to damage, they may still meet the threshold for unconscionability especially if their presence in the agreement would have the effect of preventing a tenant from obtaining insurance (e.g. tenant's insurance or accidental death and dismemberment insurance).

D. Unlawful Terms

The RTA and MHPTA establish that a term of a tenancy agreement is not enforceable if it is inconsistent with the Act or regulations.

Some of the examples provided above as unconscionable terms would also be considered terms that are inconsistent with the RTA and MHPTA and respective regulations. As a result, they would not only be unenforceable, but they would also be subject to administrative monetary penalties.

For example, the standard terms found in the Schedule of the regulations provide that the landlord may increase the rent only in the amount set out by the regulation. Therefore, terms imposing a significantly higher rent increase on an ongoing basis without justification could not only be considered unconscionable but could also attract administrative monetary penalties.

E. Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the arbitrator will consider the importance of the term in the overall scheme of the

8. Unconscionable, Unlawful, and Material Terms

August-
24

tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the arbitrator will consider the true intention of the parties in determining whether or not the clause is material.

F. Ending a Tenancy Agreement for Breach of a Material Term

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Before serving a Notice to End Tenancy for breach of a material term, the party alleging the breach must first let the other party know in writing of the alleged breach and give them a reasonable opportunity to fix the problem. The written notice of the alleged breach should inform the other party that:

- there is a problem;
- they believe the problem is a breach of a material term of the tenancy agreement;
- the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- if the problem is not fixed by the deadline, the party will serve a notice to end the tenancy.

If the other party does not fix the problem by the deadline, the party alleging the breach can serve a Notice to End Tenancy for Cause for breach of a material term of the tenancy agreement.

If a dispute arises related to a Notice to End Tenancy for Cause for breach of a material term, an arbitrator must find that all of the following conditions are satisfied before upholding the Notice to End Tenancy:

1. The party breached a term of the tenancy agreement,

8. Unconscionable, Unlawful, and Material Terms

August-
24

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2. The term being breached is a “material term,”
 3. Following the breach, the party alleging the breach provided written notice of the problem to the party,
 4. The written notice indicates that the other party must correct the breach and sets out a deadline by when the breach must be corrected,
 5. The party was given a reasonable amount of time to correct the breach, and
 6. The party continued to breach that material term of the tenancy agreement after the reasonable period for correction had passed (See Section F).

If the Notice to End Tenancy is disputed, the party alleging the breach bears the burden of proof. The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the arbitrator will consider the true intention of the parties in determining whether or not the clause is material.

G. Case Law

- [*Ali v. British Columbia \(Residential Tenancy Branch\)*, 2023 BCSC 1336](#)

H. Policy Guideline Intention

The Residential Tenancy Branch issues policy guidelines to help Residential Tenancy Branch staff and the public in addressing issues and resolving disputes under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. This policy guideline may be revised and new guidelines issued from time to time.

I. Changes to Policy Guideline

Section	Change	Notes	Date Guideline Changed
All	Am	Revised for clarity	April 5, 2017
All	Am	Formatted to new template	February 28, 2024

8. Unconscionable, Unlawful, and Material Terms

August-
24

C	Am	Removed legislative reference since it is now referenced in Section B	February 28, 2024
D	Am	Revised “Residential Tenancy Branch” to “arbitrator” for accuracy.	February 28, 2024
E	Am	Section significantly rewritten for clarity. Additional content added about the conditions that must be met to uphold a Notice to End Tenancy for Cause on the basis of a breach of a material term.	February 28, 2024
G	New	Reference to new case law.	February 28, 2024
C	New	Added examples of unconscionable terms.	May 28, 2024
C	New	Added examples of unconscionable terms.	August 15, 2024

Change notations

am = text amended or changed

del = text deleted

new = new section added