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MAKING
THE SHIFT^{INC}

Canada

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KEEPING YOUTH HOUSED

**Law and Legal System Reform
for Youth Eviction Prevention**

ABOUT THE PROJECT

This paper is part of a joint research project with the National Right to Housing Network, Canadian Centre for Housing Rights, and University of Saskatchewan College of Law. Through this and other research, including engagement with youth and consultation with decision-makers, our research team is exploring the fundamental question: *can we build a youth-centred and human rights-informed approach to eviction law and practice that prioritizes eviction prevention?*

This paper and project are funded by Making the Shift Youth Homelessness Social Innovation Lab (MtS), which funds, conducts, prototypes, and mobilizes cutting-edge research to prevent and end youth homelessness in Canada. Our project addresses the reality that evictions are particularly damaging for youth because of their long-term consequences and propensity to entangle youth with other systems—for instance, the education, prison, healthcare, or child welfare systems. Laws, policies, and practice can either exacerbate housing insecurity for young people or be pillars of prevention-based approaches.

Disclaimer:

The opinions, findings, and conclusions or recommendations expressed in this document are those of the author(s) and do not necessarily reflect the views of the University of Saskatchewan College of Law or project funders.

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Introduction

In Canada, young people are more likely than most other groups to face eviction from rental housing (Gaetz et al, 2018). Because eviction is a pathway to long-term housing instability (including homelessness), and is also associated with poor social, educational, and health outcomes, preventing youth evictions should be a key priority for policy makers and housing advocates. Youth eviction prevention comprises multiple strategies and necessarily involves multiple players and systems, including landlords, governments, schools, and communities. **However, the focus in this paper is specifically on how law and legal processes—and specifically eviction legal systems—can play a role in youth eviction prevention.**

This paper defines eviction legal systems as comprising the legislation, policy, caselaw, courts, and tribunals that govern evictions. In Canada, each province and territory has its own distinct legislative and institutional framework/system to deal with evictions. That said, it is possible to make some general observations about how eviction legal systems operate across the country. All jurisdictions have residential tenancies statutes that set out rules about landlord-tenant relationships and regulate evictions. These statutes set out grounds for eviction (for example, non-payment of rent by the tenant, or a landlord’s desire to renovate or occupy the rental unit), as well as procedures for eviction processes. Eviction processes often involve a hearing whereby a decisionmaker considers evidence and

determines whether the landlord’s eviction application meets legal requirements. When the decisionmaker renders an eviction decision, this decision can be enforced by a Sheriff or other official who is empowered to physically remove a tenant and their family from their home.

A focus on law and legal processes is important when we are thinking about eviction prevention because, simply put, law helps create eviction. In the words of American scholar Kathryn Sabbeth (2022), eviction is not a natural occurrence but rather is the “product of the legal system that political leaders have chosen to construct.” We were reminded of this fact during the COVID-19 pandemic, when many jurisdictions implemented measures to temporarily put a halt to certain types of evictions (CMHC, 2020).

Myriad laws and legal institutions shape housing experiences of tenants and create the conditions for precarious housing and evictions. These include property laws that govern ownership of real estate and establish the rights of property owners; labour laws and social assistance laws that keep the incomes of many tenants low, and corporate and tax laws that allow for the financialization of housing wherein investors can treat housing as a commodity for profit-making (Sabbeth, 2022). Despite the significance of all these legal regimes, the focus in this paper is on eviction legal systems themselves, which are most directly responsible for eviction. The paper’s focus is

on how these systems can be transformed in order to prioritize youth eviction prevention and housing stability for youth. The argument is that if law helps create evictions and the conditions for evictions, then law can also build in commitments to ensure that the most vulnerable tenants experience greater security of tenure, and fewer evictions.

This paper is intended to contribute to the growing body of Canadian research and scholarship on the human right to housing and youth eviction prevention. First, it discusses the contexts and backgrounds of youth eviction, including discussion of

eviction processes and the impacts of eviction on youth. The paper then turns to the literature on eviction prevention. As noted above, eviction prevention requires a multipronged approach, and law and legal system reform must be taken up alongside other initiatives: this section of the paper will briefly outline some of these necessary upstream eviction prevention initiatives. The paper will then turn to a discussion of ideas for how law and legal systems could be transformed to prioritize youth eviction prevention. **As will become clear, many of these reforms could benefit all tenants and their families—not just youth.**



Background: Definitions, processes, contexts, and impacts of eviction on youth

DEFINITIONS

This paper defines eviction as a tenant's involuntary loss of their home as a result of a landlord's words or actions. Eviction prevention, in contrast, is any program, policy, or intervention that is aimed at keeping people in their rented home with security of tenure (Schwan et al, 2018). It is important to point out that eviction can be "formal" or "informal." "Informal" evictions happen outside the legal process; for example, informal evictions include situations where a tenant moves after a landlord has threatened an eviction process, or simply requests a tenant to leave. Informal evictions can also include situations where a tenant leaves after an unaffordable rent increase or after experiencing landlord harassment (Zell & McCullough, 2020). Formal evictions, on the other hand, are enacted as a result of a legal process. In Canada, this usually involves a landlord taking steps to terminate a lease in accordance with legal requirements and/or applying for a hearing at a provincial or territorial residential tenancies tribunal.

Many experts believe that informal evictions outnumber formal evictions and that the majority of tenants simply move out prior to the conclusion of a formal eviction process (Zell & McCullough, 2020). However, it is very important to pay close attention to eviction legal systems because they influence the

operation of informal evictions. Matthew Desmond describes the impact of the formal system on informal evictions by explaining that the formal system casts a "shadow" that hangs over landlord-tenant relationships (2017b). When the formal system makes it easy and efficient for landlords to evict their tenants, and typically works to reinforce the power of landlords and to minimize tenants' security of tenure, informal evictions can become to seem natural and inevitable to both landlords and tenants. In this context, tenants may feel that contesting an eviction or asserting their rights is not worthwhile. **As one Saskatchewan tenant stated "most people will just pack up and bounce out... As soon as I get an eviction notice... I'm already packing"** (Buhler & Tang, 2019, p.216).

There are various definitions of "youth" used by different agencies and groups in Canada. As one report puts it, "[y]outh tends to be a fluid age category and is defined as the stages between adolescence to early adulthood, often culturally seen as a transition from dependence toward independence and autonomy" (Government of Canada, 2021). For example, the Canadian Observatory on Homelessness defines "youth homelessness" as homelessness experienced by young people between the ages of 13 and 24 (Canadian Observatory on Homelessness). Statistics Canada defines "youth" as those between the ages of 15 and 30 in a recent health report (Garriguet, 2021).

The 2021 “State of Youth” report, in contrast, engaged youth between the ages of 13 and 36 years old (Government of Canada, 2021). Meanwhile, the United Nations defines youth as persons between the ages of 15 and 24 (United Nations Department of Economic and Social Affairs, 2013). This paper does not adopt a strict definition of “youth.” Because it concerns young people who are also themselves renters, it is likely to concern youth who are 18 years old and older. However, we know that some people younger than 18 are renters in Canada, and we also know that many young people are themselves the parents of children. Therefore, this paper takes an inclusive and expansive definition of youth.

EVICITION PROCESSES AND CONTEXTS

As noted above, residential tenancies legislation in each province and territory sets out the process for evictions. Typically, a landlord must give notice to a tenant, and then there is a dispute resolution or adjudicative process where a decisionmaker considers the legality of the eviction. Usually, tenants and landlords have the right to present evidence, to question the evidence presented by the other party, and to receive a fair decision, and most include some sort of limited appeal process to a higher level of decisionmaker. In some (but not all) jurisdictions, the legislation includes a provision that decisionmakers consider the fairness of the eviction beyond merely ensuring that technical or procedural requirements have been met (Canadian

Centre for Housing Rights, 2023). Often, the adjudicator renders a written decision with the eviction order. As noted above, an eviction order can be enforced by a Sheriff or other agent, who may forcibly remove a tenant from their home.

The eviction legal system tends to frame the landlord-tenant relationship as simply a contractual and transactional relationship between two parties. Certainly, residential tenancies legislation across the country does not explicitly acknowledge underlying power imbalances between landlords and tenants, nor do these laws reference that rental housing engages the human rights of tenants. Indeed, it is not unusual to see claims by governments or others that the purpose of residential tenancies legislation is to “balance” the interests of landlords and tenants. For example, the government of Saskatchewan states that Saskatchewan’s legislation seeks to “balance...the needs of tenants for safe, secure, and habitable living accommodations, and the needs of landlords to conduct a viable business and protect their property investment” (Government of Saskatchewan, 2023). Similarly, the Ontario legislation states that it seeks to “balance the rights and interests” of landlords and tenants (Government of Ontario, 2023). These statements paint a picture of a housing landscape where landlords and tenants approach the residential tenancies relationship with commensurate interests that can be evenly balanced. This approach is described by Nicholas Blomley as the “mythologizing” of landlord-tenant relationships as an “egalitarian form of horizontal mutuality” (Blomley, 2020, p.40).

In reality, landlord-tenant relationships operate in a social and economic context where landlords and tenants often have wildly uneven power. Indeed, the power to evict itself “illustrates the presumptive power of ownership” (Van der Walt, 2009., p.55). Landlords and tenants typically approach their relationships with each other from very different social and economic locations. In his recent work, Ricardo Tranjan describes Canada’s “landlord class” as primarily comprising wealthy families, corporations, and financial investors, who are able to build equity and extract profit from their relationships with tenants (Tranjan, 2023, pp.39-40). Other studies reveal that landlords use eviction processes to extract rent and additional fees, and also to assert control and discipline over tenants (Sabbeth, 2022). Rental property in Canada is increasingly subject to financialization, meaning that rental housing is increasingly treated as a commodity and a vehicle for profit making (August, 2020). Meanwhile, tenants are increasingly struggling to make ends meet due to low wages, inadequate social assistance rates, and high rents, leaving them vulnerable to landlord power. Kathryn Sabbeth describes landlords as holding “physical and psychological” power in relation to tenants because “the tenant’s access to a basic necessity of life hinges on the landlord’s willingness to provide it” (Sabbeth, 2018, p.99).

Eviction law and legal processes occur within this larger context. Kathryn Sabbeth’s work has shown that in the United States, eviction courts do little to disrupt the fundamental power imbalances between landlords and tenants. She notes that eviction processes

are characterized by minimal procedural protections and short timelines (2022). Landlords benefit from cheap application fees, low attendance rates by tenants, and minimal evidentiary requirements. Research in Canada suggests some similar patterns exist in this country (Buhler, 2022). In sum, it seems fair to say that **eviction legal processes in Canada generally do not prioritize a prevention focus in their work, instead focusing on efficiency and enforcing landlords’ rights to possession.**

YOUTH, HOUSING INSECURITY, AND EVICTION

This paper focuses on youth who are themselves renters, observing that it is not uncommon for young people who are renters to also be the parents of young children. We also note that youth often live in rental housing with older adults (parents or others). Each situation and story is unique, yet we know that there are some patterns when it comes to youth and housing insecurity. We know that youth are particularly vulnerable to discrimination and exploitation when they are renters, and this disadvantage is profoundly intersectional. Age intersects with other social identities (including Indigeneity, race, immigration status, ability, and gender identity) to shape housing prospects and outcomes (Schwan et al, 2021). Youth report difficulty accessing affordable and decent rental housing due to age and income based discrimination (Karabanow et al, 2010). Once they have found a place to live, many youth report experiencing discrimination by landlords. It is perhaps unsurprising then

that youth are also among the groups most likely to experience eviction from rental housing, with Indigenous, newcomer, LGBTQ2S+ youth, youth with disabilities or who are single parents, and youth who have been involved with the child welfare system facing the highest risk of eviction (Gaetz et al, 2018; Youngbloom et al, 2022). In other words, the risk of eviction rises along with vulnerability and disadvantage.

Youth who are tenants face stigma and may be cast by landlords and others as irresponsible and therefore deserving of eviction (McDonald, 2011). However, it is imperative to emphasize that structural conditions produce youth housing precarity. For example, child welfare systems and youth criminal justice systems often leave young people vulnerable to housing insecurity and unequipped to manage or prevent what McDonald calls “housing disasters” (2011, p.127). Further, many young people face challenges in securing living wages and accessible services, meaning they may not be able to afford rent (Oudshoorn & Justabro, 2020). As a result, they may be more likely to reside with others as co-tenants and may be vulnerable to eviction due to actions of roommates (Karabanow et al, 2010). As McDonald explains, problems that lead to eviction for youth (including difficulties paying rent) are therefore both individual and structural in nature (2011).

EVICTION’S IMPACTS ON YOUTH

Eviction is associated with a myriad of highly negative social, economic, and health outcomes for those who experience it, and can be particularly harmful for youth and children. First, we know that eviction can be a direct pathway to homelessness. One Canadian study reported that almost half of homeless youth had experienced at least one previous eviction (Gaetz et al, 2002). Research shows that youth who end up homeless experience high levels of distress and violence and often have serious difficulties entering into employment, educational opportunities, or training (Gaetz et al, 2018a). Because youth experience homelessness at disproportionate rates (26% of homeless people in Canada are under the age of 24) (Porter, Schwan, & Raza, 2022), special efforts should be made to address youth eviction risks.

Youth who do manage to secure alternate housing following eviction will rarely experience improved living conditions. Rather, eviction is associated with increasingly unstable housing experiences for youth. McDonald describes this as a “downward spiral” (p.122). Similarly, Cimini discusses an “eviction cycle” that can lead to long-term poverty and housing instability (p.47). Eviction can also lead to the apprehension of children and the long-term trauma associated with child apprehension (Groening et al., 2019).

Eviction of youth and children is also associated with worse educational

outcomes, and poorer prospects for future employment and financial security (Desmond, 2016a; Kahlmeter, 2020). Zivanovic and her co-authors reported that eviction was associated with the loss of income assistance for youth who subsequently became homeless (2016). Health research has shown that eviction is associated with multiple negative psychological and physical health

consequences, leading Megan Hatch and Jinhee Yun to conclude that **for young adults, eviction is “bad for your health”** (2021; see also Hoke & Boer, 2021). This body of research urges those with the power to prevent eviction to do so. We turn now to the topic of eviction prevention and, specifically, the role of legal eviction systems in preventing youth eviction.



“Upstream” Eviction Prevention

This paper focuses on the law and legal processes that govern eviction of tenants from rental housing. Its purpose is to suggest areas of law and legal system reform to help reduce youth evictions in Canada. However, reforms to law and legal processes must necessarily be accompanied by other eviction prevention initiatives and policies, to ensure that fewer cases end up in eviction proceedings in the first place. This section discusses some of these “upstream” youth eviction prevention initiatives.

Because the majority of evictions across the country are for rental arrears (Federation of Canadian Municipalities, 2008), it seems clear that one of the best ways to prevent eviction is to ensure that tenants are able to afford their rent.

Ensuring widespread availability of deeply affordable housing necessarily involves multiple strategies. These should include efforts to increase the availability of public, co-op and affordable market housing, and to control the rampant financialization of housing which has been shown to be associated with rising housing unaffordability (Canadian Centre for Housing Rights, 2023b). We also need more housing that is specifically designed to support youth (Oudshoorn & Justabro, 2020).

Upstream eviction prevention also requires financial supports being made available for tenants. Such support could take the shape of rental assistance, supplements, and emergency funds for tenants (Schwan et al, 2018). Government social assistance

programs must ensure that they are actually covering the costs of housing (Gaetz et al, 2018b). Strengthened labour laws, and legislation and policies that ensure living wages for workers are also important measures. Governments should ensure that social assistance rates comply with human rights obligations, and should ensure that specific financial supports are targeted to young people. Research has established that housing assistance protects low-income families from eviction, so government financial assistance is a clear strategy to ensure more youth are able to maintain housing (Lundberg et al, 2021).

Upstream eviction prevention could also include the development of programs that provide comprehensive, “wraparound” supports to help youth maintain housing (Schwan et al, 2018). This could include housing programs where supports for youth exist on-site (Morton et al, 2020). Financial and case management, assistance with budgeting, household management, mental health supports, conflict resolution, systems navigation support and more could assist many young people to secure and maintain rental housing (McDonald, 2011, p.127; Gaetz et al, 2018a; Gaetz et al, 2018b).

Finally, accessible youth-centred educational initiatives are also essential eviction prevention tools. Alyssa Brierley has written about one such initiative by the Centre for Equality Rights in Accommodation (now the Canadian Centre for Housing Rights) which engaged creatively with youth

to educate them about human rights, eviction, and tenancy rights (Brierley, 2019). Ansloos and his co-authors note the importance of decolonial educational models when it comes to Indigenous youth homelessness prevention (2022). Education about tenants' rights should also be targeted and made available to teachers, social service agencies, and health services providers, who have pre-existing relationships with youth and are positioned

to assist youth to access supports (Malenfant et al, 2020). **Research has shown that despite negative experiences with legal systems, youth do want to know their rights.** The key is to ensure that rights education initiatives are accessible, relevant, and youth-centred, and that they take account of the barriers that many youth experience when navigating systems that were not designed with their interests or experiences in mind (Zalik, 2000).



Law and Legal System Reforms for Eviction Prevention

FOUNDATIONS: THE HUMAN RIGHT TO HOUSING, THE DUTY TO PREVENT EVICTION, AND YOUTH-CENTRED APPROACHES

Eviction laws and legal processes should be grounded in a commitment to human rights and should be guided by the understanding that there is a human right to adequate housing and security of tenure

(Centre for Equality Rights in Accommodation & National Right to Housing Network, 2022). In 2019, the federal government enacted the *National Housing Strategy Act*, which explicitly recognizes housing as a human right (National Housing Strategy Act, 2019). However, individual provinces and territories have yet to explicitly revise residential tenancies legislation to reflect a human rights lens.

A shift to a human-rights focused lens would be a significant one for eviction legal systems, which, as outlined above, have tended to view landlord-tenant relationships primarily through a contract law lens, without a view to inequitable contexts within which landlord-tenant relationships are embedded, or the deeply harmful impacts of eviction on vulnerable tenants. Eviction decisionmakers have also tended to view eviction as the only possible solution to address a wide variety of tenancy issues and problems (Canadian

Centre for Human Rights, 2023a). **A shift to a human rights lens necessarily involves centring the human need for shelter, security, and a place to call home, and to recognize that “housing is essential to the inherent dignity and well-being of the person”** (National Housing Strategy Act, 2019).

While international human rights law does not prohibit evictions, it does provide some important guideposts to inform eviction law processes. First, **international human rights law makes it clear that eviction into homelessness is a gross violation of human rights** (Special Rapporteur on the Right to Adequate Housing). The United Nations Committee on Economic, Social, and Cultural Rights has adopted a proportionality framework which essentially requires eviction decisionmakers to consider whether the remedy of eviction is proportional to all the circumstances of the case, and to treat eviction as a last resort (Canadian Centre for Housing Rights, 2023a). A human rights approach to eviction would therefore require all parties to never treat eviction as a routine matter, and to ensure that all reasonable measures are taken to prevent eviction.

Recent Canadian scholarship on youth homelessness prevention has discussed the merits of implementing a statutory “duty to assist” on local authorities and community entities who become aware of youth who are

at risk of homelessness. The Duty to Assist would require that local government officials or agencies offer supports, including assistance with accessing housing, for youth experiencing or at risk of homelessness (Gaetz et al, 2018c). Advocates point to legislation enacted in Wales as a model for how this approach could look in Canada. The concept of a Duty to Assist is an example of a positive obligation on governments to take measures to protect the human rights of youth. Expanding on this concept, legal systems could incorporate a “duty to prevent eviction” in their policies and practices as a method for promoting the human right to housing. Elements of what this could look like in practice are discussed further below.

In addition to a human rights lens, **any efforts to change systems that impact youth should ensure that youth voice and participation are valued and that youth are seen as “truth tellers and rights holders”** whose lives and situations are taken seriously (Nichols et al, 2022). This would require including youth in evaluating any law, policy or practice reforms or initiatives and including youth in evaluation of programs and outcomes.

REDUCING BARRIERS TO PARTICIPATION IN HEARINGS BY YOUTH

Across Canada, eviction proceedings are managed by administrative law tribunals, often with a mandate to be accessible and navigable without costly legal assistance. However, one striking reality when it comes

to eviction legal proceedings is that most of the time, tenants do not show up at their hearings. This is at least part of the reason why tenants have such poor outcomes in eviction processes (Buhler, 2021). We do not have age-specific data specific to rates of tenant attendance at hearings, but it is reasonable based on what we know about youth and access to justice more generally to conclude that **youth are very likely to not participate in their eviction hearings**. For example, Janet Mosher’s research with racialized youth in Toronto showed that the youth reported negative experiences with legal institutions, and that they tended to view law and justice systems as a “club for the privileged” rather than as bodies that would take their experiences or needs seriously (Mosher, p.848). Mosher concluded that the youth who participated in her research held a “deep distrust” of formal legal processes and had little faith that these processes could deliver justice (p.848-849). Similarly, Yedida Zalik’s research found that youth perceived Canadian legal systems as discriminatory and influenced by power (Zalik, 2000). Indigenous youth who participated in Ansloos’s research observed that these systems were not built with their care in mind (Ansloos et al, 2022). **The distrust of justice systems held by youth, mixed with the reality that eviction is so often treated as a routine process where landlords typically obtain possession, makes tenant non-attendance in eviction proceedings unsurprising**. One way for governments and tribunals to address this issue is to ensure that more diverse hearing officers are appointed, including hearing officers who are renters or who may have lived experience of housing insecurity. In one

study, youth shared that they believed that more diverse decision makers would increase their access to justice (Department of Justice Canada Research and Statistics Division, 2019).

In addition, youth face other barriers to participation in eviction proceedings. These barriers include knowledge about their rights, feeling intimidated by legal processes, and technological and logistical barriers.

Tribunals should seek to understand why so many tenants are not participating in eviction processes and should seek to implement measures to try to increase participation. Measures could include ensuring that landlords always satisfactorily demonstrate that the tenant has received notice of the eviction hearing and that the tenant understands the meaning of the notice, the reason for the hearing, and how to participate in the hearing.

Further, with so many jurisdictions holding hearings online or by telephone, tribunals can also do more to ensure that landlords have provided accurate contact information for tenants where possible, as well as access to technology or other supports to enable participation. We know that digital exclusion impacts low-income youth, who may have limited access to internet, email, cell phone minutes and other technology (Sandefur, 2014; Read, 2022). Another key access to justice intervention is to ensure that youth have meaningful access to legal support in eviction matters. This is the subject of the next section.

YOUTH LEGAL ASSISTANCE AND ADVOCACY FOR EVICTION MATTERS

Several American jurisdictions have implemented a right to counsel for tenants facing eviction, and data thus far has shown that **when tenants have legal assistance, eviction rates go down.** In short, legal assistance has a significant impact on tenant outcomes and helps tenants maintain their housing (Engler, 2010; Holl et al, 2016; Peterson, 2020). While there is still a need for further research in Canada, one study by Emily Paradis found that tenants who had legal assistance in Ontario experienced better outcomes. (Paradis, 2016).

Researchers have attributed the positive impacts of lawyers not just to knowledge of law, but also to the professional, social, and “relational” capital that lawyers carry within legal systems. In other words, lawyers help “lend legitimacy” to tenants’ claims and ensure that the situations of otherwise marginalized tenants are taken seriously (Sandefur, 2015, p. 911-912). In eviction matters specifically, lawyers can ensure that landlords actually prove their cases, and can also raise available defences. Lawyers help balance power and translate opaque legal processes to their clients.

In Canada, the availability of legal assistance for tenants varies by jurisdiction. A few jurisdictions provide duty counsel assistance or some limited representation through their civil legal aid programs, but most jurisdictions do not fund legal assistance for tenants facing eviction. Given the often-dire

consequences of eviction, and **given eviction’s specific negative impacts on youth, provinces and territorial governments should ensure that all tenants have access to legal advocacy or representation in eviction matters and should prioritize assistance in cases affecting youth and children.** Because eviction processes are handled by administrative law tribunals, rather than courts, it may be possible for either lawyers or trained non-lawyer advocates to take on the work of assisting youth in eviction matters. Legal aid services should expand legal assistance for youth (and all tenants), and tribunals should also be empowered to appoint counsel or advocates in cases where youth are unrepresented.

However, because it is likely that distrust for law and legal systems held by many youth extends to distrust for lawyers, care must be taken to ensure that publicly funded legal services are appropriate and accessible for youth. Advocates or lawyers for youth should be trained to offer youth-centred services. This includes ensuring advocates understand the barriers faced by youth in legal and housing systems, and that they prioritize relationships, empowerment, collaboration, and trauma and violence-informed approaches (Zalik, 2000). **Ideally, advocates and lawyers would be available “where youth are at”**—including community centres, schools, drop-in centres, libraries, or neighbourhood based legal clinics (Chan & Huys, 2019).

Further, coordination of legal services for youth who are caught up in multiple legal processes should be a priority. We know that

housing law matters like eviction often arise in tandem with other legal problems—for example, criminal law matters or child protection matters. We also know that what happens in one legal forum can have cascading impacts on other legal processes. For example, eviction can lead to child apprehension proceedings and vice versa; criminal charges can lead to eviction; and homelessness caused by eviction can also increase risk of criminalization. **Research suggests if a young person has one lawyer for all their legal matters, they experience better outcomes.** If it is not possible to have one single lawyer dealing with all legal matters, efforts should be made to ensure coordination and communication between advocates as this decreases fragmentation and improves housing stability and other outcomes (Britton & Pilnik, 2018).

INCORPORATING A “BEST INTERESTS OF CHILDREN AND YOUTH” ANALYSIS IN ALL EVICTION PROCEEDINGS

In addition to ensuring that youth have access to meaningful legal assistance, **more can be done to ensure that eviction decisionmakers are focusing on prevention, and specifically considering the impacts of eviction on youth and children.** Currently, no residential tenancies legislation in Canada includes any specific guidance for decisionmakers when faced with an eviction application involving a child or young person. As McDonald writes, residential tenancies legislation imagines a

universal or generic tenant and “does not consider the more complicated developmental factors leading to housing instability, eviction, and homelessness. It does not acknowledge the younger age groups who are in transition to adulthood” (2011, p.130). This can be addressed by incorporating an obligation on decisionmakers to undertake a best interests analysis where eviction would impact a child or young person. Ideally, governing residential tenancies legislation should be amended to include a directive that the best interests of youth and children be included in any eviction decision, and that **all alternatives to eviction are considered prior to any eviction order involving a child or young person** (Martin et al, 2019; Lacombe, 2017).

The above recommendations are in keeping with recent recommendations by the United Nations Committee on the Rights of the Child, in its Concluding observations on the Fifth and Sixth Reports of Canada. In its report, the Committee urged Canada to ensure the best interests of the child was a “primary consideration” in all legislative, administrative, and judicial proceedings and decisions as well as in all policies, programs that are relevant or impact children (United Nations Committee on the Rights of the Child, 2022). Regarding eviction, the Committee recommended that Canada “revise all provincial and territorial laws governing evictions to ensure that the best interests of the child are given primary consideration in all eviction matters and that all avenues for eviction prevention are pursued prior to termination of tenancy.” The Supreme Court of Canada has held that

human rights values should inform administrative decision-making like that undertaken by eviction tribunals, so tribunals should consider how to integrate these values into their approach to evictions (Raso, 2015). **Incorporating a best interests of the child analysis into eviction decision-making is therefore clearly one way that tribunals can embrace human rights values in their work.**

It is important to keep in mind that critical scholars have noted that the “best interests of the child” is a malleable concept and has at times been applied by decisionmakers to justify harmful outcomes—such as child apprehension. For example, Susan Boyd has written that “what is viewed as “best” all too often involves a normative and idealized image of parenting in the white, middle-class, nuclear, heterosexual family, rather than a concrete determination of a child’s welfare” (Boyd, 2003, p.13). Thus, it is crucial that decisionmakers undertaking best interests analyses do so in a trauma-informed and culturally sensitive manner, as well as with a deep understanding of structural and systemic factors that produce housing precarity.

LANDLORD AND GOVERNMENT EVICTION PREVENTION RESPONSIBILITIES

As part of a prevention-centred approach to eviction, legislation should be amended to require landlords who are seeking an eviction order to demonstrate to the tribunal their efforts to avoid eviction. Abby Boshart and

Kathryn Reynolds (2023) have suggested several ways that landlords can become more active in preventing evictions. Strategies include prioritizing clear, accessible and equitable communication throughout the tenancy to build trust and enable early eviction mitigation strategies; proactively connecting tenants with communities and support networks, building in flexible terms, processes and payments, and committing to diversion rather than immediate eviction. Similar approaches were suggested by Balzarini and Boyd (2021), who described practices of small scale landlords who “worked with” tenants to prevent eviction through ongoing communication, relationship-building, payment plans, and even changing the terms of rental agreements where necessary.

Tribunals should also have the ability to make orders where necessary to require that responsible governments provide necessary assistance to prevent eviction or ensure adequate alternative housing where children and youth would be rendered homeless as a result of eviction.

This recommendation has been emphasized by Bruce Porter, Kaitlin Schwan and Sahar Raza (2022), who suggest that the responsible government be a party to any eviction involving children and that the tribunal or court be empowered to order provision of assistance to prevent eviction or ensure that alternate housing is available. To be clear, the mandate of all parties would be to ensure that families have the resources to maintain housing, find alternate adequate housing, and to support families to stay together. This would be one concrete way to implement the “duty to assist”/ “duty to

prevent eviction” discussed above. As discussed above, eviction can often lead to ongoing housing insecurity and homelessness, which in turn can lead to the apprehension of children and fragmentation of families. Empowering tribunals to order governments to provide support for families and youth facing eviction would have as an underlying value a mandate to prevent child apprehension and fragmentation of families.

A TRAUMA-INFORMED TRIBUNAL

Some areas of law, notably criminal law, explicitly acknowledge that youth and children have special status due to their developmental and other needs, and must be treated differently than adults (Hollingsworth, 2016). Indeed, Canada has developed a specialized system for youth in criminal law matters. It is likely not practical or necessary to create a separate system for youth facing eviction. After all, as Doob and Tonry point out, what is important is not just the formal structure of a legal system or process but rather what happens on the ground, in practice (2004).

What is possible, however, is ensuring that hearing officers, tribunal staff, and other relevant stakeholders working within the eviction legal system are equipped to offer trauma-informed and youth-centred services and that they understand the specific harms that eviction causes for youth. While a detailed discussion of trauma-informed practice is outside the scope of this paper, it is important to note

that a rich and growing body of research and scholarship provides valuable insights about trauma-informed practices within justice processes. For example, in his book *Trauma-Informed Youth Justice in Canada*, Judah Oudshoorn writes that trauma-informed youth justice processes embody several important core values. First, trauma-informed youth justice must value critical and holistic thinking. Second, it must value human dignity. Third, a trauma-informed framework must value participation, and must make special room for the voices of youth who are on the margins of society. Fourth, trauma informed justice values peace and relationship-building. Fifth, trauma informed justice takes a holistic approach which involves a commitment to harm reduction. Finally, a trauma-informed approach values positive social change. Fundamentally, Oudshoorn argues, being trauma-informed means understanding trauma and its effects, and then embracing a commitment to implementing practices that do not perpetuate trauma. “It almost goes without saying”, he writes, “that practices that do further harm should be abolished” (p.202).

COORDINATING SYSTEMS

We know that youth who experience eviction are also often entangled with other systems, including criminal justice and child welfare or family law systems and processes. As noted above, youth who are dragged into the criminal law system face heightened risks of eviction. This includes the reality that landlords are often quick to evict in cases

where there is police or alleged criminal involvement, and also because being incarcerated often makes it impossible for a tenant to pay their rent or communicate with their landlord (Quirouette et al, 2016). Thus, criminal law involvement can be a precursor to eviction; and eviction can likewise be a precursor to a tenant being criminalized and brought into criminal justice processes (Almquist & Cusworth Walker, 2022). Similarly, we know that youth who have “aged out” of the child welfare system face higher rates of eviction; and that eviction can also trigger involvement by child welfare authorities (Nickel et al, 2020).

These systems are too often working together to increase housing precarity and vulnerability to harm. They are too often culturally unsafe and contributing to increased precarity for youth (Ansloos et al, 2022). **Advocates have called for changes, including greater information sharing between agencies about outcomes and processes, and for individual case coordination where appropriate** (Ansloos et al, 2022; Gaetz et al, 2018b). What could this look like for eviction legal systems? To start, it could involve communication with other agencies to discuss areas where systems might overlap or compound problems. Taking advice and guidance from Elders, youth with lived experience, and experts in trauma and violence-informed processes could ensure that any coordination efforts address the enmeshed operation of current legal systems and emphasize eviction prevention and housing security for youth and children, rather than dispossession and disruption.

OTHER MEASURES TO INCREASE ACCESS TO JUSTICE AND EVICTION PREVENTION FOR YOUTH

Eviction legal systems can also implement some procedural reforms that will immediately reduce harm and promote eviction prevention. First, legislated timelines for various parts of proceedings (for example, timelines for service of hearing notices, or exchange of evidence) should be extended to ensure that tenants have time to prepare for hearings, negotiate with landlords, and plan for alternative housing if necessary. Filing/application fees for landlords can be raised, because evidence shows that cheap filing fees mean more evictions whereas higher fees reduce evictions (Gomery et al, 2023).

In addition, jurisdictions (like Saskatchewan) where tribunals publish tenant names in written eviction decisions should immediately cease publishing tenant names. This practice creates a publicly available

“screening tool” that landlords can use to discriminate against tenants, and often include deeply private information about tenants’ financial, health, and other personal details.

Finally, residential tenancies tribunals could change their metrics of evaluation from current emphases on case volume, speed, and efficiency, to a focus on measuring how many evictions were successfully diverted or avoided. Currently, tribunals emphasize speed and efficiency in their reporting to stakeholders. For example, in 2021 the Saskatchewan Auditor General commended Saskatchewan’s residential tenancies tribunal for the fact that the average time between a hearing and a written decision was 3.4 days (Provincial Auditor of Saskatchewan, 2021). Conversely, an Ontario report noted the slow pace at which Ontario’s tribunal operated due to pandemic-related issues (Ombudsman Ontario, 2023). **Instead, tribunals could report and be evaluated based on their success in resolving landlord-tenant conflicts without resorting to eviction.**



Conclusion

This paper has discussed the deeply consequential impacts of eviction on youth and has argued that the **eviction legal system must confront the harms of eviction on youth—and make reforms that seek to reduce and prevent youth eviction from rental housing**. The paper argued that all reforms must be grounded in a recognition that housing is a human right, and with a commitment to youth-centred and prevention-oriented approaches. The paper explored several avenues for reform. It called for greater measures to increase access to justice, including access to legal representation, for youth who find themselves facing an eviction process. It argued that governing legislation should be reformed to incorporate a requirement that decisionmakers conduct a “best interests of children and youth” analysis in all decisions.

The paper also noted that legislation could be reformed to ensure that landlords and responsible governments have positive responsibilities to prevent eviction and, in the case of governments, assist youth who are at risk of homelessness as a result of eviction. It argued that eviction tribunal decisionmakers and staff should take steps to become trauma-informed in their processes, and to ensure better harm-reduction focussed coordination with other systems.

Finally, it argued that other procedural reforms and a shift to measuring success based on the number of evictions prevented could help change the “culture” of the

eviction legal system to one where the maintenance of housing is valued, and where evictions, especially eviction of youth, children, and families, are rare rather than routine events.

SUMMARY OF RECOMMENDATIONS

- (1) All eviction-related laws, policies, and practices should be grounded in a recognition that rental housing is not merely a contract, but that it engages the human rights of renters. This would require:
 - a. Recognizing that eviction into homelessness is a human rights violation;
 - b. Requiring that tribunals undertake a robust proportionality analysis in all eviction decision-making;
 - c. Requiring that eviction is always treated as a last resort;
 - d. Placing a “duty to prevent eviction” on all relevant parties;
 - e. Centre youth voices and experiences in all policy and law reform initiatives.
- (2) Reduce barriers to participation by youth in eviction processes.
 - a. Appoint more diverse hearing officers, including those with lived experience of renting and housing precarity;

- b. Support initiatives for youth-centred education about their rights;
 - c. Ensure that landlords must prove service of documentation, including showing that the young person has received and understood the notice of eviction;
 - d. Ensure that youth have meaningful access to all relevant technology to participate in eviction hearings and processes.
- (3) Provide legal assistance to youth who are facing eviction.
- a. Ensure that legal aid programs are funded to support youth who are facing eviction;
 - b. Ensure that legal service providers adopt youth-centred and trauma-informed approaches.
- (4) Reform relevant laws and policies to ensure that the best interests of youth are a key consideration in all eviction matters.
- (5) Ensure that landlords and governments have responsibilities to prevent eviction.
- a. Landlords should be required to demonstrate efforts to prevent eviction;
 - b. Governments should have a responsibility to provide necessary supports to prevent eviction and, if necessary, ensure that youth do not become homeless because of eviction.
- (6) Ensure that tribunal staff and hearing officers receive training about youth-

centred and trauma-informed practices, including education about the harmful impacts of eviction on tenants.

- (7) Ensure coordination where appropriate between eviction legal systems and other systems involving a young person.
- (8) Implement other reforms focussed on eviction prevention, including providing tenants more time to pay; increasing landlord filing fees, prohibiting the publication of tenant names in reported decisions; and implementing policies that ensure that tribunals measure their successes not in terms of efficiency but rather in terms of how many youth and other renters maintain their housing.

While the eviction legal system can do much to reduce eviction orders and work to ensure youth, children, and families retain their housing, the eviction and housing crisis clearly engages multiple other laws, systems and policies. This paper has discussed the need for crucial reforms to social policies including those that make housing more affordable and less subject to financialization. Fundamentally, what is needed is a shift from a transactional or commodity-based view of rental housing and towards understanding that housing is a human right. Ultimately, our goal as a society should be more than achieving eviction prevention for youth. **We must work toward a society where youth not only avoid eviction but where they are able to thrive and meet their full human potential with secure, safe housing, and a sense of home and belonging.**

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KEEPING YOUTH HOUSED

Law and Legal System Reform
for Youth Eviction Prevention
