

Welcome.... We will be starting on the hour.



**CARST Webinar Series: Radon and Residential
Tenancy Discussions**





AGENDA:

- Welcome and Introductions
- Summary of Landlord and Tenancy issues and Radon in Canada
- Sharing Ideas
- Action Steps and Next Meeting





**RADON AND RENTERS:
Legal Strategies and
Avenues for Change**

**CARST Webinar - Webinar on Radon and Residential
Tenancy Discussions
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Why Focus on Radon and Renters

- **public health perspective —consider ALL homes**
- **dislodge ‘normalcy’ of single family owner occupied homes**
- **Health Equity**
- **Right to a Healthy Environment**
- **Smokers**
- **Power imbalances in landlord tenant relationship**
- **split incentives — If the landlord buys and supplies all of the components of a home, they have an incentive to do so at the lowest possible cost**

What We Have Found and How

2018 radon scan surveyed all residential tenancies legislation across Canada: <https://cela.ca/environmental-scan-of-radon-law-and-policy-best-practices-in-canada-and-the-european-union-report-report-prepared-for-health-canada/>

Recent review of Canadian Legal Information Institute ([CANLII.org](https://www.canlii.org/)) for new cases— some were found (legislation and regulation not updated due to time constraints)

Also checked US based Environmental Law Institute (see <https://www.eli.org/buildings/indoor-air-quality-rental-dwellings-8>)

- Very little pro-active action on renters in Canada
- Lack of specific radon language in any standards that apply to renters
- Broad language on fitness of repair and quiet enjoyment
- there are possible actions on radon before landlord-tenant tribunals
- public health action possible

Jurisdictions that Protect Renters

Mandatory Information

- [Florida Statutes 404.056,](#)

Landlords must disclose known radon levels

- [Illinois Comp. Statutes Chap. 420, §46/25](#)

Landlords must test, tenants can terminate if over Guidelines

- [Maine Revised Statutes 14, §6030-D .](#)
- Norway Radiation Protection Regulations, s. 6, plus Residential Tenancies Act, Sections 2.2 and 5.1

Local authorities can order testing and mitigation

- Swedish Environmental Protection Act , Section 9, Chapter 9
- UK Housing Act, plus Housing Health and Safety Rating System

Laws that Protect Canadian Renters

- **residential tenancies**
- **occupiers liability**
- **public health (and associated regulations)**
- **standards of maintenance**
- **special rules covering social housing**

Residential Tenancies

Basic structure is quasi-private— legislation sets necessary terms in contract between landlord and tenant

tenant inspections feature *caveat emptor*

- **BC—no objective duties for landlords to report any problems,**
- **formalized process of “walk through” inspections**

Tribunals

- **BC: Residential Tenancies Branch**
- **Ontario: Landlord and Tenant Board**
- **Quebec: Régie du logement**
- **consider disputes over rent**
- **when tenancies rightfully end (such as whether damage deposits or rent reductions are owed).**

Remedies around radon might involve orders for rent reduction, being able to vacate a tenancy earlier, or work orders. Possibly compensation

good state of repair/fit for habitation

Clauses in all residential tenancy law across Canada

Ontario case of *CET-67599-17 (Re)* 2017 CanLII 60362 (ON LTB) July 31, 2017

- tenant applied for an order determining that the Landlord failed to meet maintenance standards
- The 78 years old tenant was not living in the unit at the time of application—undergoing cancer treatment and living with relatives.
- He argued that he experienced seizures because of the condition of the unit and claimed several repair issues,
- submitted an Inspection Report from a Property Inspections company.
- The Board held that evidence demonstrated structural issues with the roof and crawlspace including the risk or radon gas permeating the rental unit.
- a 100% rent abatement was warranted until repairs were complete, including ensuring radon did not permeate the unit

At Québec's Régie du logement

Duff Conacher c. National Capital Commission (2006)

- very high radon levels (between 680 Bq/m³ and 1,280 Bq/m³) constituted a “serious threat”

Bramley c. Vanwynsberghe (2017)

- Tenants vacate early claiming radon concerns. Landlord seeks rent owed.
- Battle of radon tests —Tenant gave 488 Bq/m³, Landlords 110 Bq/m³.
- judge concludes radon not significant
- Tenants moved out without showing landlord test or giving him opportunity to test and mitigate.
- tenants left without right and ordered to pay damages.

Vanderwerf v. Dolan, 2019 QCRDL 37417

- Tenant leaves after radon tests show 699 Bq / m³
- Goes to Tribunal seeking compensation and to be released from a long-term lease
- \$ 1,000 in moral damages for troubles and inconveniences and \$ 2,000 in moving expenses

Quiet Enjoyment

- **common law principle — independent of statutory wording-but also in most residential tenancies legislation**
- **covenant of quiet enjoyment as part of the tenancy agreement**
- **the landlord (or tenant) cannot substantially restrict the tenant's ability to use their residence in an ordinary lawful way**
- **must be of such severity that the premises become “untenable” or “uninhabitable as a residence”.**

Y.A., Y.E., S.A. & B.A. v Regina Housing Authority 2017 SKORT 75, upheld Regina Housing Authority v Y.A., 2018 SKQB 70

- **three tenants with the Regina Housing Authority suffered from second-hand smoke intrusion**
- **Pro Bono Law Saskatchewan test case**
- **lung health experts testified**
- **Extensive rate abatements— to two thirds of the rent-- were granted for the duration of the tenants time in the units.**

Challenges to Using Residential Tenancies

Negatives

- Residential Tenancies tribunals are administrative tribunals, and unlike courts are not strictly bound by stare decisis.
- some tribunals do not publish decisions
- superior courts wary of imposing standards on tribunals (“deference to “reasonableness standard” or, in BC, “patently unreasonable”)
- difficulty of access (win on radon but lose a home) —see Ontario Rentsafe project

that said, there are Positives

- clear avenue for radon action
- Tribunals should follow general consensus positions — Consistent rules and decisions are fundamental to the rule of law (*Altus Group Limited v. Calgary (City)*, 2015, Alberta Court of Appeal)

Ontario Radon Advocacy

2014 private members bill would create the *Radon Awareness and Prevention Act*

- **would have required testing, and mitigation if above 200 Bq/m³ for all provincially owned buildings**

2016 consultations on *Residential Tenancies Act*.

- **submissions by CARST, Ontario Lung Association, and CELA**
- **publicity from Mike Holmes, TV renovation celebrity**
- **radon testing to be mandatory in all residential tenancies**
- **mandatory mitigation where where radon above 200 Bq/m³;**
- **test results to be made available to all tenants upon request**

Public Health

General Powers

- Public health agencies generally respond to complaints
- can respond to complaints around radon.
- few (if any) complaints about indoor radon are received
- little mandate to act on radon

Alberta Health Services

- worked with a Calgary renter to tests and order mitigation
- developed a guidance document
- drew on general nuisance clauses in the *Public Health Act* (at s. 59 to 61) and the *Nuisance and General Sanitation Regulation, Alta Reg 243/2003*.
- “Nuisance” is defined as “a condition that is or that might become injurious or dangerous to the public health, or that might hinder in any manner the prevention or suppression of disease” (*Public Health Act, s. 1(ee)*).

Some provinces specific do direct public health officials to investigate rental units on a complaints basis— Saskatchewan and Manitoba

Some Public Health law includes regulation of indoor environments:

- **Manitoba— *Dwellings and Buildings Regulation 322/88 R***
 - specific details around issues such as water or windows,
 - specific ventilation clauses (s. 10(2))
- **BC. The *Health Hazards Regulation*, BC Reg 216/2011 at section 7 covers inadequate rental accommodation, and describes conditions that make up a health hazard. However, it is restricted to requiring potable water, minimum limits on air space per unit, and a window that can open.**
- **PEI The *Rental Accommodation Regulations*, PEI Reg EC142/70 — covers minimum space, dimension of rooms, drinking water, room temperature and weatherproofing,**
- **these could be amended to cover radon**

Standards of Maintenance

- municipal level
- e.g. *Montreal By-law concerning the sanitation, maintenance and safety of dwelling unit*
- potential way for municipalities to take action on radon and renters
- *Waterloo's Rental Licensing Bylaw 2011-047* uses licensing provisions to enforce standards of maintenance
- we found no examples where radon included
- BC— provincial governments provides sample bylaw (at http://www.housing.gov.bc.ca/pub/htmldocs/pub_sample.htm)
- includes health and sanitary concerns e.g. that sinks have running water, but no mention of radon
- most BC municipalities in fact have no provisions for renters protections
- Ontario Regulation 517/06 *Maintenance Standards* only appeal where other relevant municipal bylaws are not in effect.

Occupiers Liability

Traditionally, common law did not allow tenants to sue landlords for damages

Occupiers Liability legislation replaces common law—landlord is ‘occupier’ and tenant is ‘invitee’ on the land

Tenant shows (on balance of probabilities)

1) damage

2) caused by an unusual danger

3) the danger must be one about which the occupier knew or ought to have known

4) the occupier must have failed to use reasonable care to prevent the invitee's injury or damage from the unusual danger, and

5) the invitee must have employed reasonable care for his or her own safety and security.

Problems of establishing causation.

Damages may be small.

Duty to mitigate.

Social Housing

- **Some social housing is co-ops and dwellers are not tenants but co-owners.**
- **Some owned by provincial agencies (eg BC Housing).**
- **Some owned by local governments (Toronto Community Housing Corporation).**
- **Where government owns and dwellers rent, residential tenancies and occupiers liability applies.**
- **Some housing societies test.**
- **Some government programs to tested public buildings.**
- **Quebec Housing Corporation (SQH) study found 61 out of 380 dwellings with above-guideline levels, and mitigated (2014). Large scale testing initiative after that**
- **In 2015 Manitoba Housing and Renewal Corporation committed to proactively implementing a testing program to monitor levels of radon in government housing**
- **Manitoba Housing's *Design Guidelines for Multi-Unit Affordable and Social Housing* (November, 2017) include provisions for radon control**
- **some specific housing societies have tested and mitigated**

Strategies and Next Moves

- **help tenants know and fight for their rights**
- **work with tenants advocacy organizations such as the Tenant Resource and Advocacy Centre (British Columbia) and the Advocacy Centre for Tenants Ontario**
- **engage Residential Tenancies branches/commissions to use investigative powers to help renters test for radon**
- **help public health officials connect the dots on radon and renters**
- **specific housing regulation under Public Health acts can include radon**
- **municipalities can enact or amend standard of maintenance bylaws**
- **include radon in guidelines for housing authorities**
- **targeted testing and mitigation subsidies**



thank you

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Current Examples

BC – Whistler, tenant knew about radon, tested and asked their landlord to fix it; fix was expensive due to house, but landlord fixed; reasons given was due to awareness in community even though vacancy rate is low and landlord could have had a new tenant; also thought that relationship with tenant was a motive for fixing

MB – tenant tested their home, landlord installed a 'fix' but it wasn't a properly installed system; used sub-standard materials



ACTION STEPS and Next Meeting:

Notes...

- we need proper guidance for testing in Multi-Unit Residential testing in Canada
- look at changes to the landlord tenancy acts in each provinces
- make information for tenants more available
- inform people who are making those who make decisions with landlords and tenants aware of radon
- Simple information sheet for Tenants, include province specific information
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Questions from the CHAT BOX:

Who is eligible for compensation and what type? – Many residential tenancy acts contain provisions for tenants to be compensated in some cases for damages. This is an issue that we will need to investigate and prepare more specifics about as it will vary province by province. We will add this to our list of action items for the future.

Would the licensing bylaws be expanded to Air B&B and VRBO? This is an interesting question and another area that we would have to spend time investigating. It will be interesting to have people share thoughts on if this area is something CARST (or others) should spend time investigating.

is there a question about length of exposure to radon risk, eg. after how many years would it be reasonable to claim illness? – Didn't seem like this would impact the decision of tribunals, Health Canada has made a it quite clear that radon exposure is a health issue.

re lung cancer, the UK is tracing cancer cells for radon markers, correct?



Notes from the CHAT BOX:

Re lung cancer, the UK is tracing cancer cells for radon markers, correct?
- there is research ongoing in Canada as well as other countries. To date, we don't have any published research.

Should radon testing and mitigation training be incorporated into HVAC professional training? i.e.: college level? – Great suggestion, we have been reaching out to various trade schools to talk about it, there is a C-NRPP certification program which is available for any one to take and become certified. We know that in many areas they have included radon and the rough-in as part of the plumbing training. We will add to our action items to continue to reach out to schools and increase awareness.



Notes from the CHAT BOX:

I would hear your view on a Builders / Developers liability or responsibility in radon testing of new homes. In Ontario under the building code radon mitigation and testing is only required in three designated areas. Tarion home warranty now consider radon a warrantied item. Question is, does the developer / builder have an obligation to test after occupation if not in these designated areas.

Tarion warranty covers homes for high radon levels within the first 7 years. It is the responsibility of the homeowner to test (neither Tarion nor the builder are responsible to test). Homeowners are not well informed on this, and this is a good area to continue radon awareness about.

The Ontario building code contains provisions for radon in the building code and it puts the onus on the municipality to address if they have 'known radon'. Several municipalities have enacted radon measures. You can find this information on our website here: <https://carst.ca/carstblog/7685273>



Other Questions:

There is a lack of guidance for Multi-Residential testing in Canada, what can be done about this?

We currently don't have clear guidance for testing or mitigation of multi-residential buildings in Canada. It is something CARST has been talking with Health Canada about. We will continue to have discussions about it at the upcoming CARST Conference in Victoria and will be working towards recommendations for Canada.

CARST 9th ANNUAL
CONFERENCE



RADON - INCREASING VISIBILITY
- DIMINISHING IMPACT



Schedule is online: <https://carst.ca/carst-2020/#ContinuingEducation>

HIGHLIGHTS

Saturday: Field Trips – Multi-Unit Testing/Mitigation and School and Child Care Testing/Mitigation

Sunday: Great education sessions including Building Envelopes, Issues with New construction, Challenging houses

Monday and Tuesday: great speakers, practical and policy sessions Monday afternoon and Tuesday morning;

Topics include Radon and Mapping Discussion; Radon and Real Estate, and more...

Upcoming Events:



- **CRPA Conference June 8-12 2020**
- **C-NRPP Radon Measurement and Mitigation Course - Winnipeg August 17-22, 2020**
- **International Conference on the Management of Naturally Occurring Radioactive Materials (NORM) in Industry October 2020**