

# Shelters and Non-Tenancy Accommodations



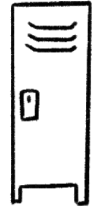
## Shelters and Non-Tenancy Accommodations



Precariously housed people often use informal housing options, such as shelters and rooming houses.<sup>1</sup> In some cases, despite including formal agreements, these indoor accommodations are not covered under local residential tenancy legislation, whether those accommodations are perceived to be temporary or explicitly permanent. This creates problems for precariously housed individuals and their relationship to their personal property. This includes lack of sufficient and secure storage, and confiscation and theft of belongings. This is exacerbated by a lack of accessible remedies, such as small claims court or human rights tribunals, depending on the issue, to address these challenges. As a result, the belongings of residents of such spaces are often no more secure than they would be on the streets.

# 1. How Non-Tenancy Accommodations are defined in this report

This chapter discusses “non-tenancy accommodations”: types of housing or indoor accommodations that are not included in provincial residential tenancies legislation in Ontario<sup>2</sup> and in B.C.,<sup>3</sup> and therefore do not offer its residents the same rights regarding their belongings. Examples of non-tenancy accommodations include hotels, jails, hospitals, housing cooperatives, emergency shelters, transitional housing,<sup>4</sup> and care homes.



Although there is a broad range of non-tenancy accommodations, this chapter focuses on two: (i) rooming houses where a tenant lives with and shares a bathroom and/or kitchen with the owner or owner’s family, and (ii) emergency shelters. These accommodations are chosen as they are some of the only affordable options in many urban centres and are commonly accessed by people with fixed or informal incomes, and by people who rely on public space.<sup>5</sup>

Despite the definitions and requirements laid out in landlord-tenant legislation, landlord-tenant laws do not always apply to rooming houses. Residential tenancies legislation in Ontario and British Columbia does not apply to shelters<sup>6</sup> or rooming houses with shared amenities with the owner.<sup>7</sup> Short-term shelters are generally exempt from residential tenancies legislation. This has implications for a tenant’s rights to their personal property: if residential tenancy protections don’t apply, then the provisions that protect belongings don’t apply either.<sup>8</sup>

## 2. Shelters

An average of 14,000 people use shelters on a nightly basis in Canada, with over 130,000 different shelter users per year.<sup>9</sup> Certain populations experience poverty at disproportionate rates, meaning they are more likely to be forced to use emergency shelters. Indigenous people are ten times more likely to use a shelter than non-Indigenous people, with Indigenous women being the most overrepresented.<sup>10</sup> Newcomers and immigrants to Canada make up approximately 5% of shelter users. People over the age of 50 are also increasingly being forced to use emergency shelters.<sup>11</sup> People of colour, people who use drugs, people stigmatized around mental illness or other health conditions, 2SLGBTQIA+ people, people with disabilities, and people who are non-conforming in other ways disproportionately experience homelessness.<sup>12</sup> Although shelter providers may not keep statistics based on these demographics, the fact that these populations are more likely to experience poverty and homelessness in turn means that they are likely more likely to be forced to use shelters. Similarly, because of their affordability in urban areas, rooming houses, including those not covered by residential tenancies legislation, are often accessed by newcomers to Canada, students, seniors, racialized individuals, people with disabilities, and people who have experienced homelessness.<sup>13</sup>

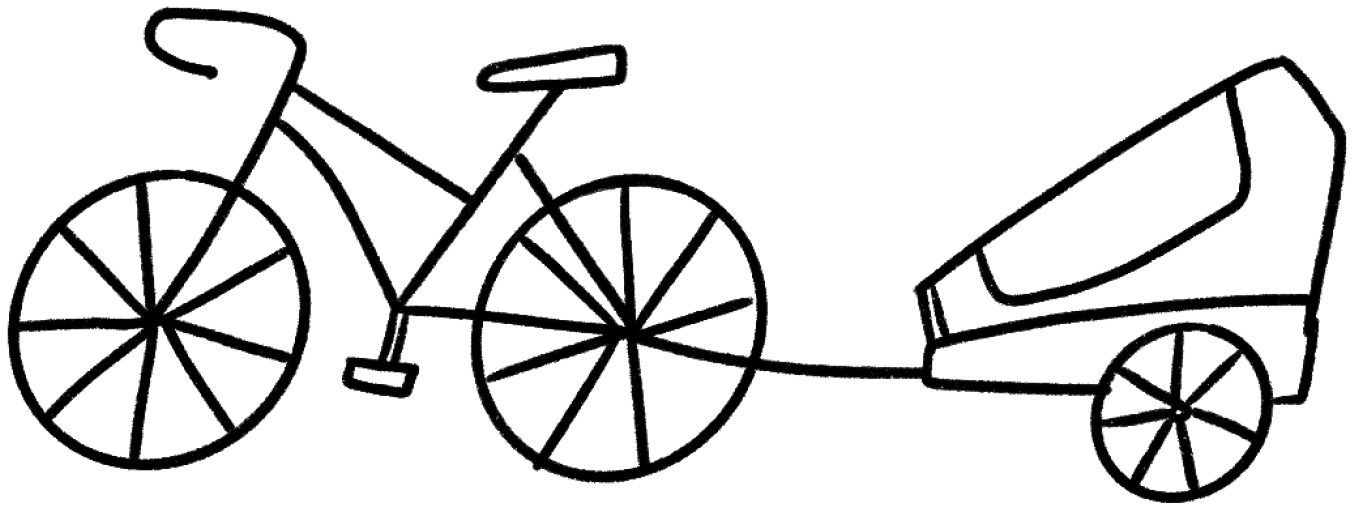
Shelters differ from streets, parks, and tenancies in the context of a person’s rights to their personal belongings. As neither fully private

spaces, nor open to the general public, shelters are a kind of 'hybrid space' where shelter-users reside within private real property but lack the same protections to their personal possessions as someone comfortably housed.<sup>14</sup> In order to escape fines, arrest, or risk of their belongings being impounded by city employees, many precariously housed people are forced to rely on emergency shelters, exposes them to shelter rules and practices that can place their belongings at risk.<sup>15</sup>

Being exempt from residential tenancies legislation means that shelters lack clarity as to residents' rights to their personal property; in some ways, a person's rights to their belongings are clearer on the streets or in parks.<sup>16</sup> Shelter standards frameworks such as the *Toronto Shelter Standards* and *BC Housing Emergency Shelter Program Framework* offer shelter-users general guidelines regarding the requirements of shelters in regards to topics such as storage and complaint mechanisms. However, due to inadequate and insecure storage, the prevalence of theft, and shelter program agreements that waive shelter providers' liability in the event of lost or missing belongings, shelter-users exist in spaces that offer minimal protection to their personal property.

## Vignette

Kamran, 55, had been staying with a friend and looking for an apartment of his own when the landlord changed the building rules to no longer allow guests.<sup>17</sup> He bounced around between other friends' homes, and for a few nights slept in doorways next to his bike and bike trailer. Eventually he heard about an encampment on the edge of town which had regular visits from housing workers, outreach teams, and even doctors. He gathered his belongings from his various friends' apartments and set up a makeshift shelter on the edge of the encampment in a small stand of trees.

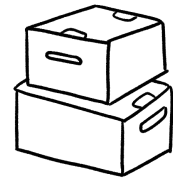


A few weeks later, someone with a clipboard approached Kamran when he was working on his bike outside of his tent to inform him that the encampment was closing due to a court ordered injunction, and that there was a spot in a shelter for Kamran which would eventually lead to permanent, stable housing. Though Kamran had never stayed in a shelter before, he was excited at the prospect of his own place. Kamran decided he could handle a shelter for a few months and left his name and contact info with the housing worker.

On the day of the move, a contracted demolition crew showed up to Kamran's tent and told him that he was only permitted to bring two plastic bins of his property and one bike into the shelter.<sup>18</sup> They said they could store his bike trailer and extra belongings for him, but after watching the demo crew discard people's stuff over the past week, Kamran did not feel comfortable doing so. He didn't want to leave his belongings at the encampment site to gather them later, as he had heard of other encampment residents having their belongings seized by bylaw after they had moved into housing.<sup>19</sup> Kamran sent two bins of his belongings with the demo crew, found a place in the industrial part of town to stash his remaining belongings, and locked his bike trailer to a bike rack nearby. He would have to deal with his stuff tomorrow.

Though Kamran had never stayed in a shelter before, he was excited at the prospect of his own place.

Kamran biked to the shelter where his two bins had already arrived. He locked his bike in the bike storage area and was given a tour of the space; a large warehouse where every guest had their own cubicle. However, since the shelter was brand new they had not yet installed lockers so storage of valuables would have to be done by staff in the backroom where only staff had access. Kamran signed his intake document that stated the shelter provider was not responsible for his belongings and that if he moved out, they would only hold his belongings for two weeks.<sup>20</sup> Shelter staff asked to go through his belongings to which Kamran agreed. Staff found a small pocket knife, a gift from Kamran's late father, and informed Kamran that they would have to store it in the backroom until he moved out.<sup>21</sup> Although the knife was the last remaining item he had from his father, the staff seemed nice and the place seemed secure, so Kamran eventually agreed, hoping he would not stay in the shelter long before they moved him into his own apartment.

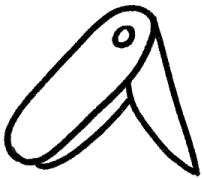


Having sheltered outside for the past few weeks, Kamran's first order of business was to catch up on his sleep. He plugged his phone into the outlet next to his bed and had his first dry, warm sleep in weeks. Upon waking up, Kamran noticed his phone and charger were no longer plugged into the wall.<sup>22</sup> He checked his bags, bins, and pockets. He checked with staff who said they would keep an eye out for it but reminded him that he was responsible for his own belongings. Feeling that his belongings were no longer safe, he immediately became worried about his father's knife. He asked staff to locate it so he could give it to a friend to hold onto it. After twenty minutes, staff returned from the backroom unable to locate his knife, telling him that he would have to wait until the day manager was in on Monday.<sup>23</sup> Kamran panicked. He felt as though he and his belongings were safer in the encampment, but he didn't want to give up his possibility of getting his own housing. Kamran sat on the edge of his bed weighing the pros and cons of staying in the shelter.

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## Standards that govern possessions of people in shelters



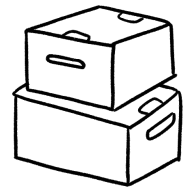
Shelters are often guided by shelter standards frameworks enacted by provinces or municipalities, such as the Toronto Shelter Standards (TSS),<sup>24</sup> or the BC Housing Emergency Shelter Program Framework<sup>25</sup>. These frameworks are implemented to ensure quality of service, consistency across the shelter system, and a clear set of expectations and minimum requirements for shelter users<sup>26</sup> and are meant to guide shelter policies and procedures included as part of a program agreement between the shelter provider and the city or province. However, these frameworks lack enforceability and operate only insofar as they do not interfere with existing federal, provincial, municipal laws, bylaws, regulations, and codes.<sup>27</sup> Some standards frameworks state that shelters funded or operated by the City are “required to adhere”<sup>28</sup> to the shelter standards, and others include checklists for site compliance reviews for shelter certification<sup>29</sup> or audits,<sup>30</sup> however offer no indication of if or how these standards would be enforced.

Shelter standards frameworks often include personal storage for shelter-users as an essential or basic service requirement<sup>31</sup> and lay out standards regarding confiscation and storage of medications, harm reduction supplies, and weapons. Others consider personal storage as an “important aspect to consider”<sup>32</sup> in the context of safety and security of residents, but instead leave a significant regulatory gap and put the responsibility on shelter residents to “respect the private property and belongings of others” and to “maintain their own personal belongings”.<sup>33</sup>

In Ontario, shelter standards frameworks require shelters to have policies and procedures in place laying out their service restrictions (e.g. unplanned discharge, eviction) and appeals process.<sup>34</sup> Service restrictions can result from missed curfew, assault, violence, possession of a weapon, substance use, trafficking drugs, or other actions that compromise staff and client health and safety depending on the shelter’s policies and the jurisdiction’s shelter standards guidelines.<sup>35</sup> Additionally, the TSS guidelines and Ottawa Emergency Shelter Standards (OESS) highlight a requirement for shelter providers to develop policies around retrieval, storage, and disposal of belongings in the event of a shelter discharge. However this requirement is made without explicitly suggesting what those policies and procedures should be.<sup>36</sup>

## Storage in Shelters

Shelters offer only marginally more security of belongings than found on streets or parks. This can be seen in restrictions in the amount of belongings people are permitted to keep in the shelter, the timeframe in which they can store their belongings, their autonomy over the items stored, and the limits on the shelter provider's liability and thus security of the storage itself.



Rules limiting the amount of personal property a shelter-user may bring into a shelter have become commonplace.<sup>37</sup> Shelter-users are often restricted to two bags or plastic tote bins, a trend seen especially when decamping residents into temporary indoor situations.<sup>38</sup> Limits on personal belongings and lack of storage have been raised as discrimination under human rights codes. In *Pressello v Union Gospel Mission*,<sup>39</sup> the complainant, a person with disabilities, argued that a lack of storage they experienced when others served by the Union Gospel Mission have available storage, amounted to discrimination. The claim was dismissed because Union Gospel Mission was able to demonstrate that their code of conduct stated that daytime storage is not available, that items left behind would be discarded, and that the storage they did offer was for a substance use treatment program separate from the shelter program. In *Ferron v Governing Council of Salvation Army*,<sup>40</sup> the complainant argued that he had been discriminated against for being evicted from a shelter without notice for having "too much stuff" when it was commonplace for shelter-users to violate policies regarding personal belongings. The claim was dismissed because the application was filed after the one-year limitation period had passed, because of a lack of evidence, and because of a determination that the complainant was a vexatious litigant.

When shelter users are able to access the storage options provided by shelters, there remain concerns about the security of and personal autonomy over their belongings, especially money or personal identification.<sup>41</sup> Shelter intake processes often include notice of a shelter provider's right to dispose of resident belongings in certain circumstances<sup>42</sup> and their limited responsibility over shelter-users' property.<sup>43</sup> Further, when items are stored by staff, residents lack control over ready access to their belongings, as they are only available when shelter workers have time to access them.<sup>44</sup> Additionally, cases discussing shelter employment standards have demonstrated arbitrary, insecure storage of shelter-user property.<sup>45</sup>



Lack of sufficient and secure storage within shelters has proven to be a major barrier to shelter users. Shelters that do not offer sufficient storage, or any daytime storage at all, force shelter users to carry their belongings with them, or risk having them confiscated and destroyed by municipal actors. Shelters that do offer storage are held to minimal regulatory requirements regarding that storage, often leading to storage solutions that are inadequate, insecure, and impractical for shelter users, putting their belongings at risk of theft, or disposal by shelter providers.

A 2011 British Columbia government report determined that that many benefits emerged when people had storage space when they were transitioning between housing, homelessness, and back to

housing.<sup>46</sup> Despite the project being considered successful, it was discontinued on a long-term. More recently, in 2018 the City of Victoria approved an allocation of funding to a local drop-in centre to build and operate a storage facility for up to 100 unhoused and precariously housed people.<sup>47</sup> The model was based on a similar operation run by a ministry society in Vancouver, which itself unfortunately was shut down in 2019 due to funding and flooding issues.<sup>48</sup> The ministry society worked to install lockers for their 60 upstairs shelter residents, but many people were left without storage options. Even these kinds of ad hoc operations, as important as they are, out of necessity need to limit when people can access their belongings and how much they can store at any given time. The difficulty that these different organizations have on the ground in trying to address the issue of storage space for the people they serve highlights the need for greater government investment in the infrastructure and operational costs involved in maintaining accessible storage options.

## Theft and Confiscation in Shelters

Intimately connected with lack of sufficient, secure storage in shelters is the occurrence of theft. Theft in shelters has long been cited as a problem by shelter-users and researchers, with incidents ranging from storage lockers being broken into<sup>49</sup> to shelter-users being forced to sleep on top of their belongings to keep them from being stolen.<sup>50</sup> Theft in shelters is a common reason unhoused individuals gravitate towards the streets rather than shelters, even in extreme weather.<sup>51</sup> In a study of affidavits collected from encampment residents in Victoria in 2016, theft in shelters was determined as one factor that made shelters a “site of systemic failures” essentially “forcing [people] to shelter outside”.<sup>52</sup> Although shelter users are often guilty of theft, a generalized lack of security and storage in shelters can surely be attributed to shelter providers.

While some may assume that theft occurs exclusively at the hands of other shelter users, perceptions of theft occurring at the hands of shelter staff is not uncommon, both by shelter users and fellow shelter employees. In one small claims civil tribunal case, the complainant argued that shelter staff stole his clothing after he was asked to leave the shelter.<sup>53</sup> The complaint, however, was largely ignored due to the fact that he had signed a shelter agreement stating that residents are responsible for their own property, and due to a lack of evidence. In *Headley v City of Toronto*,<sup>54</sup> a shelter employee was found to have been wrongfully dismissed after having been accused of theft of client maintenance (rent) payments. Although the accused has found not to have stolen client funds, the court found that theft was a regular occurrence at the shelter and that the shelter lacked consistent procedures for storing and tracking client money.

Confiscation of certain classes of belongings by shelter employees enforcing shelter protocols is also noteworthy. In some jurisdictions, shelter standards state that shelter employees should not prohibit or confiscate life-saving medications or naloxone, hormones for transgender clients, or harm reduction supplies.<sup>55</sup> Conversely, some jurisdictions require shelter-users to “hand over” illegal substances and prescription drugs at risk of eviction from the program.<sup>56</sup> Shelter



standards frameworks generally require abstinence-based shelters to inform clients of their prohibition on alcohol and drugs prior to admission into the shelter so confiscation is a known part of the program.<sup>57</sup> Regardless of if a shelter resident agrees to these terms, the confiscation of substances, prescription or otherwise, could have significant impacts on a shelter user's mental and physical health and wellbeing. Similarly, weapons prohibitions permit shelter employees to confiscate items deemed to be dangerous for the general safety of shelter users. However, shelter standards around weapons or prohibited items often permit shelters to refuse admission if a potential client does not consent to a search of their belongings, and permits shelter employees broad discretion in refusing to admit a person if they have reasonable grounds to believe the client has a prohibited item.<sup>58</sup>

## Implications of Theft and Confiscation in Shelters

The actual or possible theft or confiscation of shelter users' personal belongings have implications ranging from emotional and psychological impacts, to losses that affect a person's ability to survive, to state decisions regarding a person's personal autonomy. The possessions of precariously housed individuals "not only [help] them live but can also be part of who they are as persons".<sup>59</sup> As such, the loss of any personal belongings can have significant negative effects on the emotional and psychological well-being of shelter-users. Additionally, the loss of survival supplies such as tents<sup>60</sup> or other critical items such as sleeping bags, food, clothing, identification documents, and medication can directly impact a person's ability to survive.<sup>61</sup> In one case, an individual with an acquired brain injury had a computer and other possessions stolen while staying in a shelter.<sup>62</sup> Losing his belongings played a part in a determination of incapacity and subsequent guardianship transferred to the Ontario Public Guardian and Trustee. This determination was made because of his perceived inability to manage his property that was stolen in the shelter, but also because during his capacity assessment he lacked his glasses, and in particular, his laptop which he used as an "aid to compensate for some of the repercussions from his [brain] injury" such as short term memory loss.<sup>63</sup>



Theft and the devastating impacts theft has on people experiencing homelessness could be effectively addressed with sufficient, secure storage within shelters, provided by other non-profit or governmental actors in other settings, or more effectively, by offering accessible and affordable housing. Additionally, shelter standards frameworks could extend to requiring shelters to provide sufficient indoor and outdoor secure storage to ensure that shelter-users are not further marginalized through the further loss of personal property.

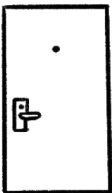
### 3. Rooming houses with shared amenities

Multi-tenant housing (also known as 'rooming houses' or 'dwelling houses') are tenancies characterized by shared facilities, usually kitchens or washrooms, between three or more people who pay rent

individually.<sup>64</sup> Rooming houses are privately-owned and run dwellings. Rooming houses “provide deep affordability... [to] members of some of the most vulnerable groups”.<sup>65</sup> In some jurisdictions rooming houses are covered under landlord-tenant legislation, but remain unlicensed and therefore unregulated, meaning the arrangements in rooming houses can be fluid and include power imbalances. The unique arrangement of rooming houses and the mix of enforcement and licensing mechanisms that govern them can lead to confusion regarding tenant’s rights which often has implications on a tenant’s ability to retain and access their personal belongings.

Rooming houses where a tenant lives with and shares a bathroom and/or kitchen with the owner or owner’s family<sup>66</sup> are not included in landlord-tenant legislation in both Ontario and British Columbia. Living in housing arrangements that are exempt from landlord-tenant legislation means that individuals may lack certain tenant-based rights to their personal belongings, or lack clarity as to what their rights are. This can happen despite paying rent or participating in formal agreements similar to those between a recognized tenant and landlord. The following tribunal decisions demonstrate the complicated reality of determining if landlord-tenant laws apply to a rooming house, and in some instances, the implications this can have on a person’s belongings.

In a 2014 BC Residential Tenancy Board decision, a renter’s application to recover the value of belongings withheld in a wrongful eviction was dismissed because the landlord lived in the rooming house part time.<sup>67</sup> Despite a signed agreement, it did not fall under the residential tenancy legislation and the renter had no means to mediation. The renter was evicted, had their belongings removed, destroyed, and some items retained by the landlord for non-payment of rent.<sup>68</sup>



In other instances, residential tenancy legislation was found to apply even though the landlord lived in the same building. In a 2016 Ontario Landlord Tenancy Board (LTB) decision, the owner of a rooming house moved back into the home after having given the tenant exclusive use of the unit. Upon moving back in, the owner restricted the tenant’s access to their belongings, and eventually evicted them under the claim that the tenant lacked rights under the ON RTA by sharing the unit with the owner. The LTB decision led to the tenant being awarded damages for wrongful eviction. However this occurred after the tenant had already been detained by police and experienced significant stress due to the lack of clarity regarding rooming house designation based on the owner’s use of the property. A 2015 BC Residential Tenancy Board decision stated that because the landlord did not use the same shared bathroom or kitchen facilities as the tenant, the BC Residential Tenancy Act (“BC RTA”) was found to apply.<sup>69</sup> In an Ontario LTB decision, the landlord began using the tenant washroom more frequently after having a stroke, despite having her own personal bathroom in the house.<sup>70</sup> Focusing on the wording of the *ON RTA* provision, because the tenant was not “required” to use the same washroom (because the landlord had their own bathroom), it was decided that the *ON RTA* applied.

Although rooming house tenants living with their landlord generally lack access to landlord-tenant legislation, they can potentially still rely on the validity of the contract related to their residency, as was the

case in *Chehresaz v Sadegh Khalesi*.<sup>71</sup> In this case, the court awarded damages to the tenant for the landlord's lack of reasonable notice of termination of contract, lack of duty of good faith in performance of contract, and for the tort of conversion in the landlord's holding of the tenant's laptop.

In addition to being excluded from residential tenancy legislation, people living in rooming houses with shared amenities with the owner or owner's family are also unable to rely on provincial human rights legislation. The BC *Human Rights Code* and the Ontario *Human Rights Code* contain explicit provisions that exclude these types of rooming house situations from the same anti-discrimination protections offered to tenancies.<sup>72</sup>

#### **4. Legal decisions impacting people's belongings in non-tenancy accommodations**

The legal ambiguity surrounding shelters and other accommodations that do not fall under provincial residential tenancy legislation means that caselaw in this field is not as developed as it is for parks and street spaces, especially in regards to the impacts on peoples belongings. Decisions regarding people's belongings in these settings have been made at various levels, from small claims courts and BC's Civil Resolution Tribunal, to human rights tribunals, to BC and Ontario Supreme Court, and even residential tenancy administrative tribunals. Below are some notable cases from BC and Ontario that have implications on people's belongings in shelters and other non-tenancy accommodations.

Since *Victoria (City) v Adams*,<sup>73</sup> particular focus has been paid to the availability of shelter spaces relative to a municipality's ability to enforce laws, bylaws, and be granted injunctions to dismantle encampments. However, a minimal count of whether there are sufficient shelter spaces fails to consider the quality or suitability of these shelter spaces.<sup>74</sup> Further, it is not always possible to conduct 'quantitative assessments' given the specific needs of those living in encampments, including the degree to which shelters store and secure people's belongings.<sup>75</sup>

More recently, courts have held that the number of shelter spaces must also be truly accessible and suitable in order for cities to be permitted to dismantle encampments based on the number of available shelter spaces.<sup>76</sup> Particularly in *Bamberger*, when determining not to grant the City of Vancouver an injunction to dismantle an encampment at CRAB Park, the court recognized a lack of storage within and outside of shelters and its implications on finding accessible, suitable shelter.<sup>77</sup> This holding suggests that a lack of accessible storage within shelters, or more broadly within municipalities, could be understood as a reason shelters are not accessible in the context of municipalities seeking injunctions to close encampments, and in Constitutional challenges to existing legislation.

An Ontario Small Claims Court case, *Chehresaz v Sadegh Khalesi*,<sup>78</sup> was relevant for the decision that rooming house residents

who do not have rights as tenants can still rely on the validity of their residency contract with the rooming house owner. While the resident did not have the protections of their belongings that are offered through residential tenancies legislation, the court awarded damages to the tenant for the landlord's lack of reasonable notice of termination of contract, the landlord's lack of duty of good faith in performance of contract, and for the tort of conversion in the landlord's holding of the tenant's laptop.

This same principle has been applied in the context of transitional housing in a decision of the BC Civil Resolution Tribunal ("CRT") in *Semenoff v Many Ways Home Housing*.<sup>79</sup> Being exempt from the BC RTA, the CRT was found to have jurisdiction to resolve the dispute. The CRT is an entirely online tribunal with jurisdiction over small claims under \$5000, motor vehicle accidents with minor injuries, strata bylaws, and non-profit and housing associations. Despite the lack of a written rental agreement, the parties maintained a binding contract which was violated by the non-profit entity when they evicted Mr. Semenoff without notice. Upon his eviction, the housing provider offered to send his belongings to a shelter. He stated that he did not want his belongings shipped to a shelter because of the shelter's lack of secure storage. However, because the housing provider offered to ship his belongings to a shelter and thus made his belongings available to him, they were found to be not liable for the cost of the eventually discarded belongings. Additionally, Mr. Semenoff was denied his \$250 deposit in part because of the housing provider's assertion that they were required to take contaminated items to the dump. This case demonstrates the shifted jurisdiction of residencies that are not covered under landlord-tenant law, and the ways that courts and tribunals devalue the belongings of precariously housed individuals.

Provincial human rights legislation can address issues of discrimination in services customarily available to the public, including housing and other accommodations. However human rights law explicitly excludes rooming houses where the tenant shares the space with the owner or owner's family. Seeking remedy through human rights tribunals for loss of personal belongings requires that people establish that discrimination occurred based on a recognized grounds such as race, disability, or gender identity which can raise evidentiary issues. In an Ontario Human Rights Tribunal case *Ferron v Governing Council of Salvation Army*,<sup>80</sup> the complainant argued that he had been discriminated against for being evicted from a shelter without notice for having "too much stuff" when it was commonplace for shelter-users to violate policies regarding personal belongings. The claim did not go forward, having been determined to have no reasonable prospect for success because the application was filed after the one-year limitation period had passed, and because of a lack of evidence that the eviction was related to a protected grounds under Ontario's *Human Rights Code*.

## **5. Conclusion**

As shelters and certain rooming house arrangements are explicitly exempt from residential tenancies legislation, people in these accommodations lack the same rights and protections over their

tenure and their belongings as do people in recognized tenancies. This is despite the fact that many emergency shelter and rooming house options require both contractual agreements and monthly maintenance/rent payments. This lack of regulation leaves many precariously housed people with less security and less clarity as to their rights to their personal property.

While many jurisdictions have developed shelter standards frameworks to ensure that shelters provide consistent services with opportunities for resident input and complaints processes, these frameworks often lack enforceability and the types of clear provisions that constitute governmental statutes such as residential tenancies legislation. If shelters and certain rooming houses are to remain exempt from residential tenancies legislation, other legislation regulating a person's rights to personal belongings, storage, and privacy should be considered by municipal and provincial governments guided by relationships with local Indigenous communities and governments.

As theft in shelters is a significant barrier to safety and effectiveness of shelters, sufficient and secure storage options within shelters or offered separately by municipal, non-profit, or subsidized private storage programs could address these concerns. Documents released by BC Housing such as the *Shelter Design Guidelines*<sup>81</sup> recommend the provision of adequate indoor and outdoor storage in new or retrofitted shelter buildings. However these documents lack the legislative power to require secure storage in shelters. As the personal property of shelter-users and other precariously housed individuals is often important to their mental wellbeing and physical survival, shelter providers and municipalities should prioritize storage space to ensure shelters achieve their functional purpose of a safe place for precariously housed individuals. The locations and rules governing use of storage should be designed so as to maximize users' accessibility.

## Appendix: Legal Cases

### Non-Tenancy Accommodations - Legislation and Regulations Impacting People's Possessions

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#### Jurisdiction: British Columbia

##### Law/Bylaw/Rule

##### Purpose

*Residential Tenancy Act, SBC 2002, c 78*

To outline rights and responsibilities of landlords and tenants including what constitutes a tenancy, steps to

be taken at the beginning of a tenancy, how to act during a tenancy and how to end a tenancy.

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*Residential Tenancy Regulation,  
BC Reg 477/2003*

To detail landlord duties and rights including rent increases, abandonment of property, penalties, and evictions.

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*Assistance to Shelter Act, SBC  
2009, c 32*

To regulate the implementation of emergency shelter programs in extreme weather events.

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*Unclaimed Property Act, SBC  
1999, c 48*

To reunite owners with their unclaimed property held by government and regulate the duties of holders of unclaimed property.

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*Community Care and Assisted  
Living Act, SBC 2002, c 75*

To provide licensing for community care facilities for vulnerable populations in residential settings.

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*Human Rights Code, RSBC  
1996, c 210*

To ensure that people can participate equally in economic, social, political and cultural life by forbidding discrimination based on certain personal characteristics in areas of daily life.

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*BC Housing Emergency Shelter  
Program Framework*

To outline program elements, standards and guidelines, and defines the roles and responsibilities of shelter providers.

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*Community Charter, SBC 2003,  
c 26*

To incorporate the municipalities across BC and outline areas of

authority including bylaw enforcement and other regulatory powers.

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## Jurisdiction: Vancouver

Law/Bylaw/Rule	Purpose
<a href="#">Police (Disposal of Property) Regulation, BC Reg 87/91 (under the Police Act, RSBC 1996, c 367)</a>	To outline rights of police departments to dispose of abandoned or found property and limit liability from damages
<a href="#">Building By-Law No 12472</a>	To regulate standards for fire safety in buildings and facilities and to adopt the provincial fire code.
<a href="#">Fire By-law No 12472</a>	To regulate standards for fire safety in buildings and facilities and to adopt the provincial fire code.

## Jurisdiction: Ontario

Law/Bylaw/Rule	Purpose
<a href="#">Residential Tenancies Act, 2006, SO 2006, c 17</a>	To outline rights and responsibilities of landlords and tenants including what constitutes a tenancy, steps to be taken at the beginning of a tenancy, how to act during a tenancy and how to end a tenancy.
<a href="#">General Regulations, O Reg 516/06</a>	To detail landlord duties and rights including rent increases and specify definitions of certain tenancies.

<i>Housing Services Act, 2011, SO 2011, c 6, Sch 1</i>	To provide planning and delivery of housing and homelessness services.
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<i>Human Rights Code, RSO 1990, c H.19</i>	To ensure that people can participate equally in economic, social, political, and cultural life by forbidding discrimination based on certain personal characteristics in areas of daily life.
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<i>Ontario Fire Code, O Reg 213/07</i>	To regulate safety for building occupants by eliminating fire hazards and establishing of fire safety plans.
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## Jurisdiction: **Toronto**

Law/Bylaw/Rule	Purpose
<i>Municipal Code Chapter 629, Property Standards</i>	To regulate, prohibit, impose duties on private property owners regarding maintenance of indoor and outdoor areas.
<i>Toronto Shelter Standards</i>	To and provide shelter users with a clear set of expectations, guidelines, and minimum requirements for the provision of shelter services.

## Jurisdiction: **Ottawa**

Law/Bylaw/Rule	Purpose
<i>Ottawa Emergency Shelter Standards</i>	To regulate consistent shelter programming, ensure minimum standards, and provided a tool for accountability.



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**Jurisdiction:** **Hamilton**

**Law/Bylaw/Rule**

**Purpose**

*Blueprint for Emergency Shelter Services*

To develop a sustainable system to better support homeless people as they move to permanent housing.

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**Jurisdiction:** **London**

**Law/Bylaw/Rule**

**Purpose**

*City of London Emergency Shelter Guidelines*

To provide a consistent service framework for shelter providers.

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**Shelters and Non-tenancy accommodations  
– Examples of how courts have decided  
cases related to shelters and personal  
belongings**

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**Case:** **Victoria (City) v Adams, 2009 BCCA 563**

**Relevant Issue**

**Outcome**

When the number of homeless people exceeds the number of available shelter beds, does a bylaw that prohibits homeless people from erecting temporary shelter at night violate their constitutional rights to life, liberty and security of the person under s. 7 of the *Canadian Charter of Rights and Freedoms*?

Parks bylaw found to violate s. 7 rights and was not justified under section 1 of the *Charter*. The ruling was contingent on the fact that (1) the City had insufficient shelter spaces, and (2) that if other accommodation were available the bylaw sections may have been valid. The court narrowed the ruling to night-time sheltering only.

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**Case: [Bamberger v Vancouver \(Board of Parks and Recreation\), 2022 BCSC 49](#)**

**Relevant Issue**

**Outcome**

An encampment at a public park on federal port land leased by the City is ordered to close by way of the *Parks Control By-law*. Encampment residents seek judicial review of the orders. Parks Board seeks injunction to compel encampment residents to comply with orders.

Are the Parks Board's orders for eviction valid and enforceable?

Application for judicial review granted. Parks Board application for injunction adjourned pending the judicial review.

Court acknowledges impacts of a daily decamping requirement; recognizes that lack of storage, sheltering options make moving belongings a significant hardship.

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**Case: [Chehresaz v Sadegh Khalesi, 2015 CanLII 8736 \(ON SCSM\)](#)**

**Relevant Issue**

**Outcome**

Can a resident of a rooming house that is exempt from residential tenancy legislation seek a remedy in small claims court?

Rooming house residents who do not have rights as tenants can still rely on the validity of their residency contract with the rooming house owner. While the resident did not have the protections of their belongings that are offered through residential tenancies legislation, the court awarded damages to the tenant for the landlord's lack of reasonable notice of termination of contract, the landlord's lack of duty of good faith in performance of contract, and for the tort of conversion in the landlord's holding of the tenant's laptop.

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**Case: [Semenoff v Many Ways Home Housing Society, 2021 BCCRT 362](#)**

**Relevant Issue**

**Outcome**

Can a resident of transitional housing seek a remedy in small claims court?

Being exempt from the BC RTA, the BC Civil Resolution Tribunal was found to have jurisdiction to resolve the dispute. Despite the lack of a written rental agreement, the parties maintained a binding contract which was violated by the non-profit entity when they evicted Mr. Semenoff without notice.

However, because the housing provider offered to ship his belongings to a shelter and thus made his belongings available to him, they were found to be not liable for the cost of the eventually discarded belongings. Additionally, Mr. Semenoff was denied his \$250 deposit in part because of the housing provider's assertion that they were required to take contaminated items to the dump.

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## Footnotes

1. See *Semenoff v Many Ways Home Housing Society*, 2021 BCCRT 362 [Semenoff] [online](#); *Chehresaz v Khalesi*, 251 ACWS (3d) 144, 2015 CanLII 8736 (ON SCSM) [Khalesi] [online](#).

2. See *Residential Tenancies Act*, 2006, SO 2006, c 17, s 2(1) [ON RTA] at ss 5, 5.1.

3. See *Residential Tenancy Act*, SBC 2002, c 78, s 1 [BC RTA] at s 4.

4. ON RTA does not use the term 'transitional housing' but lays out in depth what is required for programs intended to assist tenants towards "more permanent living accommodation" (s 5.1(2)2) to be exempt from ON RTA in s 5(k) and s 5.1. BC RTA uses the term 'transitional housing' (s 4(f)) and defines the term in s1 of the Residential Tenancy Regulation.

5. While transitional housing or transitional shelters are similarly exempt from landlord tenant legislation, this report does not focus this form of accommodation, in part due to the complexity that often arises when determining whether or not transitional housing qualifies as a tenancy (see section on rental housing, including transitional

housing). Additionally, government institutions such as hospitals, psychiatric wards, and federal and provincial prisons are similarly exempt from residential tenancy legislation and place many precariously housed people in situations where their personal belongings are constantly under threat of seizure or destruction. Other types of non-tenancy accommodations not addressed include couch surfing, long-term informal stays with friends or family, living in a motel or hotel, squatting, or rehabilitative housing.

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6. See *BC RTA*, *supra* note 4 at s 4(f) and *ON RTA*, *supra* note 3 at s 5(f).

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7. See *ibid*, *BC RTA* at s 4(c) and *ON RTA* at s5(i).

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8. This lack of clarity has become even more significant in the context of governmental responses to the housing crisis in the COVID-19 pandemic, where the line between supportive housing, transitional housing, and emergency shelter is often unclear. While the distinction between transitional and supportive housing is unclear at the best of times, it was especially in the case of self-isolation hotels seen in BC. In 2020 the BC provincial government clarified that living accommodations provided in relation to COVID-19 emergency response fell under the definition of emergency shelter and was thus exempt from the BC RTA. See British Columbia, "Residential Tenancy Policy Guideline 46-1: Emergency Shelters, Transitional Housing, Supportive Housing" (June 2020), [online](#) (pdf) [Guideline 46-1]; Residential Tenancy Regulation, BC Reg 477/2003, s 1.1. However, several hotels used as emergency response shelters were eventually purchased by BC Housing, transitioning to temporary supportive housing, which can have varying applicability to residential tenancies legislation depending on the features of the program. See Attorney General of British Columbia, "More housing coming for people in Victoria" (28 April 2021) [online](#).

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9. Aaron Segaert, "Homeless Partnering Strategy: National Shelter Study 2005-2014" (2017) at 5-6, [online](#) (pdf); *Employment and Social Development Canada*.

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10. See *ibid* at 37.

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11. See *ibid* at 6.

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12. Canada Mortgage and Housing Corporation, "2SLGBTQIA+ Housing Needs and Challenges" (15 June 2022), [online](#); Reaching Home: Canada's Homelessness Strategy, "Report on addiction, substance use and homelessness" (21 April 2022), [online](#).

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13. See Maytree, "A Human Rights Review of Toronto's Multi-Tenant Homes Policies" (October 2020), [online](#) (pdf); *Maytree* at 1 [*Maytree*].

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14. See See Nicholas Blomley, Alexandra Flynn & Marie-Eve Sylvestre, "Governing the Belongings of the Precariously Housed: A Critical

15. Terry Skolnik, "Freedom and Access to Housing" (2018) 35 Windsor Yearbook of Access to Justice 226.

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16. See *Garcia v City of Los Angeles*, No. 20-55522 (9th Cir. 2021) [*Garcia*] where a city ordinance that allowed the city to remove of bulky items without notice was found to violate Fourth Amendment protections against unreasonable seizures. See *Lavan v City of Los Angeles*, 693 F3d 1022 (9th Cir 2021) [*Lavan*] where a court determined that belongings left unattended could not be considered abandoned. See also *Connecticut v Mooney*, 218 Conn. 85 (1991) where a tent under a bridge was constitutionally protected as a home.

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17. The stories described at the beginning of each section are not real-life stories of specific individuals. They are composites of experiences that people have described regarding the ways in which they navigate a variety of laws, bylaws and policies that impact their ability to retain their possessions or access services with their belongings. These stories reflect the experiences of real people who have shared their experiences, whether as individually identifiable people or as participants in studies that have contributed to knowledge on this issue. The elements that make up the stories are derived from multiple municipalities, so it would be inaccurate to name a particular municipality in any of them. The relevant body of research concerning these kinds of experiences focuses on particular areas in which people have been impacted, rather than on their entire experiences moving across different spaces.

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18. See *Prince George (City) v Johnny* 2022 BCSC 282 [*Johnny*] [online](#) at para 50.

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19. See *ibid* at para 46.

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20. See *Gunn v The Governing Council of the Salvation Army in Canada*, 2019 BCCRT 1082 [online](#) at para 10 [*Gunn*].

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21. See City of Toronto, "Toronto Shelter Standards" (Version 4) [online](#) (pdf) at s 11.2.1 [TSS]; City of Ottawa, "Ottawa Emergency Shelter Standards" (24 February 2021) [online](#) (pdf) at s 11.2 [OESS]; City of London, "Emergency Shelter Guidelines" (February 2011) [online](#) (pdf) at s 6.7 [*London Shelter*].

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22. See *Victoria (City) v Adams*, 2009 BCCA 563 [*Adams*] [online](#) at para 53.

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23. See *Poff v City of Hamilton*, 2021 ONSC 7224 [online](#) at para 58 [*Poff*] where encampment resident comments on storing belongings in shelters: "when they have been placed in a safe place by staff, it can be difficult to get staff to retrieve them because the[y] are often busy and ask me to return at a later time".

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24. See *supra* note 17.

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25. BC Housing, "BC Housing Emergency Shelter Program Framework" (January 2018) [online](#) (pdf): [*BC Housing Shelter*].

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26. See *TSS*, *supra* note 17 at Preamble (i).

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27. See *ibid* at s 4(b)(i); See *OESS*, *supra* note 17 at s 4.

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28. *TSS*, *supra* note 17 at Preamble (i).

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29. See *OESS*, *supra* note 17 at 78.

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30. See *TSS*, *supra* note 17 at s 12.2.2.

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31. See *BC Housing Shelter*, *supra* note 52 at s5.7; See *OESS*, *supra* note 17 at s 9.4(a).

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32. *London Shelter*, *supra* note 17 at s C 6.3.

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33. *Ibid* at s E 1.0.

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34. See *TSS*, *supra* note 17 at s 8.4.2(a); *OESS*, *supra* note 17 at s 7.7.2, *London Shelter*, *supra* note 17 at s D 1.7)

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35. See *TSS*, *supra* note 17 at s 8.4.2; See *OESS*, *supra* note at 7.7.2(a) (b). In Toronto, however, this requirement is waived in the event that a transitional shelter provider uses rental agreements in their service model, in which case they are required to follow evictions processes through the Landlord Tenant Board (LTB) as laid out by the *ON RTA*. See *TSS*, *supra* note 17 at 8.4.2(a).

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36. See *OESS*, *ibid* at 7.7; See *TSS*, *supra* note 17 at 8.4.

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37. *Ibid* at 12.

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38. *Ibid*; See also *Gunn*, *supra* note 16 where intake assessment rules limit residents to two bags of personal property; *Johnny*, *supra* note 14 at para 50 where people were only permitted to carry two bins in a shuttle from an encampment to a hotel; *Black v Toronto (City)*, 2020 ONSC 6398 [online](#) at para 113 where encampment residents were only permitted to bring two bags of belongings to a shelter, respite, or hotel, and if they refused to accept shelter would be issued trespass notices and cleared within 72 hours.

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39. 2017 BCHRT 49 [*Pressello*] [online](#).

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40. 2017 HRTO 505 [online](#).

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41. Novac et al, "Justice and Injustice: Homelessness, Crime, Victimization, and the Criminal Justice System" (November 2006), [online](#) (pdf): at 61.

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42. See *Pressello*, *supra* note 25 at para 16 where shelter code of conduct states the shelter will dispose of belongings left at the shelter during the day; See also *Gunn*, *supra* note 16 where intake process informs residents of shelter's policy of disposing of belongings two weeks after discharge.

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43. See *Gunn*, *supra* note 16 at para 10.

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44. See *Poff*, *supra* note 19 at para 58.

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45. See *Headley v City of Toronto*, 2019 ONSC 4496 [online](#); Decision No. 991/07, 2010 ONWSIAT 935 [online](#).

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46. *Ibid* at 12.

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47. Bill Cleverly, "City of Victoria to pay \$130,000 for Storage Lockers for Homeless", *Times Colonist* (10 October 2018), [online](#): *Times Colonist*.

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48. First United Church, "Storage Program Closure Advisory" (20 August 2019), [online](#); Jon Hernandez, "I Basically Have to Toss All of My Stuff": Unique DTES Storage Program Shuts Down", *CBC News BC* (18 November 2018), [online](#).

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49. See Gwendolyn Dordick, "More Than Refuge: The Social World of a Homeless Shelter" (1996) 24:4 J Contemporary Ethnography 373.

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50. See Mark Zion, "Making Time for Critique: Canadian 'Right to Shelter' Debates in a Chrono-Political Frame", (2020) 37 Windsor Yearbook on Access to Justice 88; See Amy Donley & James Wright, "Safer Outside: A Qualitative Exploration of Homeless People's Resistance to Homeless Shelters" (2012) 12:4 J Forensic Psychology Practice 288; See Anthony Marcus, "Shelterization revisited: Some methodological dangers of institutional studies of the homeless" (2003) 62:2 Human Organization 134.

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51. See *Bamberger v Vancouver (Board of Parks and Recreation)* 2022 BCSC 49 [*Bamberger*] [online](#) at paras 113, 119, 129; See *Poff*, *supra* note 19 at para 178; See Blomley et al, *supra* note 20 at 168; See Mitchell Duneier. 1999. *Sidewalk*. New York: Farrar, Straus and Giroux.

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52. Nicholas Olson & Bernie Pauly, "'Forced to become a community': Encampment residents' perspectives on systemic failures, precarity,

and constrained choice” International Journal of Homelessness, forthcoming.

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53. See *Gunn*, *supra* note 16.

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54. 2019 ONSC 4496 [online](#).

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55. See *OESS*, *supra* note 17 at s 10.2.1; See *TSS*, *supra* note 17 at s 11.2.1.

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56. See *London Shelter*, *supra* note 17 at s C 6.6(c).

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57. See *TSS*, *supra* note 17 at s 11.2(d).

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58. See *TSS*, *ibid* at 11.2.1; See *OESS*, *supra* note 17 at s 11.2; See *London Shelter*, *supra* note 17 at s C6.7(b).

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59. Larry J Zimmerman & Jessica Welch, “Displaced and barely visible: archaeology and the culture of homelessness” (2011) 45:1 Historical Archaeology 67 at 70.

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60. See *Bamberger*, *supra* note 38 at para 119.

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61. See Amanda Eisenmann & Francis Origanti, “Homeless Rights: A Call for Change” (2021) 30:1 J Soc Distress & Homelessness 90 at 92.

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62. See *Hillier v Milojevic*, 2010 ONSC 4514 [online](#).

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63. *Ibid* at para 51.

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64. Municipal Licensing and Standards, “Multi-Tenant (Rooming) Houses: Owner Guide” (November 2020), [online \(pdf\)](#): *City of Toronto*.

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65. See *Maytree*, *supra* note 12 at 3.

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66. See *BC RTA*, *supra* note 4 at s 4l; *ON RTA*, *supra* note 3 at s 5(i).

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67. *Decision 1035* (1 April 2014), [online \(pdf\)](#): BC RTB Dispute Resolution Services.

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68. See *SOT-66343-15 (Re)* (1 November 2016), [online](#): ON LTB.

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69. *Decision 6468* (29 January 2015), [online \(pdf\)](#): BC RTB Dispute Resolution Services.

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70. See *TST-26870-12 (Re)* (23 July 2012), [online](#): ON LTB. See also *TNT-11384-10 (Re)* (10 May 2011), [online](#): ON LTB [11384] where *ON RTA* was found to apply when a landlord moved into a rooming house because the tenant had not been required to share a washroom or kitchen with landlord for previous 10 months.

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71. See *Khalesi*, *supra* note 1.

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72. See *Human Rights Code*, RSO 1990, c H.19, s 21(1); See *Human Rights Code*, RSBC 1996, c 210, s 10(2)(a).

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73. See *Adams*, *supra* note 18.

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74. See Terry Skolnik, "How and Why Homeless People Are Regulated Differently" (2018) 43:2 *Queens LJ* 297.

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75. See *ibid.*

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76. See *Abbotsford (City) v Shantz*, 2015 BCSC 1909 [online](#) at para 82; See *Prince George (City) v Stewart*, 2021 BCSC 2089 [online](#) at para 74; See *Bamberger*, *supra* note 38 at para 15.

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77. See *Bamberger*, *ibid* at para 212.

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78. See *Khalesi*, *supra* note 1.

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79. See *Semenoff*, *supra* note 1.

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80. 2017 HRTO 505 [online](#).

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81. BC Housing, "Shelter Design Guidelines" (September 2017) [online \(pdf\)](#).

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**The Report**

**EMAIL**

**Glossary**

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**In Their Own Words**

**Resources**

**Who We Are**

**SOCIAL**

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