

## PREVENTING RENOVICTIONS: NEW WESTMINSTER ADOPTS NEW APPROACH

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Many have said that the lower mainland's housing market is in crisis. Under the *Residential Tenancy Act* (the "Act") property owners are permitted to evict tenants where they perform renovations to their property. However, with limited affordable housing available, evictions of tenants under the guise of performing renovations on units and then significantly increasing the rent on those units, commonly known as "renovictions", pose an additional barrier for tenants to secure housing. To address this concern, the City of New Westminster (the "City") amended its *Business Regulations and Licensing (Rental Units) Bylaw*, to regulate such renovictions, which has recently been upheld by the British Columbia Court of Appeal.

The City's bylaw imposed criteria on how landlords and building owners may undertake renovations, and included provisions restricting evictions and rent

increases except as allowed under the Act. The bylaw required that, before an eviction notice is issued to a tenant, the property owner must provide alternative accommodation during the renovations and an offer to return to the renovated unit or to another comparable unit in the same building on the same or better terms as the rental agreement with that tenant pertaining to the unit being renovated. In addition, the amendment authorized the City to impose a monthly business license surcharge on any on the landlord that increases the rent in contravention of the bylaw. Property owners may seek an exemption where they demonstrate that renovations cannot be completed in a safe manner unless some or all the properties are vacated.

In the case of *1193652 B.C. Ltd. v New Westminster (City)*<sup>1</sup> the appellant landlord

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argued that the bylaw amendments were beyond the jurisdiction of the City since the provincial legislature intended to exhaustively regulate rent control and evictions under the Act. The landlord sought to have all of its units vacant for at least a year to complete renovations and did not request an exemption. Further, the landlord did not provide alternative accommodation for the tenants. Both the chambers judge and the Court of Appeal disagreed and held that the Community Charter authorized the City to regulate renovations locally, stating that the bylaw amendments had the lawful purpose of protecting renters, which the City has the authority to do pursuant to its powers to regulate business as well as the health safety or protection of persons or property in relation to residential property. The Court of Appeal acknowledged that the bylaw amendments were complementary to and did not frustrate the provincial Act, quoting Chief Justice McLachlin's statement in *Reference re Assisted Human Reproduction Act* that, so long as complementary local laws do not frustrate other legislation, "in an area of jurisdictional overlap, the level of government that is closest to the matter will often introduce complementary legislation to accommodate local circumstances".<sup>2</sup>

The City of New Westminster is the first municipality in British Columbia to enact such a bylaw. However, the Court acknowledged the City's stance on the importance of this measure in light of the ongoing housing crisis. It is expected that other municipalities may follow the City of New Westminster's approach in addressing affordable housing shortages.

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Kelsey Stuckert

1 *1193652 B.C. Ltd. v New Westminster (City)*, 2021 BCCA 176

2 *Reference re Assisted Human Reproduction Act* 2010 SCJ No 61 at para. 70



**KELSEY STUCKERT**

**604.358.0293**

**KELSEY@CIVICLEGAL.CA**

Kelsey is an associate lawyer of the firm. She maintains a general municipal law practice with a focus on litigation and environmental law. She provides advice to municipalities and regional districts on regulatory liability, contract disputes and elections. During her time at law school, Kelsey was the Social Justice and Public Interest Representative for the Allard Law Student Society Careers Committee. She also volunteered with Pro Bono Students Canada as a researcher for the Canadian Mental Health Association and completed the Indigenous Community Legal Clinic. Prior to attending law school, Kelsey completed a Bachelor of Arts in the Faculty of Communication, Art and Technology at Simon Fraser University, specializing in political communication.

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710 - 900 West Hastings Street, Vancouver, BC V6C 1E5  
604.639.3639 | [www.civiclegal.ca](http://www.civiclegal.ca) |  CivicLegal