AGING IN PLACE

There is no doubt – the age demographics in Canada are changing. The percentage of persons over the age of 65 is rising and is set to accelerate. Living longer means people are selling houses that demand maintenance and capital. These persons and are moving to smaller spaces, perhaps with age related services. Housing prices and high rents means that a lot of aging people are just staying in place rather than move and face market rents in new accommodation.

It's inevitable – landlords are going to have to navigate aging in place issues. They can be quite serious when it comes to health and safety, of the aging person and the neighbours of the aging person.

What follows is an introduction to topics and concerns that Landlords can consider when dealing with tenants aging in place.

VULNERABILITY

As part of the aging process, adults could become vulnerable to abuse, neglect or self-neglect in their living accommodation. Nonetheless, an adult is presumed to be capable of making decisions about their personal care, health care and financial affairs unless this is proven to be not true[1]. In other words, persons aging in place are perfectly entitled to endanger themselves (but not others) if they have mental capacity.

We have, sadly, run into situations where family members "dump" their aging relatives into rental accommodation. The unfortunate thinking of the family members is that the aging relative is now your problem. The *Adult Guardianship Act* (the "*AGA*") in section 1 defines abuse as the deliberate mistreatment of an adult that causes the adult physical, mental or emotional harm, or damage or loss in respect of the adult's financial affairs. For instance, situations of intimidation, humiliation, physical assault, overmedication, and withholding medication are considered abuse towards the adult.

Likewise, section 1 of the *AGA* defines neglect as "any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage or loss in respect of the adult's financial affairs, and includes self-neglect" and describes self-neglect as "any failure of an adult to take care of himself or herself that causes, or is

[1] The Adult Guardianship Act, s.3

reasonably likely to cause within a short period of time, serious physical or mental harm or substantial damage or loss in respect of the adult's financial affairs…".

If, after reviewing these definitions, the landlord believes the renter appears to be suffering from abuse, negligence, or self-negligence, the landlord should consider initially communicating with the renter and the renter's family. If not, the landlord should consider reporting the situation to one the of the designated institutions mentioned below, which would be in charge of assessing whether the adult is being neglected, self-neglected, or abused.

- Fraser Health Authority: 1-877-732-2808 or email react@fraserhealth.ca
- Interior Health Authority: 1-844-870-4754 or fill the form https://www.interiorhealth.ca/information-for/seniors/adult-abuse-and-neglect/report-adult-abuse-or-neglect.
- Island Health Authority:
    - Victoria: 250-388-2273 or toll free 1-888-533-2273
    - Nanaimo: 250-739-5749 or toll free 1-877-734-4101
    - North Island: 250-331-8570 or toll free 1-866-928-4988
- Northern Health Authority: 1-844-465-7414
- Vancouver Coastal Health: 604-904-6173 or toll free 1-877-732-2899 or email react@vch.ca

You should note that the AGA provides immunity to these persons reporting under that Act. Therefore, there are no concerns about privacy or retribution from the tenant or their family

When making a determination of whether the adult needs assistance or support, the designated agency needs to follow the guiding principles of the AGA, which stipulate that:

- All adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they do not harm others and they are capable of making decisions about those matters.
- All adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their financial affairs.

In case the designated agency considers that the adult needs assistance or support, the designated agency may refer the adult to available services, assist the adult in obtaining services, inform the Public Guardian and Trustee, and investigate whether the adult is unable to seek support and assistance because of a physical restraint, a physical handicap, or an illness, disease, injury or other condition that affects the adult's ability to make decisions about the abuse or neglect.

If, as a landlord, you are facing what appears to be a vulnerability situation and you are uncertain about how to proceed, you could seek legal advice.

SAFETY

Landlords also need to be aware that incidents can occur at the residence of senior renters, such as cooking or smoking incidents. To prevent these situations from worsening for senior renters, landlords should look for strategies that could prevent incidents from happening again or to reach out to the relatives of the senior renter for support.

The landlords' main concern after an incident is to aim to make it possible for the senior renter to stay within the unit (after all, we are not in the business of evicting tenants) unless the implementation of strategies is not effective and therefore considering ending a tenancy appears to become appropriate under the circumstances. The use of legal measures should be the last step to consider when addressing incidents that put at risk a senior renter.

The Mental Health Act

For instance, in cases where a senior renter appears to have a mental disorder, does not want to be voluntarily admitted to a hospital, and who might meet the requirements of involuntary hospital admission under the *Mental Health Act*, the Landlord can offer support by contacting a physician for advice, a mental health centre for guidance, or the police when the renter appears to have a mental disorder and is acting in a manner likely to endanger the person's own safety or that of others[2].

Landlords should consider keeping notes of the person's symptoms and behaviours that notes the following as this information could be helpful when contacting physicians:

- Are there any symptoms of mental disorder such as hallucinations, delusions, irrational thinking, depression, or difficulty relating to the environment or others?
- Has there been any previous episodes where symptoms of mental disorders were observed?
- Is there a need for protection of the adult or others due to harmful behavior or symptoms?
- Has there been an attempt to persuade the person to visit a physician?
- Include the date, location, and names of the person involved.

AFFORDABILITY

In addition to vulnerability and safety considerations, some senior renters struggle to maintain their status as renters because they cannot afford rent when there are rent increases.

AGE RELATED DISABILITY

[2] https://www.health.gov.bc.ca/library/publications/year/2005/guide-mental-health-act.pdf

An important consideration Landlords should bear in mind is that the *Human Rights Code* (the "*Code*") applies to tenancies[3] and that age related disabilities might arise in aging adults[4]. What this means is that some adults can be suffering from physical or mental disabilities that have been caused or enhanced by aging, and that the Landlords should consider their age-related disabilities if that adult makes a request about their tenancy.

Since renters with age related disabilities are protected under the *Code*, any renter has the right to file a complaint for discrimination if that renter is able to demonstrate the following: the renter is perceived to have a disability under the *Code* and/ or the renter's age or perceived age, the renter has suffered an adverse impact regarding a term or condition of the tenancy, and it is reasonable to infer from the evidence that the renter's disability and/ or the renter's age was a factor in the adverse treatment[5].

If as a Landlord, you have a situation when age related disability is argued be cautious about whether your actions could be considered to be discriminatory and whether the duty to accommodate the renter is warranted under the circumstances.

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[3] *The Human Rights Code*, s. 10

[4] *Stewart v Satorotas Enterprises and others*, 2012 BCHRT 442

[5] *Stewart v Satorotas Enterprises and others*, 2012 BCHRT 442, p. 64