
March 2020

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Sarah Buhler
University of Saskatchewan College of Law

Catriona Kaiser-Derrick
Legal Aid Saskatchewan

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Citation Information

Buhler, Sarah and Kaiser-Derrick, Catriona. "Home, Precarious Home: A Year of Housing Law Advocacy at a Saskatoon Legal Clinic." *Journal of Law and Social Policy* 32. (2020): 45-66.

DOI: <https://doi.org/10.60082/0829-3929.1377>

<https://digitalcommons.osgoode.yorku.ca/jlsp/vol32/iss1/4>

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Home, Precarious Home: A Year of Housing Law Advocacy at a Saskatoon Legal Clinic

SARAH BUHLER & CATRIONA KAISER-DERRICK*

Cet article traite de l'impact du travail de défense des droits en matière de logement d'étudiantes et étudiants en droit inscrits à la clinique Legal Assistance Services for Saskatoon Inner City (CLASSIC). Le sujet est abordé à travers une analyse des dossiers fermés de 2017 de la clinique, en droit du logement. Notre analyse démontre que le travail de défense des droits de la population étudiante auprès de l'Office of Residential Tenancies (le tribunal de droit du logement de la Saskatchewan) mène souvent à des décisions favorables aux locataires. Cela confirme les études qui démontrent qu'une pleine représentation juridique produit de meilleurs résultats pour la clientèle à l'issue de litiges. Notre étude contribue à la littérature sur les impacts des programmes d'éducation juridique clinique en proposant une discussion nuancée, contextuelle et fondée sur le travail sur le terrain, de la défense des droits en matière de logement effectuée par la population étudiante clinique et sa clientèle, dans une clinique juridique communautaire.

This article discusses the impacts of housing law advocacy by clinical law students at Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) through an analysis of CLASSIC's 2017 closed housing law files. Our analysis shows that law student advocacy at the Office of Residential Tenancies (Saskatchewan's housing law tribunal) is often associated with decisions in favour of tenants. This is consistent with studies that show that full legal representation is associated with improved litigation outcomes for clients. But our analysis also demonstrates the numerous limits to individual advocacy in housing law contexts. Our study contributes to the literature about the impacts of clinical law programs through a nuanced, contextual, and ground-level discussion of the housing advocacy by clinical law students and their clients within a community legal clinic.

A PLACE TO CALL HOME is essential for human survival and dignity. Secure and safe housing provides physical shelter from the elements as well as a space where psychological and emotional needs can be fulfilled.¹ As Julia Christensen writes, “[h]ome, identity, and belonging are ... indelibly linked.”² A sense of home and a safe place to live are key determinants of health, well-

* Sarah Buhler is an Associate Professor at the University of Saskatchewan College of Law. Catriona Kaiser-Derrick (JD University of Saskatchewan College of Law, 2018) was a law student research assistant for this project. She is currently a lawyer with Legal Aid Saskatchewan. The authors would like to thank the editors of the *Journal of Law and Social Policy* and the anonymous peer reviewers.

¹ Jessie Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Oxford: Hart Publishing, 2013) at 4–5.

² Julia Christensen, *No Home in a Homeland: Indigenous Peoples and Homelessness in the Canadian North* (Vancouver: UBC Press, 2017) at 27. See also Lorna Fox O'Mahony, “The Meaning of Home: from Theory to Practice” (2013) 5:2 *International Journal of Law in the Built Environment* 156 at 158: “Our homes are the foundations of our lives.”

being, and quality of life.³ Yet inadequate and unstable housing is a reality for many individuals and families throughout Canada. A 2010 report by the Wellesley Institute notes that “[d]eep and persistent housing insecurity and homelessness are truly nationwide issues.”⁴ In Saskatoon, the largest city in Saskatchewan, affordable and safe housing is an ongoing and urgent concern.⁵

Community Legal Services for Saskatoon Inner City (CLASSIC) is a community legal clinic located in the neighbourhood of Riversdale, a community that has been the epicentre of recent rapid gentrification, rising housing prices, and debates about policing, colonialism, racism, and inequality in the city.⁶ Housing law is a key area of advocacy at CLASSIC, comprising between twenty to twenty-five per cent of its work in any given year.⁷ Since CLASSIC’s inception in 2007, its law students have represented tenants at the Office of Residential Tenancies (ORT), the administrative law tribunal that adjudicates disputes between landlords and tenants in Saskatchewan. Working under the supervision of CLASSIC’s staff lawyers, law students represent tenants at eviction hearings, defend clients against landlords’ monetary claims, and bring applications against landlords for breaches of their rights under *The Residential Tenancies Act, 2006*.⁸

In 2017, CLASSIC’s tenth anniversary, CLASSIC initiated a review of files in order to gain insights into the impacts of its advocacy. Although the clinic routinely documents and reports basic information about its work—including demographic information about clients, numbers of files, and areas of law—we wanted to know more about the types of claims, case outcomes, and emergent systemic patterns. As noted by Sarah Buhler, Sarah Marsden, and Gemma Smyth, “[c]linics are well-positioned to see patterns in client needs and in how the law is applied.”⁹ CLASSIC staff believed that this data would inform law reform and other systemic advocacy efforts, and that it would be of interest to other community partners. Because of the sheer volume of files and the necessity of a manageable project, we narrowed our review temporally and by area of law. We looked at the files closed over the course of the 2017 calendar year in three areas of law (housing, prison, and criminal law).

In this article, we focus on what we learned about CLASSIC’s housing law advocacy through this project. In 2017, CLASSIC closed a total of seventy-four housing law files involving

³ Margot Young, “Charter Eviction: Litigating out of House and Home” (2015) 24 J L & Soc Pol’y 46 at 47. See also the OECD Library, a database on major issues in OECD countries, which notes that good housing standards are essential to “security, privacy and personal space:” OECD, “Housing conditions” in *How’s Life?: Measuring Well-being* (OECD Publishing, Paris, 2011) at 19, online: <doi.org/10.1787/9789264121164-6-en> [perma.cc/B6RX-2AU4].

⁴ Wellesley Institute, “Precarious Housing in Canada” (2010) at 24, online: <wellesleyinstitute.com/wp-content/uploads/2010/08/Precarious_Housing_Part_One.pdf> [perma.cc/C9JS-K79R].

⁵ See Saskatoon Housing Initiatives Partnership, “Saskatoon Homelessness Report Card 2018” (2018), online: <static1.squarespace.com/static/58dd630f3a0411286bd918ad/t/5c0555ee1ae6cfe5a110d82a/1543853552582/Homellessness+Report+Card+2018.pdf> [perma.cc/6ADZ-VGZU].

⁶ See Allan Casey, “Reviving Riversdale: Gentrification and Reconciliation in one of Saskatoon’s Poorest Neighbourhoods,” *The Walrus* (22 October 2014), online: <thewalrus.ca/reviving-riversdale> [perma.cc/WW6Z-ME4F]; Jaskiran Dhillon, *Prairie Rising: Indigenous Youth, Decolonization, and the Politics of Intervention* (Toronto: University of Toronto Press, 2017) at 26–27. We discuss some of the dynamics of the debates about Riversdale later in the paper.

⁷ See CLASSIC, “Annual Report 2017-2018” at 4, online: <http://www.classiclaw.ca/uploads/1/6/8/5/16850750/2017-2018_annual_report.pdf> [perma.cc/6Q4K-HN9V].

⁸ *The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001, online: <qp.gov.sk.ca/documents/english/statutes/statutes/r22-0001.pdf> [perma.cc/S3SH-C9HV].

⁹ Sarah Buhler, Sarah Marsden & Gemma Smyth, *Clinical Law: Practice, Theory, and Social Justice Advocacy* (Toronto: Emond Press, 2016) at 110.

a total of seventy-five clients (one file was a joint retainer); these seventy-four files were the subject of our review. We identified the types of housing law problems faced by clients, and considered the impacts of CLASSIC's advocacy in addressing these issues. As we will discuss, the majority of the files involved claims initiated after the tenancy was over, which is significant in considering the impacts and limits of housing law advocacy.

CLASSIC's housing law advocacy unfolds within the larger contexts of inequality, systemically entrenched power imbalances, and a legal regime that facilitates evictions. These contexts shape and constrain the process and outcomes in various ways. The files document the deep housing precarity faced by tenants and while they underscore the importance of legal advocacy at the ORT, they simultaneously reveal its limits. CLASSIC's clients faced inadequate housing conditions including pest infestations, mold, lack of heating, broken appliances, and damaged doors and windows. They faced invasions of privacy, physical attacks, and harassment by landlords and/or their agents. For many clients, housing issues intersected with a myriad of other issues, including interactions with police, incarceration, mental and physical health challenges, racism, and discrimination.¹⁰

As noted, most of the cases involved the end of the tenancy. In some cases, CLASSIC defended tenants facing eviction claims. More often, however, it represented tenants in claims made by either the landlord or the tenant in the wake of the tenancy's dissolution; that is, after the tenant had already moved out. Thus, in the majority of cases that went to hearings at the ORT, then, the focus was on seeking compensation for inadequate housing conditions or other breaches of tenants' rights, or defending against claims made by landlords, after tenants had already lost their tenancy. CLASSIC's advocacy therefore focused on mitigation of, or compensation for, harm relating to lost tenancy, rather than maintaining or improving current housing conditions for tenants. This pattern illuminates the limits of the individual advocacy model, as well as power imbalances between landlords and tenants. We argue that this insight invites efforts for law and policy reform, and community organizing, in order to establish further protections and security for tenants. However, the impact of CLASSIC's individual tenant advocacy should not be diminished: it reflects important demands by tenants for accountability, justice, and dignity in housing.

Our research provides empirical insights into housing law processes and the housing law problems faced by low-income tenants in Saskatoon. It also provides nuanced and ground-level insights into the advocacy and work of clinical law students within a community legal clinic.¹¹ Certainly, while the data from our review is not widely generalizable due to the relatively small sample size, the observations from this review do reveal the types of legal and other challenges that marginalized tenants face with respect to housing in Saskatoon and beyond.

In Part I of this article, we will first introduce CLASSIC and the clinical law program, as well as the ORT. We will provide some background to issues and statistics relating to housing in Saskatoon and place this discussion within the wider context of power relations, economic and social inequality, and colonialism. In Part II, we will discuss the methodology and limits of our project. In Part III, we will turn to the key themes that arose in our review. We will argue that the

¹⁰ As we set out in more detail below, in Saskatoon—where Indigenous people are more likely to experience homelessness—housing precarity, colonialism, and racism are linked. According to a 2014 report, Indigenous people make up forty-six per cent of the population of people experiencing homelessness in Saskatoon, and seventy per cent in Regina: Stephen Gaetz, Tanya Gulliver & Tim Richter, "The State of Homelessness in Canada, 2014" (2014) at 60, online: <homelesshub.ca/sites/default/files/attachments/SOHC2014.pdf> [perma.cc/7HK9-CTWU].

¹¹ In this way, it responds to calls in the literature for studies on the impacts of clinical law student advocacy. See, for example, Jeanne Charn & Jeffrey Selbin, "The Clinic Lab Office" (2013) 1 *Wis L Rev* 145.

files show both the limits and importance of individual advocacy at the ORT, and we will conclude with a consideration of the implications of our study for clinic housing law practice.

We approach this research from our particular life experiences and from our position as “insiders” with respect to CLASSIC. Sarah is a law professor and has a long history with CLASSIC, having been involved in various capacities since its inception in 2007. Catriona was a law student research assistant for this project, and was actively involved at CLASSIC as a volunteer and clinical law student. As insiders to the program whose impacts we were investigating, we are aware that there might be insights that we miss simply because of our proximity to the context we are investigating. However, “insider status” can also afford researchers valuable insights nuances of data.¹² We attempted to be self-reflexive in this regard throughout the project. We also acknowledge that we approach our work from our position as settlers who have benefitted from the dominant system (including the justice system), while many of our clients at CLASSIC have experienced this system as oppressive and harmful. We have learned from the stories of CLASSIC’s clients in this regard and these insights are reflected in this article.

I. CONTEXT AND BACKGROUND

A. CLASSIC AND THE OFFICE OF RESIDENTIAL TENANCIES

CLASSIC was founded in 2007 as a result of the efforts of a group of law students at the University of Saskatchewan College of Law. Its vision is “a just society that is supported by a fair legal system.”¹³ CLASSIC’s mission is to “work towards social justice with low-income, marginalized Saskatchewan residents, with a commitment to Indigenous peoples, through a legal clinic that is guided by the needs of the community.”¹⁴ According to CLASSIC, this mandate “engages law and inter-disciplinary students through experiential learning, providing insights into the cultural and social reality of law and fosters an ethic of social justice.”¹⁵ CLASSIC is structured as a not-for-profit organization and is governed by a volunteer board of directors. CLASSIC is located in Saskatoon’s Riversdale neighbourhood. Originally located inside the White Buffalo Youth Lodge, a community youth centre in Riversdale,¹⁶ CLASSIC relocated in 2012 to its current storefront address on 20th Street West (about four blocks east of the White Buffalo Youth Lodge).

CLASSIC’s neighbourhood, historically home to many Indigenous families, is a strong and diverse community with a sense of history and vibrant social networks.¹⁷ It has also been constructed as racialized space and has been the target of racist commentaries over the years.¹⁸

¹² For a discussion of this issue of “insider status,” see Ronald J Pelias, “Writing into Position: Strategies for Composition and Evaluation” in Norman K Denzin & Yvonna S Lincoln, eds, *The SAGE Handbook of Qualitative Research*, 4th ed (Thousand Oaks, Cal: SAGE, 2011) 359 at 662-663.

¹³ See CLASSIC, online: <classiclaw.ca> [perma.cc/X773-JVEV].

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ See Saskatoon Tribal Council, “White Buffalo Youth Lodge,” online: <sktc.sk.ca/programs-services/family-community-services/community-supports/white-buffalo-youth-lodge> [perma.cc/K9VD-DLKH].

¹⁷ See Evelyn Peters & Carol Lafond, “‘I Basically Mostly Stick with My Own Kind’: First Nations Appropriation of Urban Space in Saskatoon, Saskatchewan” in Evelyn Peters & Chris Anderson, eds, *Indigenous in the City: Contemporary Identities and Cultural Innovation* (Vancouver: UBC Press, 2013) at 88.

¹⁸ See, for example, Laura Woodward, “‘It’s ignorance about language’; Riversdale website removes post after complaints,” *CTV News* (17 August 2018), online: <saskatoon.ctvnews.ca/it-s-ignorance-about-language-riversdale-website-removes-post-after-complaints-1.4057999> [perma.cc/GK95-JF6V]. For an essay that discusses the racialization of space in Saskatoon, see Sherene Razack, “‘It Happened More than Once’: Freezing Deaths in Saskatchewan” (2014) 26:1 CJWL 51.

With high poverty rates and poorer health outcomes as compared to most other neighbourhoods in the city, the neighbourhood has also been the site of ongoing and disruptive institutional interventions in people's lives. ¹⁹As Evelyn Peters and Carol Lafond found in their Saskatoon-based research study, for many Indigenous peoples, "the public areas of the streets are not safe ... [P]ublic space is not something that they can safely appropriate for everyday activities without the threat of police harassment. This, of course, reminds them that their right to use these spaces is under the control of the dominant society."²⁰ Riversdale has also been the site of a recent rapid gentrification process which has often been accompanied by a narrative about the neighbourhood as being "degenerate" and in need of revitalization. ²¹ As many community members and activists point out, this narrative has justified the further displacement of long-time residents.²² As Sarah Buhler, Priscilla Settee and Nancy Van Styvendale write, the "the racialization of neighbourhoods such as Riversdale works to justify the increasing occupation (or 'revitalization') of such neighbourhoods and the displacement of Indigenous peoples."²³

CLASSIC hosts the University of Saskatchewan's Intensive Clinical Law program, which places second- and third-year law students at the clinic for one semester. Students receive fifteen credit hours, which includes a twelve-credit practicum at CLASSIC and a three-credit academic seminar. Under close supervision of CLASSIC's supervising lawyers, students represent clients in a wide variety of legal areas, including housing law, social assistance appeals, prison law, criminal law, human rights, and immigration and refugee law. As of 2018, CLASSIC had served close to ten thousand clients.²⁴ CLASSIC uses a financial eligibility framework for prospective clients.²⁵ Housing law has been a core area of practice since CLASSIC's inception. Indeed, because Saskatchewan's Legal Aid system does not assist with residential tenancy matters, CLASSIC is the only place in Saskatoon where low-income tenants can obtain free legal representation for their housing matters.²⁶

Over the years, CLASSIC has engaged in law reform and systemic advocacy related to housing, working closely with several community agencies and partners.²⁷ For example, CLASSIC recently collaborated with the Saskatchewan Human Rights Commission on an initiative that

¹⁹ See Dhillon, *supra* note 6 at 103–119 for a detailed discussion of institutional interventions and disruptions in Indigenous communities in Saskatoon.

²⁰ Peters & Lafond, *supra* note 17 at 96.

²¹ Ben Fawcett, "Ben on Gentrification and Urban Change," *Wahkohtowin Justice Map*, online:

< <https://www.arcgis.com/apps/MapTour/index.html?appid=b83485f7347e4edc991fca28fb52cc05>>. See also, Charles Hamilton, "'This is Ground Zero for Gentrification': Artist wants to keep the gentrification conversation happening in Riversdale," *Saskatoon StarPhoenix* (8 September 2016), online: <thestarphoenix.com/news/local-news/this-is-ground-zero-for-gentrification-artist-wants-to-keep-the-gentrification-conversation-happening-in-riversdale> [perma.cc/W7FQ-8L6K].

²² Fawcett, *supra* note 21.

²³ Sarah Buhler, Priscilla Settee & Nancy Van Styvendale, "(Re)Mapping Justice in Saskatoon: the Wahkohtowin Project's Digital Justice Map" (2019) 8 *Annual Review of Interdisciplinary Justice Research* 146 at 159.

²⁴ CLASSIC, *supra* note 7 at 1.

²⁵ See CLASSIC, "FAQ For the Public," online: <classiclaw.ca/questions-for-public.html#4> [perma.cc/NHE8-KGRM].

²⁶ Residential Tenancies files make up about twenty per cent of CLASSIC's total caseload: CLASSIC, *supra* note 7 at 4. Legal Aid Saskatchewan provides assistance in criminal and family law, but not other areas of law. See Legal Aid Saskatchewan, online: <legalaid.sk.ca> [perma.cc/R5R3-9T7C].

²⁷ For a discussion of systemic advocacy and CLASSIC's work in this area, see Amanda Dodge & Gemma Smyth, "Learning, Teaching & Practising Systemic Advocacy in Legal Clinics: A Conversation" (2018) 29 *J L & Soc Pol'y* 47.

identified patterns of discrimination in the provision of rental housing in Saskatoon.²⁸ CLASSIC also helped establish Renters of Saskatoon and Area (ROSA), an independent, grassroots tenants' advocacy group that provides education, support, and a voice for tenants on housing policy issues.²⁹

However, the majority of CLASSIC's housing-related work is focused on individual advocacy for tenants at the ORT.³⁰ The ORT is the administrative tribunal that adjudicates disputes between tenants and landlords pursuant to *The Residential Tenancies Act* (Act).³¹ The Act sets out the rights and responsibilities of landlords and tenants, including rules around payment of rent, evictions, implied standards of habitability, and more. According to the Government of Saskatchewan, the Act and its accompanying regulations "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."³² Hearings in Saskatoon are held at the ORT's office in a government building downtown, where hearing officers preside over the testimony and evidence presented by tenants and landlords. The ORT is an extremely active tribunal, receiving over eight thousand applications per year.³³ However, we note that this statistic is very likely an underrepresentation of the number of housing-related legal problems faced by tenants. According to a 2018 Saskatchewan Human Rights Commission report, many tenants with legitimate complaints about their landlords or housing conditions do not take these matters to the ORT, for a variety of reasons, including a lack of knowledge about their rights or fear of retaliation by landlords.³⁴

Despite these barriers, many tenants do approach CLASSIC for assistance with their housing law problems. CLASSIC deals with five primary types of residential tenancies files:

- (1) Breach of tenant's rights, where a tenant retains CLASSIC to represent them in filing a breach of rights claim
- (2) Eviction matters, where a tenant retains CLASSIC to represent them with respect to a landlord's application for possession
- (3) Defending against landlord claims, where a tenant retains CLASSIC to help defend them against a claim for rent arrears or damages initiated by the landlord
- (4) Disputes about security deposits, where tenants seek the return of a security deposit, or where landlords seek to retain the deposit.
- (5) Systemic/policy advocacy files, where a tenant retains CLASSIC to help negotiate with

²⁸ Saskatchewan Human Rights Commission, *Access and Equality for Renters in Receipt of Public Assistance: A Report to Stakeholders* (Saskatoon: Saskatchewan Human Rights Commission, 2018), online:

<saskatchewanhumanrights.ca/pub/documents/publications/SHRC_RIRPA_web.pdf> [perma.cc/X5EX-LELJ].

²⁹ See SaskForward, "Renters of Saskatoon and Area (ROSA) on Provincial Renting Concerns," (26 January 2017), online: <saskforward.ca/renters-saskatoon-area-rosa-provincial-renting-concerns> [perma.cc/JZ57-RH6Y].

³⁰ See Government of Saskatchewan, "Office of Residential Tenancies," online: <saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/office-of-residential-tenancies> [perma.cc/Y7L6-69VV].

³¹ *The Residential Tenancies Act, 2006*, *supra* note 8, s 14.

³² See Government of Saskatchewan, "Rights and Responsibilities of Landlords and Tenants," online: <saskatchewan.ca/business/housing-development-construction-and-property-management/landlords-and-rental-properties/landlord-and-tenant-rights-and-responsibilities> [perma.cc/2NL3-PMM6].

³³ Ministry of Corrections and Policing & Ministry of Justice and Attorney General, "Annual Report 2017-18," at 34, online: <publications.gov.sk.ca/documents/9/107684-2017-18_Justice_Corrections_AR_web.pdf> [perma.cc/Y8Q6-YSM7].

³⁴ Saskatchewan Human Rights Commission, *supra* note 28 at 14.

the landlord around problems with landlord policies or practices (for example, a landlord rule against guests or a landlord policy of charging fees on late rent)

CLASSIC's housing law files often involve more than one of these issues, such as an eviction followed by a later breach of tenant's rights claim, a landlord counterclaim, and a dispute about the return of the security deposit.

B. CONTEXTS OF TENANTS' HOUSING PROBLEMS IN SASKATOON

It is imperative to work to understand the wider contexts within which CLASSIC's housing advocacy at the ORT unfolds. A myriad of structural and systemic factors including inequality, racism, and colonialism impact and produce the housing problems faced by CLASSIC's clients. In the Ontario context, Emily Paradis has similarly noted that for most tenants, "coming before the LTB [Landlord and Tenant Board] is the product of multiple, intersecting inequities, injustices, and experiences of discrimination and marginalization."³⁵

In recent years, reports have identified housing affordability and availability as key issues facing Saskatoon.³⁶ Fueled by natural resource extraction, a province-wide economic boom ushered in a period of rapid population growth in Saskatoon. Along with this population growth came low vacancy rates in the rental market and high rents.³⁷ Although vacancy rates have risen in the wake of a recent economic downturn, the Saskatchewan Human Rights Commission notes that higher vacancy rates have not led to lower rents overall, "making the vacant units largely unaffordable for many."³⁸

In most cases, social assistance programs in the province do not cover the actual cost of rent, forcing many people to choose between meeting basic needs (*e.g.*, food, clothing, medications), or paying their rent.³⁹ The basic social assistance shelter allowance at the time of our study was approximately \$459 per month for a single person and \$711 for a family with two children, although additional benefits are available to some renters. The average monthly cost for a two-bedroom apartment in Saskatoon in 2017 was \$1,082. It is not surprising, then, that many participants in the Saskatchewan Human Rights Commission consultation process reported "spending money from their food budget to cover their rent."⁴⁰

Meanwhile, affordable social housing is limited in the city. As noted in the Saskatchewan Human Rights report, "there are fourteen agencies providing affordable rental housing in Saskatoon, including rent-g geared-to-income units, and this supply is not enough to meet the

³⁵ Emily Paradis, "Access to Justice: The Case for Ontario Tenants: Final Report of the Tenant Duty Counsel Review" (2016) at 16, online: *Advocacy Centre for Tenants Ontario* <act.o.ca/production/wp-content/uploads/2017/07/TDCP_Report_2016.pdf> [perma.cc/7L34-DS28].

³⁶ See, for example, Saskatoon Housing Initiatives Partnership, "Core Housing Need," online: <shipweb.ca/test> [perma.cc/ZTC2-SNUK]; Mark Lemstra & Wendy Sharpe, "Housing Disparity" in Mark Lemstra & Cory Neudorf, eds, *Health Disparity in Saskatoon: Analysis to Intervention* (Saskatoon: Saskatoon Health Region, 2008) at 286, online: <saskatoonhealthregion.ca/locations_services/Services/Health-Observatory/Documents/Reports-Publications/HealthDisparityRept-complete.pdf> [perma.cc/M9GW-XTFA].

³⁷ Alan B Anderson, *Home in the City: Urban Aboriginal Housing and Living Conditions* (Toronto: University of Toronto Press, 2013) at 194.

³⁸ Saskatchewan Human Rights Commission, *supra* note 28 at 8. See also Canada Mortgage and Housing Corporation, "Rental Vacancy Rates: Canada, Provinces and Metropolitan Areas," online: <cmhc-schl.gc.ca/en/data-and-research/data-tables/rental-vacancy-rates-canada-provinces-metropolitan-areas> [perma.cc/US3R-NNNJ].

³⁹ Saskatchewan Human Rights Commission, *supra* note 28 at 7. See also Anderson, *supra* note 37 at 104.

⁴⁰ Saskatchewan Human Rights Commission, *supra* note 28 at 8.

demand.”⁴¹ Furthermore, the provincial government announced in 2018 that it would end the Rental Housing Supplement program, stripping away an important public program that assisted low-income tenants with paying their rent.⁴² According to the Saskatoon Housing Initiatives Partnership, a growing number of Saskatoon households face a situation of “core housing need,” which refers to situations where “housing falls below at least one of the adequacy, affordability, or suitability standards and [a household] would have to spend 30% or more of its total before-tax income to pay the median rent of alternative local housing that is acceptable (meets all three housing standards).”⁴³

It follows that in addition to affordability, the adequacy and safety of housing are also ongoing issues for many renters in Saskatoon. Sociology professor and scholar Alan Anderson notes that “[a] great deal of the poorer inner-city rental housing in Saskatoon is controlled by ‘property managers’ who may well fit the connotation of ‘slumlords.’”⁴⁴ Anderson’s research shows that many rental units falling into this category exhibit major deficiencies including structural damage, broken doors and windows, damaged flooring, leaking plumbing systems and inadequate heating systems.⁴⁵

A large body of research has shown the connections between poor housing conditions (including insecurity of tenure) and poor health outcomes.⁴⁶ Anderson states:

safe and affordable housing improves residents’ physical and mental health; for example, a child living in decent housing is ten times less likely to contract meningitis, asthma, or respiratory complications Moreover, improved housing clearly results in children’s improved school performance, behaviour, and well-being. ⁴⁷

Similarly, a study by Gary Evans and his co-authors demonstrates that there is a strong relationship between housing quality and mental health outcomes.⁴⁸ A 2007 study of mold and depression in eight European cities revealed an association between mold in the home and depression, a link that was “independently mediated by perception of control over one’s home and physical health.”⁴⁹ The psychological and financial pressures of cleaning the mold, coupled with a feeling of a lack of control, can lead to a higher risk of anxiety and depression.⁵⁰

⁴¹ *Ibid* at 13.

⁴² DC Fraser, “Rental supplement program replacement not coming until at least 2020,” *Regina Leader-Post* (28 November 2018), online: <leaderpost.com/news/politics/rental-supplement-program-replacement-not-coming-until-at-least-2020> [perma.cc/6YZA-BZ2U].

⁴³ Saskatoon Housing Initiatives Partnership, *supra* note 36.

⁴⁴ Anderson, *supra* note 37 at 254.

⁴⁵ *Ibid* at 255.

⁴⁶ See for example: Wellesley Institute, “Housing and Health: Examining the Links” (2012), online: <wellesleyinstitute.com/wp-content/uploads/2012/10/Housing-and-Health-Examining-the-Links.pdf> [perma.cc/V9K7-WU95]; Toba Bryant, “The Current State of Housing in Canada as a Social Determinant of Health” (2003), online: *Policy Options* <irpp.org/wp-content/uploads/assets/po/bank-mergers/bryant.pdf> [perma.cc/LLB7-EJDX]; Allyson E Gold, “No Home For Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants” (2016) 24:1 *Geo J on Poverty L & Pol’y* 59.

⁴⁷ Anderson, *supra* note 37 at 105.

⁴⁸ Gary W Evans et al, “Housing Quality and Mental Health” (2000) 68:3 *Journal of Consulting and Clinical Psychology* 526.

⁴⁹ Edmond D Shenassa et al, “Dampness and Mold in the Home and Depression: An Examination of Mold-Related Illness and Perceived Control of One’s Home as Possible Depression Pathways” (2007) 97:10 *American Journal of Public Health* 1893, online: <ncbi.nlm.nih.gov/pmc/articles/PMC1994167/> [perma.cc/4CX3-6X2E].

⁵⁰ *Ibid*.

Saskatoon renters also face racism and discrimination. These issues are reported in some detail in a 2018 report by the Saskatchewan Human Rights Commission. The report documents multiple narratives by tenants about discrimination by landlords in the provision and maintenance of housing, including on the basis of income, receipt of public assistance, race, sex, and disability.⁵¹ Specific examples cited in the report include sexual harassment of tenants by landlords,⁵² Indigenous renters being told by landlords that they could not drink in their apartments, nor have family visit,⁵³ and landlords refusing to rent to tenants who received social assistance.⁵⁴ Peters and Lafond also found that Indigenous people in Saskatoon faced “discriminatory attitudes ... in their search for housing.”⁵⁵

The issues described above coalesce to create a situation where many individuals and families in Saskatoon live in inadequate, unaffordable housing and are often on the brink of losing their homes. But what are the wider power relations that are bound up with, and overlay, these realities? The work of American sociologist Matthew Desmond provides some helpful insights. Writing about evictions and homelessness in the city of Milwaukee, Desmond argues that the low-income housing market in the United States is characterized by patterns of exploitation. He writes that “[e]xploitation” is “a word that speaks to the fact that poverty is not just a product of low incomes. It is also a product of extractive markets In fixating almost exclusively on what poor people and their communities lack ... we have neglected the critical ways that exploitation contributes to the persistence of poverty.”⁵⁶ Ezra Rosser, writing about Desmond’s work, explains that “landlords are able to derive considerable profit from low-income housing and ... they have tremendously more power than their tenants. Landlords enjoy the benefits of rules that privilege their position vis-à-vis their tenants—benefits that are made all the more powerful because these rules are treated by landlords, tenants, and courts alike as the natural way the landlord-tenant relationship should be governed.”⁵⁷

Anna Lund has suggested that, despite many differences between the United States and Canada when it comes to housing, Desmond’s arguments resonate in the Canadian context.⁵⁸ The discussion above lends itself to a consideration of the ways in which exploitation of vulnerable tenants is made possible by a profit-driven market, inadequate social assistance and social housing programs, and a legal framework that facilitates and normalizes the ability of landlords to evict vulnerable tenants (*e.g.*, for non-payment of rent). Furthermore, the housing system in Canada works alongside state institutions and justice processes that further compound the vulnerability of many tenants. For example, the Elizabeth Fry Society has documented the mutually reinforcing links between the criminal justice system and housing insecurity for women.⁵⁹ We also note that when given the chance to entrench a human right to housing, Canadian courts have firmly rejected the opportunity.⁶⁰

⁵¹ Saskatchewan Human Rights Commission, *supra* note 28 at 11–12.

⁵² *Ibid* at 22.

⁵³ *Ibid*.

⁵⁴ *Ibid* at 12.

⁵⁵ Peters & Lafond, *supra* note 17 at 107.

⁵⁶ Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Crown Publishers, 2016) at 305–306.

⁵⁷ Ezra Rosser, “Exploiting the Poor: Housing, Markets, and Vulnerability” (2016) 126 *Yale L J* at 467.

⁵⁸ Anna Lund, “Book Review – *Evicted: Poverty and Profit in the American City*” (2016) 54 *Alberta L Rev* 233.

⁵⁹ Nancy Poon, “Housing Situations of Women Prior and Post Incarceration in Canada” (2015: Canadian Association of Elizabeth Fry Societies), Research Brief at 8.

⁶⁰ See *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 and *Abbotsford (City) v Shantz* 2015 BCSC 1909.

While Desmond's exploitation theory is helpful, housing precarity in Canada cannot properly be understood without consideration of settler colonialism and its ongoing effects. Scholars such as Jesse Thistle, Gabrielle Weasel Head and Yale D Belanger, and Julia Christensen have argued that Indigenous experiences of homelessness and housing are unique and are connected to larger colonial patterns and systems of dispossession and disruption, including the criminal justice system and the child welfare system.⁶¹ In Saskatoon, Indigenous tenants are almost three times more likely than non-Indigenous tenants to be living in homes requiring major repairs;⁶² Indigenous peoples are at a compounded risk of homelessness;⁶³ and explicit and implicit discrimination persists.

II. METHODOLOGY AND LIMITATIONS

The objective of this study was to review CLASSIC's closed 2017 housing law files for general, systemic, and non-identifying data about clients' housing law issues and the impact of CLASSIC's advocacy. In particular, we reviewed the seventy-four closed housing law files for information regarding the outcomes of cases, the types of housing issues faced by CLASSIC's clients, the interaction between legal and non-legal issues, and other emerging systemic patterns. The highest standards of confidentiality were applied to this study, in keeping with the legal and ethical requirements of solicitor-client privilege, the obligations of CLASSIC and its staff, and the requirements of the Behavioural Research Ethics Board, which approved the study.⁶⁴ Specifically, the researchers were already bound by ethical duties of confidentiality through their pre-existing work with CLASSIC. CLASSIC was involved throughout in the design of the research protocol and supervision of the project. Of utmost importance was the principle that no remotely identifying information be collected; rather, we were seeking to identify trends relating to CLASSIC's housing law advocacy. As a result, this article does not provide specific examples to illustrate the general patterns it describes.

Closed case files are paper files retained securely by CLASSIC after a client's legal matter has been resolved, after CLASSIC has lost contact with the client, or after the file has been closed for any other reason. First, we reviewed the entire electronic drive (e-drive) of closed files to ensure a complete cross-referencing with the paper closed case files. Cross-referencing showed an almost complete overlap between the e-drive and the physical files for a given time period, but this method did capture a few physical files that were not recorded in the given time period on the client drive and vice versa. A complete record of all closed case files in 2017 was created from this cross-referencing of electronic and paper files.

Once we obtained a complete record of closed case files for 2017, these files were then screened for the type of legal issue they dealt with. Within the focused screening for residential tenancies files, seventy-four files were identified. Each of these files was reviewed for information

⁶¹ Jesse Thistle, "Definition of Indigenous Homelessness in Canada" (Toronto: Canadian Observatory on Homelessness, 2017), online: <homelesshub.ca/sites/default/files/COHIndigenousHomelessnessDefinition.pdf> [perma.cc/2WAN-EP9J]; Gabrielle Weasel Head & Yale D Belanger, "All We Need is Our Land": Exploring Southern Alberta Urban Aboriginal Homelessness" (Toronto: The Homeless Hub, 2014), online: <www.homelesshub.ca/resource/all-we-need-our-land-exploring-southern-alberta-urban-aboriginal-homelessness> [perma.cc/ZJ8T-JDR8]; Christensen, *supra* note 2.

⁶² Anderson, *supra* note 37 at 74.

⁶³ *Ibid* at 224.

⁶⁴ Behavioural Ethics Certificate on file with authors. We also consulted with the Law Society of Saskatchewan about the project.

including time invested in the file, quantum of damages awarded for or against the client (where applicable), and the type of tenancy claim or issue (*e.g.*, eviction or breach of tenant rights).

The files were also reviewed for emergent themes. The results were recorded in a master spreadsheet using defined keywords or “tags.” The process of identifying keywords was iterative and represented a dynamic relationship between the recording of themes and the review of the individual files. Whenever keyword or pattern was identified mid-way through the review of the seventy-four files, the earlier data was reviewed a second or third time for the relevant pattern. Themes emerged organically from the data and were also informed by the critical literature discussed above.

At the analysis stage, the tags assigned to different data patterns were used to determine how many results were involved in each type of pattern. This was done by creating conditional rules within a master Excel chart created from the closed file review, and searching for how many times the different tags appeared in the data. An example of this is the tag “lost contact,” which was used to denote a file that had been closed due to loss of contact with the client. A search of this keyword identifier revealed that twenty-four per cent of files involved a loss of contact during the study period. The purpose of this use of “tagging” was two-fold: (1) to homogenize the terminology used to discuss systemic patterns for later analysis; and (2) to ensure that systemic data could later be aggregated.

The aggregation of the systemic data, meaning the review of individual files and then the collection of data on a specific point from the original data set, ensures that data has been collected in a way that cannot be identifying. As an example of an aggregated data point, seventy-three per cent of the residential tenancies files reviewed involved clients who were either in receipt of public assistance, or who had zero income.⁶⁵ These data results were obtained from reviewing all seventy-four files for the defined tag and aggregating the number of files exhibiting a particular systemic pattern into a percentage or result. Another way the data was aggregated was by calculating averages. One example of an average calculated from the data is the average number of hours of legal work invested in a completed residential tenancies file (32 hours of file work for cases that went to a hearing, for example).

The primary limitation of this study is likely to be researcher error. For example, human error may have led to inconsistencies within the tagging process. As an example, two separate tags were developed for “inadequate housing” and “homelessness.” These tags were defined separately, with “inadequate housing” defined as not having adequate housing, and “homelessness” defined as not having any housing. However, there were some files that revealed that the client dealt with both inadequate housing and homelessness during their tenancy dispute. As such, separate semantic searches for “inadequate housing” and “homelessness” may capture a broader range of data.

Another limitation is the fact that the files are themselves mediated accounts of information: they are created and maintained by clinical law students, who inevitably make choices about what information to record and what to leave out. As Thomas Scheffer writes, “[t]he file, thus, does not just report and represent. It also involves and constitutes an extended nexus of those present and absent.”⁶⁶ As an example, in our review we noted that some clients reported physical or health problems associated with their housing law matter. However, we note that this

⁶⁵ Note that as discussed below, this is a result of clinic eligibility criteria: CLASSIC’s income eligibility guidelines require that it provides service to clients whose incomes are below a set threshold.

⁶⁶ Thomas Scheffer, “File Work, Legal Care, and Professional Habitus – an Ethnographic Reflection on Different Styles of Advocacy” (2007) 14 *Intl J of the Legal Profession* 57 at 59.

information goes through three levels of filtration from collection to analysis. First, the health information is reported by the client, then the clinical law student records it in the file, then the researcher identifies a systemic tag based on their reading of the self-reported health information, and then the data is aggregated. Because of these multiple layers of data filtration, the end result, which is that thirteen per cent of files involved an intersection between poor housing and health problems, may be distorted to an unknown amount. It is important to note that this type of study limitation likely led to the *underreporting* of health problems on the files and the percentage of clients experiencing a health problem that related to their housing may have been higher than this study revealed. Mental health problems, in particular, are often concealed and underreported due to social stigma.⁶⁷

A further limitation is the issue of selection bias. CLASSIC has its own process for selecting files that involves a complicated calculus of merit, financial eligibility, jurisdiction, and mandate. This may mean that some of the data figures, while representative of larger systemic problems, may also be representative of how CLASSIC selects its own clients. As an example, the fact that seventy-three per cent of residential tenancies clients were either in receipt of public assistance or had zero income may lead to an inference that financially disadvantaged clients are the population most vulnerable to housing problems, but this is also reflective of the financial eligibility guidelines that have been set by CLASSIC.

In order to respond to these limitations, a “dynamic relationship” between screening, data collection, and analysis was incorporated into the methodology.⁶⁸ This means that, as new tags were discovered in the data collection, or data analysis process, the master spreadsheet was re-checked for these keywords, and the individual files were pulled for further review as needed. The findings are also accountable to the data in that the master spreadsheet has been stored securely to enable it to be reviewed in the future by the research principal and assistant. Transparency and self-reflectiveness about the limitations of this study and the methodology used to obtain this data is another means of confronting these limitations.⁶⁹

III. THEMES AND ANALYSIS

A. DEMOGRAPHICS

In the files studied, a majority of tenants identified as Indigenous (forty-one out of seventy-five). Twenty-three tenants identified as non-Indigenous; of these, seven identified as being refugees or recent newcomers to Canada. The remaining files did not record information about clients’ identity. Furthermore, forty-four out of the seventy-five clients were women; eight of these women reported being the primary caregivers of minor children, although information about children may not have been recorded in all files. Forty-nine of the seventy-five clients reported that their source of income was government assistance; others reported sources of income including pensions,

⁶⁷ Heather Stuart & Julio Arboleda-Florez, “A Public Health Perspective on the Stigmatization of Mental Illnesses” 34 *Public Health Revs* 1 at 2, online: <publichealthreviews.biomedcentral.com/track/pdf/10.1007/BF03391680> [perma.cc/84VY-DVN4].

⁶⁸ Janet Morse et al, “Verification Strategies for Establishing Reliability and Validity in Qualitative Research” (2002) 1:2 *Intl J of Qualitative Methods* 1 at 11, online: <sites.ualberta.ca/~iiqm/backissues/1_2Final/pdf/morseetal.pdf> [perma.cc/2L38-4M9T].

⁶⁹ Paul Galdas, “Revisiting Bias in Qualitative Research: Reflections on Its Relationship With Funding and Impact” (2017) 16:1-2 *International Journal of Qualitative Methods* 1 at 2, online: <journals.sagepub.com/doi/pdf/10.1177/1609406917748992> [perma.cc/TCD6-RKLS].

employment, or spouses with employment. Several clients reported that they struggled with health problems. The high number of Indigenous clients is reflective both of CLASSIC's policy to prioritize the legal needs of Indigenous clients, and structural inequities relating to the provision of adequate housing described earlier in the article. As discussed above, current housing practices and experiences are integrally linked to historical and ongoing practices of settler colonialism in urban contexts.

B. HOUSING CONDITIONS AND THE LIMITS OF ADVOCACY AT THE OFFICE OF RESIDENTIAL TENANCIES

Pursuant to the Act, landlords have an obligation to provide housing “in a good state of repair and fit for habitation.”⁷⁰ The presence or absence of a number of factors can impact the habitability of a unit, including pests, heating, structural problems, and mold. Repair and maintenance problems can impact other indicators of living standards directly and indirectly. For example, a broken door or window that is not fixed by the landlord can implicate other interests such as privacy and access to the rental unit. The files revealed significant issues with respect to habitability and housing conditions. We describe these issues here and consider how CLASSIC and its clients addressed them.

Pest infestations were a common issue in the files, appearing in approximately one third of the files. Of these, the majority involved complaints about bed bugs. However, we note that many tenants were facing more than one type of pest, including cockroaches, ants, and mice. Landlord failure to respond adequately to infestations had wide-ranging and deleterious effects on tenants, especially on tenants with pre-existing health problems or disabilities. Tenants are typically responsible for preparing the rental unit for an infestation treatment, and the preparation process for bed bugs and cockroaches can take hours. Clients with health problems and limited social supports experienced extreme difficulty with this process.

A delay between the reporting of the infestation and the landlord's response to the problem was also observed as having a negative impact on clients. In some cases, the landlords waited weeks or even months to execute the first eradication treatment, despite being notified on numerous occasions by tenants of the problem. This lapse in time between reporting the problem and treatment often led to worsening infestations and tenants' possessions being damaged. Many of CLASSIC's ORT clients also live in shared or apartment housing. Lapses in response time by the landlord were also observed to contribute to the spreading of the infestation to adjacent units. Failure to contain the problem in multi-family housing resulted in more tenants being affected.

As noted, health problems can diminish a tenant's ability to respond to poor housing conditions, particularly where time-consuming preparation is required for infestations. This feedback loop of health problems and housing conditions also works in the other direction—housing conditions can have a negative impact on the client's health. Mold was one housing problem that was repeatedly linked to poor health outcomes. Several files involved tenant complaints about black mold in the rental unit, often so severe that the tenants complained of being made ill. These complaints are in keeping with the research on the links between health outcomes and housing discussed above. In more than one CLASSIC file, the prevalence of black mold in the home impacted the client's ability to sleep at night due to stress and discomfort.

Inadequate heating was another common problem noted by clients. Multiple clients dealing

⁷⁰ *The Residential Tenancies Act, 2006*, *supra* note 8 at s 49(1).

with inadequate or no heating during the winter resorted to turning on the oven or other appliances to try to warm the unit. Over twenty per cent of files involved inadequate or no heating during the winter—a particularly serious problem in a city where winter temperatures regularly drop to minus twenty degrees Celsius or colder. Several clients reported having no access to hot water. Further, seventeen per cent of files involved flooding within the rental unit that the landlord had failed to attend to.

Despite the inadequate housing conditions that many clients endured, many they reported hesitations about bringing a claim forward against the landlord during the tenancy. Indeed, in the majority of cases, the breach of tenant’s rights claim was brought *after* the tenant had moved out of the unit or been evicted, whether legally or illegally. According to the Act, if a landlord fails to comply with their duty to provide, repair, and maintain a habitable unit under the *Act*, the landlord’s breaches do not relieve the tenant of their obligation to pay rent.⁷¹ Thus, the tenant’s only options when faced with poor housing conditions, where a landlord is not responsive to requests to address the problem, are either to remain in the rental unit, continue to pay rent, and seek compensation at the ORT for poor housing conditions, or to end the tenancy. While section 56 of the *Act* permits tenants to end the tenancy with only one day’s notice where the landlord has materially breached the tenancy agreement, this provision on terminating the tenancy is realistically only available to tenants who have found or can find alternative housing on short notice. In a rental housing context, where availability of housing is very limited, tenants are less able to exercise their rights under section 56, as terminating a tenancy on short notice will leave a tenant with no housing as opposed to tolerating poor housing. This is particularly pronounced for tenants living with disabilities: there is “very little independent housing for those with physical disabilities in Saskatoon.”⁷² In a number of files, clients continued to pay rent for many months despite the unit being virtually uninhabitable due to problems with pests or lack of heat. This was one important theme emerging from the review: that many clients were opting to tolerate poor housing for fear of the alternative—no housing at all.

Adding to the complexity of tenants’ situations, many of CLASSIC’s tenants received a government benefit known as the Rental Housing Supplement to pay for their rent. The supplement (which has since been cancelled for new applicants)⁷³ is a monthly government payment that assists lower income families in paying for housing. The supplement is tied to quality housing. For tenants to remain eligible for the supplement, their rental unit must satisfy certain health and safety standards.⁷⁴ In many cases, tenants reported not wanting to involve inspections for fear that discovery of the poor housing conditions by an inspector might lead to an interruption or cessation of their housing benefits. In these situations, a tenant is forced to decide between subsidized but poor-quality housing, and losing their subsidy but holding their landlords accountable for the poor conditions. In some ways, the “quality” housing that the supplement is linked to is a fiction that

⁷¹ *Ibid* at s 42(1).

⁷² Saskatchewan Human Rights Commission, *supra* note 28 at 26.

⁷³ See discussion earlier in the article. On 1 July 2018, the Government of Saskatchewan suspended the intake of new applications for the Rental Housing Supplement. See Government of Saskatchewan, “Saskatchewan Rental Housing Supplement,” online: <www.saskatchewan.ca/residents/family-and-social-support/people-with-disabilities/rental-support-for-families-and-people-with-disabilities> [perma.cc/XFC6-8T9Q]. However, families who applied before July 1 and remain eligible will continue to receive this benefit. While no new applications are being accepted for the supplement, this issue remains relevant for families in receipt of the housing supplement.

⁷⁴ *Ibid*. Note that the Supplement is portable, meaning tenants can move to other units that meet the quality standards. However, as described throughout this paper, moving can be very difficult for tenants and many may be reluctant to take steps in this regard.

the tenants are wary of challenging for fear of losing their benefits.

Thus, the files show that many of CLASSIC's clients faced serious problems with adequate and safe housing, and that these conditions are in some cases linked with physical and mental health problems. Although the Act requires landlords to provide safe and habitable housing, it is clear that in many cases this does not occur. As noted, tenants usually approached CLASSIC about these issues after they had already moved out of their home. However, it is unclear from most of the files why the tenant had moved out (*i.e.*, whether they moved out specifically because of the problematic housing conditions or for other reasons, such as eviction by the landlord). In the majority of these files, CLASSIC advanced a claim that the landlord had breached their obligations under the Act to repair and maintain the rental unit by failing to respond to the infestation.

For reasons we discuss below, many of these claims did not proceed to a hearing. However, the files show a relatively high rate of success in the claims that were actually heard at the ORT. In total, forty-six of the files involved claims of breach of tenant's rights. Of these forty-six, only sixteen were ultimately heard at the ORT. In twelve of the sixteen, the tenant was successful, and the ORT awarded damages to the tenant. The average amount awarded was \$774. The remaining cases that went to a hearing involved mixed results, meaning that both the landlord and the tenant received awards for competing claims, and a set-off resulted. Of the cases involving a set-off, the average net judgment obtained for the client was \$460. Many files (at least twenty-one; some the files were unclear in this regard) also involved defending clients against claims or counterclaims advanced by the landlords for arrears or damages. In these cases, the average mitigation of damages, or the average amount of the landlord claim that was dismissed after a hearing, was \$4,000.⁷⁵

Despite the high rate of success in these claims at the ORT, we note that the average damages awarded to tenants is arguably low when one considers the highly problematic housing conditions described above, that so many tenants endured. Although in several cases tenants sought an award for aggravated damages related to housing conditions, the success rate in being awarded aggravated damages at hearings was very low. Instead, tenants were awarded damages for the cost of lost or damaged property, or for other costs directly related to the landlord's breach. Thus, despite individual awards for tenants, it does not appear that these awards are large enough or frequent enough to inspire landlords to improve housing conditions on a systemic level. This reflects Rosser's observation that landlords may find it cheaper to deal with individual evictions than to maintain and repair properties.⁷⁶ In this regard, eviction and associated claims by tenants can be treated as a "routine business matter" for landlords and a way of avoiding genuine tenant complaints about housing conditions.⁷⁷

C. LANDLORDS, POWER AND EXPLOITATION

In his work on evictions in Milwaukee, Desmond argues: "[t]he power element is key ... it doesn't come down to the personal attributes of landlords. It comes down to a system that provides

⁷⁵ Note we calculated this average after removing two significant outliers. If the outliers are included, the average is \$9,100.

⁷⁶ Rosser, *supra* note 57 at 464.

⁷⁷ *Ibid.*

landlords with a lot of power over low-income tenants.”⁷⁸ In the previous section we explored the limits of breach of tenant’s rights claims related to housing conditions at the ORT. We noted that many tenants expressed a reluctance to pursue their rights under the Act. The files seem to show that underlying many tenants’ hesitancy to make claims against their landlords is the inherent power imbalance in the landlord-tenant relationship, and landlords’ tendency to exploit this power, especially where tenants have limited economic resources. As we will discuss in this section, power imbalances and patterns of exploitation can manifest in a variety of ways.

The Act stipulates that tenants have a right to privacy, and that landlords are not free to enter the unit arbitrarily and without notice.⁷⁹ However, in several cases, tenants claimed that landlords or their agents entered their units unlawfully, and in some cases also harassed or assaulted tenants. In multiple other cases, landlords illegally locked out tenants and disposed of their belongings. Harassment by landlords leaves tenants with a sense of risk and precariousness within their own homes. This calls to mind Christensen’s observation that tenants may not “feel at home” in their own homes due to landlord surveillance and control.⁸⁰

Fear of landlord reprisal, or actual cases of reprisal, was another prominent theme. In several files, tenants who had complained to their landlords about housing conditions or illegal landlord behaviour were subsequently served with eviction notices. In many cases, clients with strong cases for breach of tenant’s rights claims instructed CLASSIC not to proceed with their claims because of fear of reprisal. Our observations about the role of fear of reprisal by landlords are echoed in the recent report by the Saskatchewan Human Rights Commission, which stated that “lack of affordability of available housing combined with the vulnerability of [tenants] makes them hesitant to complain about any conflict with landlords, including the quality of the housing.”⁸¹

Our review further suggests that the willingness of some landlords to assert power can extend into legal processes in the wake of the tenancy’s dissolution. One way that this happens is through landlords’ use of unmeritorious counterclaims, sometimes in the realm of many thousands of dollars. Although these baseless claims were dismissed at hearings, in some cases landlords’ counterclaims intimidated and discouraged tenants, and caused them to instruct CLASSIC to withdraw their (legitimate) claims. This pattern is similar to a practice by landlords that Desmond observed in his research. He noted that landlords often made unfounded claims against tenants (even those who would never be able to pay a judgment), and that this practice typically “goes unchallenged.”⁸² As Rosser points out, this landlord practice is a means by which to assert continuing power over tenants.⁸³

Furthermore, the files reveal that in some cases involving claims about rental arrears, landlords advanced unfounded allegations of tenant drug use or social-services fraud, to attack tenants’ characters during the hearing itself. Such allegations are not material to the issue of rental arrears. While this prejudicial evidence was objected to by law student advocates, in most cases the hearing officer permitted the landlord to bring up these issues in testimony.

⁷⁸ Desmond quoted in Kevin Nance, “Matthew Desmond’s ‘Evicted’ details costs of evictions on Milwaukee’s poor” (10 March 2016) Chicago Tribune, online: <https://www.chicagotribune.com/lifestyles/books/ct-prj-evicted-matthew-desmond-20160310-story.html> [perma.cc/XMK4-4FLR]. American studies show that those evicted are typically poor, women, and minorities: Chester Hartman & David Robinson, “Evictions: the Hidden Housing Problem” (2003) 14 Housing Policy Debate at 467.

⁷⁹ *The Residential Tenancies Act, 2006*, *supra* note 8 at s 45.

⁸⁰ Christensen, *supra* note 2 at 119.

⁸¹ Saskatchewan Human Rights Commission, *supra* note 28 at 14.

⁸² Desmond, *supra* note 56 at 102.

⁸³ Rosser, *supra* note 57 at 472.

Another example of landlord exploitation visible in the files is the prevalence of work-for-rent schemes. In these schemes, tenants agree to do cleaning or maintenance work for the landlord in lieu of paying rent. Landlords and tenants typically agree to these arrangements in an informal handshake deal that is not formalized into a written contract. These schemes can expose clients on income assistance to criminal liability if they fail to disclose income earned from a work-for-rent scheme to the Ministry of Social Services. Short of criminal liability, clients' income assistance can be put in jeopardy if they engage in work-for-rent arrangements with landlords. There is a risk of a substantial overpayment assessment, where the Ministry of Social Services assesses an overpayment against a client for the rent monies paid to that client while they were engaged in a work-for-rent scheme to lower their rent. Informal verbal agreements are commonplace in work-for-rent schemes, which leaves clients vulnerable to the landlord reneging on the agreement and filing a claim against the tenant for arrears despite the work the tenant had been doing in consideration of the agreement. Indeed, in several files, the landlord reneged on the agreement *after* the tenant completed the work for no pay, on the understanding that their rent would be reduced or waived. CLASSIC has successfully defended clients faced with claims for arrears following the breakdown of a work-for-rent agreement, but these files reflect the larger issue of work-for-rent schemes and the exploitation of low-income tenants. A high percentage of the work-for-rent scheme files at CLASSIC involved clients who were newcomers to Canada with limited English language abilities, or clients with cognitive issues, which may reflect the higher risk of exploitation faced by more vulnerable tenants. Work-for-rent arrangements place tenants at dual risk of penalty by the Ministry of Social Services, and landlord exploitation. Insufficient benefits place tenants in a situation where they take on this risk in order to survive.

D. EVICTIONS AND ADVOCACY IN THE WAKE OF LOST TENANCIES

Recent work on housing law has focused on evictions, and the fundamental importance of preventing evictions through eviction defence.⁸⁴ Our review revealed that only nine out of the seventy-four files involved applications for orders for possession (eviction) by landlords. In most cases, the ORT granted the order of possession, meaning the eviction could proceed. However, as discussed above, the files show that tenants had in many other cases been illegally evicted, or had moved out simply to escape uninhabitable conditions or problematic landlord behaviour, or because they were unable to afford the rent. Landlords had evicted tenants for a variety of improper reasons, including situations where tenants complained about housing conditions. Indeed, as noted, in the majority of cases (forty-four out of seventy-four), tenants approached CLASSIC for assistance after they had been evicted, had moved out, or had decided to move out. Tenants were seeking the return of their security deposits, reimbursement for personal property destroyed or disposed of by landlords, or some compensation for terrible living conditions, as described earlier. In other words, the tenancy that was the subject of the claim was over, and the task for CLASSIC was to assist the client in mitigating or repairing some of the harm flowing from the tenancy.

Why do tenants tend to approach CLASSIC *after* they have moved out of their home? The answer is not clear, but there are several possibilities. One is the legal framework around evictions. Section 57 of the Act provides that a landlord may end a tenancy by serving a notice to terminate if rent (or even some portion of rent) is unpaid for fifteen days after it is due. In 2015, the Saskatchewan Court of Queen's Bench noted that "this section does not mean, however, that the

⁸⁴ See, for example: Kathryn A Sabbeth, "Housing Defense as the New Gideon" (2018) 41 Harvard J of L & Gender 1.

landlord is automatically entitled to possession of the premises.”⁸⁵ Rather, the Court pointed out, a landlord must first apply for an order of possession pursuant to section 70 of the Act, which requires a hearing officer to make an order that is “just and equitable in the circumstances.”⁸⁶ This means, according to the Court, that a hearing officer must consider “whether it is just and equitable to issue an order of possession.”⁸⁷ A review of ORT decisions, however, reveals that non-payment of rent is almost always accepted as grounds for an order of possession.⁸⁸ In the case of many of CLASSIC’s clients, the ability to pay rent is a serious struggle. Tenants who are evicted for late or non-payment of rent are likely aware that their odds for success are limited. As Chester Hartman and David Robinson point out in their study on evictions in the American context, most tenants move out before formal eviction proceedings commence.⁸⁹ In the Ontario context, Emily Paradis found that in some cases fifty per cent of tenants facing eviction applications by landlords did not show up for their hearings. Paradis noted that this is because tenants were unaware of their rights, assumed that they would be evicted, or were simply overwhelmed by the process.⁹⁰ In such cases, the best CLASSIC could do was engage in settlement discussions with the landlord, agreeing that the tenant would consent to the eviction if the landlord would allow the tenant extra time to move out and try to find alternate accommodation. This approach was successful in several cases.

Tenants who are living in uninhabitable premises face another set of challenges. It is possible to obtain an order from the ORT requiring the landlord to repair and maintain the premises, but the stress, time, and uncertainty involved in taking a landlord to the ORT to try to win an order to repair and remediate may be overwhelming—especially because the housing conditions persist in the meantime. Finally, there is the underlying issue of the landlord-tenant relationship itself. As noted in the previous section, tenants who complain about their living conditions may face reprisal; tenants may factor this into their decision to leave and then seek compensation after their tenancy is over.

E. MAKING SENSE OF OUTCOMES

The interaction of claims, counterclaims and set-offs makes it challenging to clearly assess CLASSIC’s success rate; in many cases, judgment was awarded to both parties, and the outcome was a set-off of the two judgments. However, it appears that CLASSIC was successful in its advocacy in a majority of cases that were heard at the ORT. As previously discussed, in cases where the tenant was awarded judgment, the average judgment was \$774, not considering judgments that were clear outliers. Meanwhile, in cases where the landlord’s claim was successful, the average judgment awarded to the landlord was \$819. However, the average net judgment obtained for tenants, after set-off, was \$460. The average mitigation, meaning landlord claims that were reduced, exempting outliers, was \$4,133. This average shows that even in cases where the tenant was unsuccessful in a claim, CLASSIC’s advocacy still had a real impact on the tenant in achieving a substantial mitigation of damages. This conclusion seems to be consistent with research that suggests that legal representation contributes to improved tenant outcomes in housing

⁸⁵ *Hart v Hunchak*, 2015 SKQB 117 (CanLII), at para 12 [*Hart*].

⁸⁶ *The Residential Tenancies Act, 2006*, *supra* note 8 at s 70(6).

⁸⁷ *Hart*, *supra* note 85 at para 13.

⁸⁸ ORT decisions are available online at: <https://www.canlii.org/en/sk/skort/>.

⁸⁹ Hartman & Robinson, *supra* note 78 at 463.

⁹⁰ Paradis, *supra* note 35 at 13.

law hearings.⁹¹ Paradis researched the impact of duty counsel in Ontario housing law proceedings, and determined that where duty counsel appeared, tenant outcomes improved by fifty-seven per cent.⁹²

It is also important to note that successful outcomes were not always monetary. Non-monetary outcomes included successfully defending clients against eviction, enforcing their legal rights, obtaining an order that the landlord do a pest treatment, or getting a tenant more time to move out. These outcomes can be classified as important harm reduction and damage control interventions with material effects for clients.⁹³ However, even in cases where tenants won monetary judgments, these can be pyrrhic wins; for example, in many cases tenants had to deal with ongoing health problems and stress related to their housing law problems. Thus, in many cases, the “successful” outcome was eclipsed by the stress and suffering caused by the tenancy.

The outcome for a significant number of files was that CLASSIC lost touch with the client. In almost one quarter of the cases, CLASSIC was unable to pursue the case to resolution because of lost contact with the client. All of the cases had been deemed to be meritorious by CLASSIC. Unsurprisingly, clients’ experiences of housing instability and vulnerability were connected to the lost contact with CLASSIC. In some cases, clients had become homeless and were likely unable to stay in touch with CLASSIC for that reason. In other cases, clients were consumed with finding new housing and moving forward with their lives. Losing touch with clients is a common theme in clinical law practice: tenants may have immediate and other concerns to attend to (for example, the need to find housing) that may mean pursuing legal action is not a high priority. It may also be the case that tenants were able to resolve matters on their own, without CLASSIC documenting this on the file. Of all the types of files in CLASSIC’s review (housing, criminal, and prison law), the housing law files revealed the highest proportion of meritorious files closed due to lost contact. It is apparent that housing stability is linked to people’s ability to access the very system that adjudicates housing disputes: in this way it is clear that housing itself is a determinant of access to justice.⁹⁴

IV. CONCLUSIONS AND IMPLICATIONS FOR LEGAL CLINICS’ HOUSING ADVOCACY

Our project raises several considerations for CLASSIC, and for other clinics working in the area of housing law. First, it appears that CLASSIC’s advocacy at the ORT is associated in many cases with decisions in favour of tenants who are making claims against landlords related to housing conditions and other breaches of tenants’ rights. This is consistent with studies about the impacts of legal representation, including in housing contexts, that show that legal representation is associated with improved litigation outcomes.⁹⁵ Significantly, it adds to the literature on the

⁹¹ This research is discussed *supra* Hart, *supra* note 85.

⁹² Paradis, *supra* note 35 at 14.

⁹³ We discuss advocacy as harm reduction and damage control below.

⁹⁴ The often insurmountable barriers faced by people who are homeless or without stable housing when it comes to accessing the justice system and enforcing rights is described in more details by the Alberta Civil Liberties Research Centre, “What Does Access to Justice Mean for the Homeless?,” online at <http://www.aclrc.com/homelessness-and-access-to-justice> [perma.cc/4C25-5KNH].

⁹⁵ D James Greiner et al, “How Effective are Limited Legal Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court” (2012), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1880078>

impacts of advocacy by law students, which also shows improved outcomes for clients who have clinical law student representation.⁹⁶ As various authors have pointed out, courts and tribunals are challenging for self-represented litigants to navigate; marginalized community members face increased and compounded difficulties in these contexts.⁹⁷

But what is also clear from the files is the fact that most tenants had moved out of their homes before any legal process commenced. By bringing matters to the attention of the ORT and claiming damages for breaches of tenants' rights, then, CLASSIC was able to work with its clients to demand some compensation for harm that was already done. The positive results observed are the result of this demand for justice after the fact. However, as we have seen, while tenants in many cases received a judgment in their favour, they had survived unacceptable housing conditions and still had to bear the costs and stress of finding a new home in a difficult rental market. It is for this reason that it is possible to frame CLASSIC's work as harm reduction,⁹⁸ or what Nancy Cook calls "damage control."⁹⁹ This question of the meaning and significance of individual legal advocacy is a well-worn debate in the clinical law literature. Many writers have argued that individual advocacy fails to change underlying systemic and structural conditions: in the words of Dean Spade, individual advocacy (?) has "failed to transform the conditions of disparity and violence that people were resisting."¹⁰⁰

Yet clients chose to come to CLASSIC and chose to make claims against their landlords (or former landlords), or to seek assistance defending against their landlords' claims. These tenants were unwilling to simply accept, without challenge, what was happening or had happened to them. They navigated the risk of reprisal and the reality of power imbalances. Dean Spade's work is helpful to frame why legal assistance matters deeply in these kinds of circumstances. Spade writes: "[a]ssistance with the quotidian aspects of life is necessary in the face of the violence of routine, systemic oppression, more harmful for being so very ordinary."¹⁰¹ Similarly, Juliet M Brodie writes that, despite their limits, individual legal services are important. She states:

it is ... important to imagine a world without [individual legal services]. If, in that world, individual legal services were no longer necessary because the forces of global capitalism, exploitation, racism, domestic violence, etc. had been vanquished, then perhaps individual legal services would have outlived their usefulness. But as long as

[perma.cc/E56C-9LQU]; Carroll Seron et al, "The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment" (2001) 35 *L and Soc'y Review* 419. On the impact of lawyers generally in civil matters, see for example: Russell Engler, "When Does Representation Matter?" in Samuel Estreicher & Joy Radice, eds., *Beyond Elite Law: Access to Civil Justice in America* (Cambridge: Cambridge University Press, 2016) 75.

⁹⁶ See Colleen Shanahan et al, "Measuring Law School Clinics" (2018) 92 *Tulane L Rev* 547; Margaret E Bell & Lisa A Goodman, "Supporting Battered Women Involved with the Court System: An Evaluation of a Law School-based Advocacy Intervention" (2001) 7 *Violence Against Women* 1377.

⁹⁷ See, for example, Elizabeth L MacDowell, "Vulnerability, Access to Justice, and the Fragmented State" (2018) 23 *Mich J Race & L* 51.

⁹⁸ Eve Tuck and Wayne Yang discuss the concept of "settler harm reduction" which for them involves projects aimed at alleviating the harms of colonialism, rather than work aimed at transforming the colonial structure itself. Eve Tuck & Wayne Yang, "Decolonization is not a Metaphor" (2012) 1 *Decolonization: Indigeneity, Education & Society* 1 at 21.

⁹⁹ Nancy Cook, "Looking for Justice on a Two-Way Street" (2006) 20 *Wash U J L & Pol'y* 169 at 170.

¹⁰⁰ Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Brooklyn, NY: South End Press, 2011) at 27.

¹⁰¹ *Ibid* at 11.

we live in a world with daily injustice visited on the poor, it does not seem excessive to have some number of lawyers and law students at their side in their individual matters.¹⁰²

In this way, individual advocacy, even when it is not changing underlying conditions, is meaningful both in solidarity with tenants' everyday survival, and also as resistance, and witness, to unjust housing conditions and improper manifestations of power by landlords.¹⁰³

It might be fruitful, then, to consider if and how individual clinical law advocacy at the ORT or other housing law tribunals can more powerfully speak to these larger, underlying injustices and inequities. The ORT is an administrative law tribunal with relaxed rules around evidence. Given these relaxed rules, there are openings in hearing processes for advocates and tenants to bring in the larger context of housing inequities and power disparities described earlier. This could help hearing officers in their interpretation of legislation and challenge the acontextual assumption that the Act balances power between landlords and tenants. Furthermore, the Act's stipulation that hearing officers consider "what is just and equitable in the circumstances"¹⁰⁴ before making an order for possession creates an ongoing opening for advocates to highlight power disparities, exploitation, and unfairness experienced by tenants.

It is also important to consider how legal services or advice can be made available at an earlier stage in the process for tenants. CLASSIC, as a small non-profit legal clinic, is currently the only source of legal representation for tenants who cannot afford a lawyer in Saskatoon. As noted above, the provincial legal aid system does not provide assistance with housing law advocacy. The ORT provides information and assistance for tenants, but cannot advocate for them. Saskatchewan should consider a publicly-funded tenant duty counsel program, similar to the one that exists in Ontario.¹⁰⁵ It should also study New York City's new program that provides free legal representation to tenants facing eviction.¹⁰⁶ Furthermore, while public information about landlord and tenant rights and responsibilities is available online and in various community locations in Saskatoon,¹⁰⁷ CLASSIC and other legal advocates and community groups should consider how to most effectively ensure that marginalized tenants are aware of their rights under the Act, specifically with respect to landlords' obligations to repair and maintain, rules about landlords entering tenants' units, illegal lockouts, and evictions, and the advisability and legality of work-for-rent arrangements. The insights gained through this project can help in the contextualizing and framing of these discussions about rights.

Of course, as we have pointed out, there is an inherent limit to what more legal information and more legal services can achieve within the current system.¹⁰⁸ Indeed, because the underlying problems are structural and systemic in nature, solutions must also be structural and systemic. One place to start is with the Act itself. The Act is written without reference to the vast power disparities

¹⁰² Juliet M Brodie, "Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-based Community Legal Clinics" (2008-2009) 15 *Clinical L Rev* 333 at 369. See also Rebecca Sharpless, "More than One Lane Wide: Against Hierarchies of Helping in Progressive Advocacy" (2012) 19 *Clinical L Rev* 347.

¹⁰³ Dean Spade argues that legal assistance can help people survive, *supra* note 100 at 39.

¹⁰⁴ *The Residential Tenancies Act, 2006*, *supra* note 8 at s 70.

¹⁰⁵ See Paradis, *supra* note 35.

¹⁰⁶ See Sabbeth, *supra* note 84 at 1.

¹⁰⁷ See Public Legal Education Association of Saskatchewan, "Renting a Home" (11 December 2018), online: <www.plea.org/legal_resources/?a=355&searchTxt=&cat=19&pcat=4> [perma.cc/LZ7T-XTTA].

¹⁰⁸ See Paradis, *supra* note 35 at 14: Paradis argues that more legal services may not help and that more legal fundamental change is required.

that may exist between landlords and tenants. Overall, it creates a structure that ultimately prioritizes the economic interests of landlords over the interests of tenants in having homes to live in. In so doing, in the words of Rosser, it “exploits the inability of the poor to make meaningful demands on landlords.”¹⁰⁹ One recent example of the prioritization of landlord interests is a new amendment to the *Act* that permits landlords to dispose of abandoned tenant property in the absence of an order from the ORT if the property value does not exceed \$1,500.¹¹⁰ This is significant because tenants living in poverty often do not have property that exceeds this value. A number of the files reviewed were claims related to the improper disposition of property under section 85 of the *Act* by landlords. This amendment eliminates legal recourse previously available to tenants, to claim for property disposed of in the absence of an order, where the property value is lower than \$1500.

CLASSIC and other groups should advocate for amendments to the Act to rectify the power imbalances discussed in this article. At the same time, it becomes clear that law reform strategies are insufficient in the face of the larger housing context. This requires support for housing policy initiatives including Housing First, affordable housing, and strong eviction prevention initiatives.¹¹¹ Because of the disproportionate impact of homelessness and inadequate housing conditions on Indigenous and marginalized communities, we agree with Christensen that what is required is a “decolonizing agenda that specifically addresses contemporary colonial geographies and their social and material expressions in Indigenous peoples’ lives.”¹¹² Of course, tenants’ perspectives and voices must be central to this work; legal clinics like CLASSIC can contribute to these larger initiatives by helping to frame “individual experiences of harm into a shared understanding of collective struggle.”¹¹³ Of utmost importance is centralizing the voices, experiences, and agency of tenants: tenants organizations such as ROSA (discussed earlier) are key in this regard. In the end, a key value of this systemic review of files is that it has helped to show that tenants’ struggles for housing justice in Saskatoon are far from isolated experiences. Legal clinics have a role to play in highlighting these collective struggles and patterns, understanding their larger contexts, and working with tenants to make change.

¹⁰⁹ Rosser, *supra* note 57 at 474.

¹¹⁰ *The Residential Tenancies Act, 2018*, c 33, online: <<http://canlii.ca/t/538tq>> [perma.cc/V8B6-YF6L]. This amendment is also problematic in that it relies upon the landlord’s estimation of the property value. If the landlord determines the property is worth less than \$1,500, the landlord can now dispose of the abandoned property in the absence of an order as long as the landlord has made reasonable attempts to contact the tenant and cannot locate the tenant. The landlord still cannot act without an order from the ORT permitting disposition of the property where the property value exceeds \$1,500.

¹¹¹ See BC Housing, “Homeless Prevention Program,” online: <www.bchousing.org/housing-assistance/homelessness-services/homeless-prevention-program> [perma.cc/5J24-Q947]; Institute of Urban Studies, University of Winnipeg, “Eviction Prevention: Toolkit of Promising Practices” (Winnipeg, 2015), online: <homelesshub.ca/sites/default/files/attachments/2016%20Eviction%20Prevention%20Toolkit%20-%20FINAL.pdf> [perma.cc/6A7N-8563]; National Law Center on Homelessness and Poverty, “Protect Tenants, Prevent Homelessness” (2018), online: <nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf> [perma.cc/3GJM-JT9F].

¹¹² Christensen, *supra* note 2 at 196.

¹¹³ Spade, *supra* note 100 at 39. See also Sameer Ashar, “Law Clinics and Collective Mobilization” (2008) 14 *Clinical L Rev* 355.