



First Nations Rental Policy and Programs: Addressing Key Issues and Challenges

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1 Introduction

Tenancy fees, or rent, are a vital source of revenue for many Aboriginal communities, helping to pay for repairs and maintenance to Chief and Council owned homes. However, implementing a system to collect a tenancy fee, or rent, is one of the most common challenges facing many First Nations.

It is a reality that when tenancy fees or rent are not charged or these fees are not paid, many communities have little or no additional finances to make repairs to the homes they own. For many Chief and Council, tenancy fees or rent are the most important source of income that can be used to maintain homes.

The purpose of this manual is to provide Chief and Council, Housing Authorities or Housing Committees a document to support the development and implementation of a rental programs within their communities.

The manual also provides approaches to calculate rental rates and approaches to rent to own policies.

2 Rental Programs in First Nations

Most homes in First Nations communities are owned by the Chief and Council. Homes are then provided to the members.

However, there is growing demand for more housing in First Nations communities. One way to address this need is to create rental housing. Several First Nation communities have successfully implemented a rental program.

2.1 Examples of First Nations Communities with a Rental Program

Several First Nations have successfully implemented a rental program:

2.1.1 Penticton Indian Band

The Penticton Indian Band in British Columbia created a new position to help tackle historical unpaid rent, and the return on investment is more than covering the new salary. The new position is shared between the Housing Office and the Social Development Office. And the new employee is filling gaps in the system that were contributing to a history of unpaid rent.

<https://www.cmhc-schl.gc.ca/en/first-nation/learn/success-stories/upload/innovative-staff-improves-rent-collection-first-nation.pdf>

2.1.2 Lennox Island First Nation

Collecting rent is one of the most common challenges many First Nations face. Rent is a vital source of revenue for many Aboriginal communities, which can help support the long-term viability of their housing. But when a tenant is missing his/her rent payments, many communities have little or no recourse as to how to fix the problem. See Appendix A.

2.1.3 Atikameksheng Anishnawbeck First Nation

Mutual accountability helps housing office collect rent and puts community members in good financial standing.

<https://www.cmhc-schl.gc.ca/en/first-nation/learn/success-stories/upload/accountability-helps-collect-rent-first-nation.pdf>

2.2 How Rent is Used by Chief and Council

Chief and Council uses the rent paid by tenants in these main ways:

1. Pay for the repairs and maintenance to your home.
2. Pay for the staff to make the repairs and maintenance to your home.
3. Repay any money Chief and Council borrowed to build or improve the home.
4. Pay the mortgage Chief and Council is paying for the home.
5. Set aside some money each year to pay for larger repairs (i.e. new roof or furnace).
6. Allow Chief and Council to raise revenues that can be reinvested in the construction of housing or for other community projects.

2.3 How Rental Programs Work

Rent or occupancy fees are calculated monthly and should be paid in advance on or before the 28th of the month. For example, February's rent should be paid by January 28th.

It is a condition of a tenancy agreement that a renter pay their rent in full and on time. Failure to pay on time could result in the Chief and Council taking legal action that could lead to an individual losing their home.

For Chief and Council, it is vital that rent be paid in full and on time to ensure that they have the revenues needed to conduct repairs, pay maintenance staff, pay back mortgage loans, have a contingency for large repairs in the future, and reinvest in the community.

2.4 Rental Incentives – Options to Consider

It is important that Chief and Council collect rent payments on time each month. Chief and Council may want to consider incentives such as:

1. A discount on the rent for tenants that can afford make rental payments on time.
2. A bonus or rebate - for example, \$50.00 at Christmas time where rent has been paid on time.
3. A discount on rent that is paid electronically.
4. A gift card – for example, if the tenant makes 5 early payments, the first week of December, you will provide them with a bonus check or a gift card.
5. A penalty for late payment.
6. A letter of reference to tenants to help build their credit rating.
7. A property upgrade such as painting, new flooring, or appliances.
8. If rent is paid on or before the first of the month, the tenant can deduct a discounted amount. If rent is paid after the first of the month, the standard rent is due.

There could be limitations, such as incentives only applying to tenants who are not receiving any social assistance and who are in good standing by paying their rent on time for a certain period.

2.5 How to Determine Rental Prices for Housing

There is no maximum or minimum price or any fixed equation you must follow when calculating the cost of rent¹. In general, rental prices are determined by the local economy or demand for rental units. The price for a property is whatever renters are willing to pay for it.

However, there are general guidelines that can help you estimate a realistic price for a property.

There are several factors to keep in mind for Chief and Council. Chief and Council should consider the development of a capital replacement plan² since doors, windows, roof and heating systems will eventually need to be replaced. Any rental charges should take the capital replacement into account.

Rent must also take the costs of insurance repairs and maintenance into account.

Here are six options for First Nations communities to consider in establishing the amount of rent to charge for a housing unit.

2.5.1 Option One – Percentage of Value

Calculate 1.1 percent of the home's value or the total costs of the construction costs to build the home. To do this, multiply the value of the home by 0.011.

For example, if the home is valued at \$90,000, the result would be \$990. For a property value of more than \$100,000., the monthly rent can be expected to be lower as few people are able or willing to pay that much rent.

2.5.2 Option Two - Comparison

Research the rental prices of similar properties in your area. The price at which other landlords are renting properties comparable to yours will give you a good idea of where the rental market is in your neighborhood. Online rental listings and free rent-calculation tools can help you compare the rent price of properties by type and location.

¹ The only exception is where the property is subject to an existing rent control formula based on provincial laws.

² For more information on capital replacement planning see: https://www.cmhc-schl.gc.ca/en/inpr/afhoce/exsoho/exsoho_005.cfm

2.5.3 Option Three – Content of the Home

Adjust the rent you charge based on the pros and cons your property offers. If the home is relatively new with up to date features, you may justify increasing your price over and above that of other properties that don't offer them.

Similarly, if your property has significant deficiencies or does not offer amenities other similar rentals include, you may have to reduce your price to stay competitive.

2.5.4 Option Four – Actual Market

A fourth option is that rent is based on household composition. These rates are best reflected in the provincial shelter allowance rates.

Shelter Allowance is an eligible expense included under Income Assistance to recipients on reserve. The overall objectives of Income Assistance are to provide support for basic and special assistance needs of First Nations people on reserve.

Basic needs are defined as financial assistance to cover food, clothing and shelter. The shelter cost is determined by provincial legislation based on number of persons under the recipient's application (e.g., family size, age of individuals, number of dependents other than spouse).

For example, in Ontario, a family of five can receive the maximum monthly shelter allowance of \$774.00. These calculations are also used to determine the CMHC's minimum revenue contribution for a Section 95 home³.

2.5.5 Option five – Tenant Contribution

The income source and amount of rent to be paid is based on the gross household income of all adults age 19 or older. Under this option, consideration is given to common income sources (e.g., income assistance, seasonal employment, self-employment) and is used to determine the gross monthly income.

BC Housing (2016) has issued a Housing Provider Kit that can be used to determine the income source and amount of rent to be paid based on gross income. For more information see:

³ For more information on MRC see: <https://www.cmhc-schl.gc.ca/en/first-nation/housing-managers/finances/understanding-operating-agreement-terms.cfm>

[http://www.bchousing.org/resources/Partner Resources/Form Templates/Rent Calculation/Rent Calculation Guide.pdf](http://www.bchousing.org/resources/Partner_Resources/Form_Templates/Rent_Calculation/Rent_Calculation_Guide.pdf)

Once the total gross income is determined, one can calculate the tenant rent contribution. In the examples provided, the tenant contribution is calculated at 30% (or the minimum rent, whichever is greater – this can be based on shelter allowance rates – family size) of assessable and calculable household gross income.

In other cases, the calculation has been a 20% contribution and in other situations it has been a 25% contribution. The tenant contribution may be changed at any time there is a change in household income.

2.5.6 Option Six - CMHC's Minimum Revenue Contribution (MRC) Calculation

This is the amount minimum required revenue contribution to the program and is used in the subsidy calculation. It must be funded annually to a specified level through collection of occupancy charges, other First Nation funds, or a combination of both.

The MRC is set at the time the project is committed. The MRC may be funded in the following ways:

1. Allocating First Nations funds from other sources;
2. Establishing a rent or occupancy charge that is collected from the tenant
3. A combination of (a) and (b).

MRC is an important source of funds for a Section 95 housing project. Along with the monthly subsidy payments received from CMHC, it forms the revenue base from which all project expenses are paid.

The MRC is a set amount by unit type (amount per month depending on number of bedrooms in the unit). Please refer to Schedule B of your Project Operating Agreement to verify the levels.

2.5.7 Calculating the Total Annual MRC Required

The total annual MRC for a project depends on the number of bedrooms per unit and the number of units in a project.

Five 1-bedroom units x MRC for 1 bedroom units x 12 months = A

Five 1-bedroom units x MRC for 2 bedroom units x 12 months = B

Five 1-bedroom units x MRC for 3 bedroom units x 12 months = C

TOTAL MRC for a 15-unit project = A + B + C

Client Selection Criteria – The criteria developed by the First Nation under a Band Council Resolution to determine eligibility and selection of occupants for housing. The selection criteria and any subsequent changes must be made known to all Band members and be approved by a Band Council Resolution and shared with CMHC.

2.6 Case Scenarios: Rent and Revenues

These three scenarios show how charging rent for all homes in the community can be beneficial to the community.

Assumptions:

1. There is no rental policy for the entire community. Consequently, AANDC will not pay for shelter allowance on homes where there are no mortgages.
2. Rent is not being collected for homes of individuals who are not on shelter allowance and are making income to pay rent.
3. The community housing stock consists of 125 homes. Among these homes, 25 have a mortgage and the Chief and Council are making the required payments (e.g., Section 95 homes). The other 100 homes have no mortgages or outstanding loans.
4. The families all consist of two children and two adults, and the monthly provincial shelter allowance is \$360.00 per month.
5. The Band does not charge a percentage of operating costs to cover maintenance and repairs for each home that is allowable under CMHC operating agreement.
6. All homes in the community require repairs and maintenance. There is a four percent rule set aside for ongoing maintenance. For many First Nations

communities, this is low percentage given the costs for repairs due to location.⁴

2.6.1 Scenario One

In this situation, rent is only charged for homes where there is a mortgage. No rent is charged for the 100 homes where there is no outstanding mortgage.

The yearly revenues from the rent are \$108,000.00. However, the operating expenses include estimated costs of repairs and insurance. In this case, the First Nations is operating at a -\$325,000.00 deficit each year.

Descriptions	Totals
Revenues	
25 homes at \$360.00.00 per month	\$108,000.00
100 homes (no rental revenues)	\$0.00
<u>Total Revenues</u>	\$108,000.00
Operating Expenses	
Mortgage payments for 25 homes \$360.00 per month	\$108,000.00
4 percent rule set aside for ongoing maintenance for all 125 homes	\$75,600.00
Insurance costs per each unit \$2,000.00	\$250,000.00
<u>Total Operating Expenses</u>	\$433,600.00
Less Revenue	\$108,000.00
Operating Deficit	-\$325,600.00

2.6.2 Scenario Two

In this case, rent is being charged for all homes in the community. This generates revenues of \$540,000.

However, the operating and maintenance costs will continue.

In this situation, the operating deficit is reduced by 206 percent to -\$106,400.00

⁴ This is based on the value of the house being the value of the original mortgage. See: <http://www.moneysense.ca/spend/real-estate/the-ultimate-home-maintenance-guide/>

2.6.3 Scenario Three

In this situation, the Chief and Council is charging rent for all 125 units. Tenants are obliged to pay their share of maintenance costs.

The Council is also including their operating expenditures to ensure that each unit is covering costs for maintenance and repairs as part of the rental payment.

The rent charged by the Council must be at least equal to the cost of the Council's mortgage payments. The rent must also factor in an estimate of repair costs and insurance.

In this case, the total revenues generated from the rental of homes, including operating expenditures, is \$866,100.00.

The amount of revenue raised from rent covers all the operating expenditures. Most importantly, in this case, the Council has a net revenue of \$432,500.00 that can be used to reinvest into building new homes or making major repairs to existing housing stock.

Descriptions	Totals
Revenues	
25 homes at \$360.00 per month + 4 % operating Costs (50.40) + insurance (\$167.00) = \$577.40	\$173,220.00
100 homes at \$360.00 per month + 4 % operating Costs (50.40) + insurance (\$167.00) = \$577.40	\$692,880.00
<u>Total Revenues</u>	\$866,100.00
Operating Expenses	
Mortgage payments for 25 homes \$360.00 per month	\$108,000.00
4 percent rule set aside for ongoing maintenance for all 125 homes	\$75,600.00
Insurance costs per each unit \$2,000.00	\$250,000.00
<u>Total Operating Expenses</u>	\$433,600.00
Less Revenue	\$866,100.00
Operating Expenditures	\$432,500.00

3 Community Consultation and Rental Programs

Community engagement is increasingly acknowledged as a valuable process, not only for ensuring communities can participate in decisions that affect them and at a level that meets their expectations, but also to strengthen and enhance the relationship between communities and the Council. The following provides a broad overview on what to consider when planning a community consultation regarding the implementation of a rental program.

There are many books and references on line that can help a housing manager develop a community consultation or engagement process. The following are some suggested references

Social Planning and Research Council of BC – This organization has developed a community engagement toolkit that offers an adaptable approach to designing a community engagement process tailored to specific issues and/or developments in your community. See:

[WWW.SPARC.BC.CA](http://www.sparc.bc.ca)

Community Engagement (BC) – This toolkit provides guidance on the issues to consider when planning and designing community engagement. It focuses on quality and effectiveness, process planning and designing engagement tailored to the particular issue, level of participation to be achieved, timeframe and range of stakeholders affected. See:

<http://www.communityplanningtoolkit.org/sites/default/files/Engagement.pdf>

Canadian Policy Research Networks – The handbook provides more detail information on engaging community members. See:

http://www.cprn.org/documents/49583_EN.pdf

3.1 Community Engagement on Rental Regimes

Implementing change in any community can be difficult. The implementation of an occupancy fee or rent for homes in many First Nations communities is a challenge. It is important to talk about rental program as a new way forward for improving housing.

Building trust and a sense of public ownership through community consultation can create a successful foundation on which to build, if various options are presented and opinions are considered on how to implement a rental regime.

This approach will help to provide understanding on the importance of collecting rent and how it will benefit the entire community.

Lack of community consultation and failure to consider the opinions of the community may create a sense of disgruntlement and mistrust in the community.

3.2 Preparing the Community Rental Regime Strategy

It is important that a community considering rental programs be aware of the challenges and the stories of progress when implementing a successful rental program.

It may be helpful to involve people from other communities who have implemented a rental regime through in-person presentations, conference calls, radio etc. Drawing powerful lessons from those who have been through the process in other communities can help your community move forward.

It may also be helpful to hire a consultant who is familiar with change management or managing in chaos approaches. A third party can bring a different perspective and can use approaches that help build consensus on thorny issues.

Some of the key objectives and priorities in the development of a rental regime strategy includes:

1. Ownership of homes by the community
2. Pays for the repairs and maintenance to the homes
3. Pays for staff to make the repairs and maintenance to the homes
4. Repay the money the Chief and Council borrowed to build or improve the house.
5. Helps the Council to leverage funds to reinvest and build more homes. This will help to reduce the housing shortage

3.3 Key Stages for Community Engagement

There are four key stages that one may want to consider when doing a community engagement for rental regimes.

3.3.1 Step One – Community Forum/Meeting

The first engagement should be made prior to any final decisions being made by Council. This should be in the form of a well advertised community forum/meeting, where an overview on charging rent or occupancy fee are presented and questions and answer session held. The Housing Department will need to advertise the community forum/meeting to create a good communication and buy in from the community members.

If possible, a leader (e.g., an elders or cultural leaders) in the community that is respected by the community members should introduce or give the presentation. As part of this forum/meeting, consideration may be given to having an expert give the presentation who will be able to provide answers to concerns that may be raised. Motivating the community to pay a fee for housing is key for the success of any rental regime.

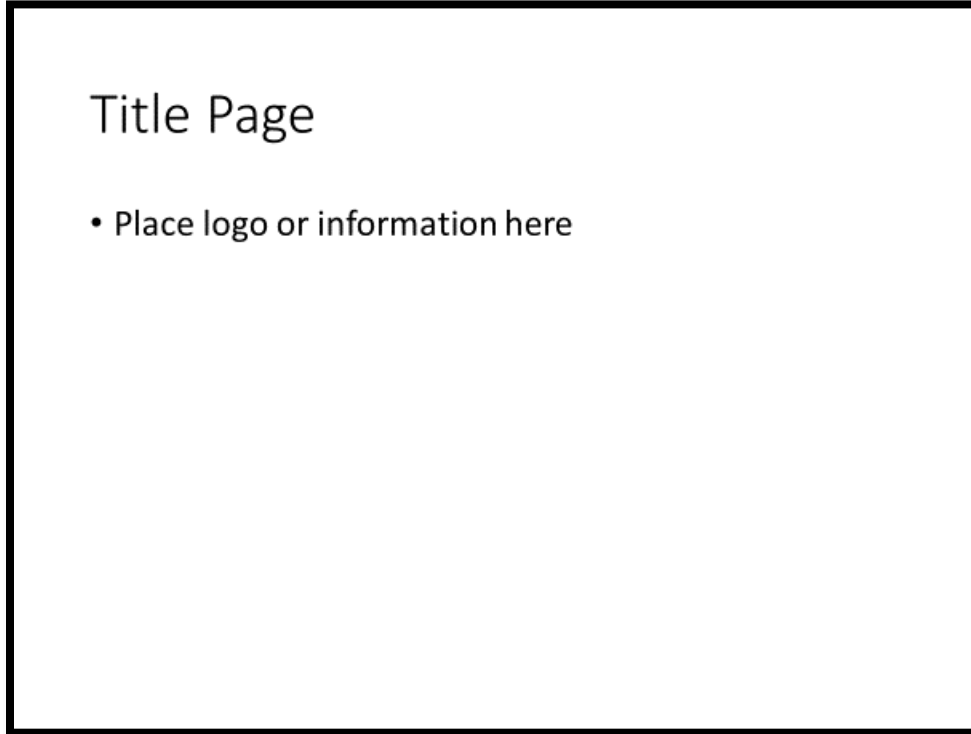
Key messages to the communities might include:

- “rental programs give us healthy homes”
- “rental programs are a part of Nation building to strengthen our community”
- “Let’s collectively establish a new vision for housing in our community”
- “Personal responsibilities to the home, family, community and their Nation”

Using these types of key messages will give the Housing Department a way to think about the role of the community in accepting a rental program. It will also provide the Housing Department with answers to tough questions or anticipated community responses (e.g., housing is a treaty right, they do not have the money to pay for rent).

3.3.2 Step Two - Presentation at Community Forum/Meeting

The following are some suggested slides (13 slides) that the Housing Department may consider using at their community Forum/Meeting⁵ :



⁵ For a copy of the presentation in power point format please email FNNBOA at info@fnnboa.ca

Presentation on Rental Program

- Reasons for the presentation
 - Chief and Council are considering to implement a rental program.
 - Provide an overview on rental programs
 - Impact on the community
 - Community's input
 - Follow up questions

What is Rent or Occupancy Fees?

- Payment to Housing Department to live in homes owned by Council
- Monthly payments usually due on the 1st of each month
- Rent geared to income (shelter allowance)
- Rent covers the costs associated with the home
- Stops Council from taking money from other areas such as education or health to pay for housing.
- Homes are an investment for your community

Why Pay Rent?

- Improves housing conditions – make repairs to your home
- Builds more homes
- Invests in your community
- Community ownership
- More money for other programs such as education, health etc

Paying Rent – How Does it Work?

- Pay rent in advance.
- First move into a property usually pay your first month's rent and a last month's rent
- The Tenant is responsible for all the utilities and insurance.
- Important to budget your monies to pay rent and your bills and expenses.

How Will Rent be Set? [the following are some suggestions, but

Council should be determined how rental fees prior to presentation]

- Council can set rent by:
 1. Based on rent per number of bedrooms
 2. Based on rent per square foot
 3. Similar to provincial Shelter allowance payments
 4. Based on rent charged for adjacent community(ies)
 5. Based on tenant's financial ability to pay a monthly fee
 6. Based on CMHC payment for housing (section 95 Minimum Revenue Contribution)
 7. Based on a percent (e.g., 1 percent) of the outstanding mortgage

Example – Section 95 Housing

- Rental programs and Section 95 Subsidized Housing Units require to have a minimum revenue contribution (MRC). Shelter allowance payments can be similar to MRC. The following is an example [MAY WANT TO USE YOUR RATES HERE]

• MRC	Shelter Allowance	
• 5 bdr....\$387	6+people	\$387
• 4 bdr....\$371	5 people	\$371
• 3 bdr....\$344	4 people	\$351
• 2 bdr....\$294	3 people	\$310
• 1 bdr....\$244	2 people	\$285
• 1 person		\$243

Rent Revenue

- Important for the Council to raise revenues to pay for the housing you live in.
- Housing is not free. We pay for it
- Invest back into the community
- 20 rental homes $\$355.55 = \$85,200.00$
- 15 rental homes (no mortgage) $= \$63,900.00$
- Rent will be charged for all homes whether there is a mortgage or not [will this be your policy?]
- Helps to pay for new roofs, siding, plumbing, paint etc

Payment Arrears

- The amount of the arrears is the amount of money owing for rent
- If owe money for rent important to talk with Housing Department
- Alternative Solutions
 - Social assistance (if not already a recipient)
 - Payment plan
- Important to avoid eviction

Tenant and Housing Dept Relationships

- Sign contract
- Process to solve any issues or disagreements
 - E.g., maintenance and repair of unit
 - Occupancy/rent collection
 - Unit Allocation
- Tenant will be responsible for upkeeping the unit (e.g., cleanliness, fixing repairs that tenant damages etc).

Handout Materials [distribute information to community]

- [suggested handouts]
- Lennox Island First Nations – Tackling Rent Collection and Other Community Challenges Head-on. This articles focuses on how this community explained the importance of paying and collecting rent.
- Penticton Indian Band – New Hire Pays Off- Innovative Staff Position Bridges Gaps and Improves Rent Collection. This document highlights how unpaid rent is collected.
- Wei Wai Kum First Nations – A Place to Call Our Own. This document focuses on homeowners and rental units.

Timelines

- [provide an overview on the next steps and when will rent be charged]
- [Provide information on how the Housing Department will continue to communicate on this topic]

Any Questions?

3.3.3 Step 3 – Distribute information

In addition to making any presentations on occupancy fees or rental programs, distributing information on how other communities are charging and collecting occupancy fees or rent can be helpful.

The following illustrates how other communities have implemented a rental policy (these documents were cited earlier in the report).

- **Lennox Island First Nations** – Tackling Rent Collection and Other Community Challenges Head-on. This article focuses on how this community explained the importance of paying and collecting rent.
- **Penticton Indian Band** – New Hire Pays Off- Innovative Staff Position Bridges Gaps and Improves Rent Collection. This document highlights how unpaid rent is collected.
- **Wei Wai Kum First Nations** – A Place to Call Our Own. This document focuses on homeowners and rental units.

Consideration may be given to telephone/conference a housing manager from a community that has established a rental regime. This will allow the community to ask this person any questions or concerns they may have on paying rent.

3.3.4 Step 4 - Timelines

It is important to understand the required resources (e.g., drafting the required by laws and rental agreements, hiring a consultant, developing a bookkeeping system, property management) that will need to be considered and how much time it will take to put everything in place.

If the Chief and Council have an election in the immediate future, there could be an impact on the timelines.

4 Rent to Own or Lease Policy

In this option, Chief and Council offer rent to own or lease to own programs to assist eligible band members who are interested in homeownership and who will be able to assume full responsibility for costs associated with homeownership at the end of defined period (e.g., 20 or 35 years).

The rent to own program is available for housing units built or purchased for homeownership, through a rent to own option. The units used for rent to own or lease to own are generally built through CMHC section 95 homes.

The rent to own or lease to own policy can vary depending on how the land is entitled (e.g., the Band Council owns the homes available for rent, but the land or property is leased, and in most cases the individual owns/mortgages the home or structure). The rent to own or lease to own option depends on the management of lands in the First Nations communities.

Possible rent to own scenarios for First Nations communities:

- **Band Home -MRC-** Shelter payment by recipient. After end of CMHC payment obligations, the home is purchased by the recipient for a specific amount.
- **Band Home – MRC –** Individual agrees to pay the MRC. After end of CMHC payment obligations, the home is purchased by the recipients for a specific amount.
- **Band Home including CMHC or AANDC funding –** After end of payment obligations, the home is purchased by the recipient for a specific amount.

Some rent to own or lease to own policies have specific conditions attached. For example, members who have been approved for a rent to own or lease to own must meet the terms and conditions of the rental tenancy agreement for 10 consecutive years (e.g., rental payments are made on time, unit maintenance completed in accordance with the agreement, no incidents of agreement or housing policy violations) and be responsible for basic maintenance (e.g., cleaning, repair damaged caused by tenant).

Under a lease to own, Whitecap First Nations provides up to 99-year residential leases. These leases are all legally surveyed and registered with NRCAN.

Under a rent to own or lease to own policy, the tenant(s) will be responsible for making the required minimum revenue contribution or mortgage that is being paid by the Council to CMHC. Once the debt or mortgage is paid, the home becomes the property of the tenant. The transfer to the tenant involves no funds or a minimum payment of \$1.00.

In a rent to own or lease to own program, the selection criteria for a member is different than for those applying to rent a unit. Under a rent to own or lease to own program, the selection criteria can include the following:

1. Family circumstances (e.g., married with children)
2. Current living conditions
3. Tenancy history (e.g., payment record, evidence of responsible behaviour, length of time as a rent only tenant)
4. The ability to pay rent/mortgage and utilities
5. No outstanding debt to the community
6. Criminal record check

In addition, members who qualify for a rent to own or lease to own program (along with the tenant who is only renting) are required to complete a training program that includes⁶:

1. A review of the First Nations Housing policy and procedures including the house maintenance schedule
2. Review of all the agreements to be signed by the tenant
3. Completion of the CMHC basic home maintenance course (to be completed within three months of moving into the unit or when the course is available)
4. Review of budget
5. Purchase rental insurance

The challenge is that First Nations may have a limited number of homes available for rent to own or lease to own programs.

These are examples of First Nations communities that have established rent to own housing policies:

⁶ See SEMA:TH FIRST NATION, Rental Housing Policies and Procedures Manual <http://www.sumasfirstnation.com/wp-content/uploads/2015/08/APPROVED-Policy-Procedure-Manual-Jan-6-2014.pdf>

1. Moricetown Band Council established a policy in 2012.
<http://moricetown.ca/wp-content/uploads/2015/06/Rent-to-Oen-Housing-Program-Policy.pdf>
2. Lytton First Nations Housing Department Policies
http://www.lyttonfirstnations.com/files/7614/3294/1358/2015_Housing_Policy_April_13.pdf
3. Saulneau First Nations (2015)
<http://www.saulneau.com/wp-content/uploads/2015/09/Housing-Policy-VF.pdf>
4. Atikameksheng Anishnawbek Rent to Own Housing Program Policy provides a very good example for a rent to own agreement (appendix C)
<http://www.atikamekshenganishnawbek.ca/site/wp-content/uploads/2011/04/AA-Rent-to-Own-Policy-January-2013.pdf>
5. CMHC has developed an overview on Wei Wai Kum First Nations and how they have rent to own houses for their members.
<https://www.cmhc-schl.gc.ca/en/first-nation/learn/success-stories/upload/a-place-to-call-our-own-first-nation.pdf>

5 Developing a Conflict Resolution System for Your Community's Residential Rental or Tenancy Programs

A rental residential tenancy dispute resolution system is your entire set of dispute resolution processes mapped out on paper. It can help your community understand what the process will look like, including what choices they have in resolving their tenancy disputes, before it is implemented.

It applies equally to landlords (typically the Chief in Council) and tenants. When developing this system, it is important to remember that no one size fits all. There are many cultural differences between historical indigenous approaches to resolving disputes and western approaches, and, of course, there are many cultural and historical differences amongst First Nations. This will be addressed more fully later in this appendix.

It is important to make the dispute resolution system (“the system”) easily accessible to all users treating everyone with dignity, equality, and respect. Some of the things that need to be considered include:

- Languages to be offered;
- Reading level of printed materials;
- Alternative arrangements for people with special needs or disabilities (e.g. telephone or video access, availability of child care, accessibility to hearing rooms, etc.);
- Fair timelines;
- Whether people will need assistance from a lawyer or other representative;
- How power imbalances will be dealt with;
- Multiple options for people to choose from when resolving their dispute;
- Location and accessibility of building and meeting rooms.

It is important to seek input from the whole community (elders, men, women, landlords, tenants, people with disabilities or special needs etc.) when designing the system. This will help insure that you identify as many barriers that prevent access as possible, and that you consider the needs of the broad community so that the system is responsive to everyone.

The better the community consultation, the better the system will be in terms of acceptance, use and effectiveness.

Another way to ensure that the system will be most effective is to offer multiple options for resolving the disputes. Options can include such things as organized conversation, mediation, arbitration, and circle processes.

This allows people the opportunity to choose the process they feel most comfortable with. For example, many people do not respond well to an adversarial approach to resolving problems but instead prefer to use dialogue.

Additionally, it might be helpful to have people who are known in the community be involved in assisting the parties to resolve their disputes. Potential candidates can include:

- Elders or elders' councils
- Trained local mediators and arbitrators
- Trained restorative justice practitioners or facilitators
- Aboriginal lawyers, judges or other dispute resolution professionals.

If the dispute goes to a hearing-style process like an arbitration, it is important that the decision-maker be impartial and independent of both tenant and landlord. This helps to ensure that the tenancy rules will be fairly and impartially applied.

Commonly disputes are resolved using either a *rights-based* approach or an *interests-based* approach.

In *rights-based* approaches, decisions are made based on who is right and who is wrong. They are informed by statutes, regulations, law and precedent, policy, contract, and convention. In the case of tenancy agreements, they are decided by using the rules that the community has adopted or developed to regulate the rights and obligations of landlords and tenants. Rights-based processes are adversarial and played out in front of tribunals or courts. Rights-based approaches feature decisions by a neutral third party such as a judge or arbitrator. When parties go in front of an arbitrator or judge, they give up their decision-making power to the arbitrator or judge.

In *interests-based* approaches, decisions are made based on what is most important to the people in the dispute. When people have a dispute, they often make demands or statements that are framed as their solutions to resolving the dispute. These statements or demands are called the person's *positions*. Interests are broader than positions. Interests underlie positions and are what each party needs for satisfaction. Interests include people's needs, concerns and hopes (e.g. shelter, safety, security, respect, and independence). Interest-based processes include focused conversations, negotiation, mediation and circles. In interest

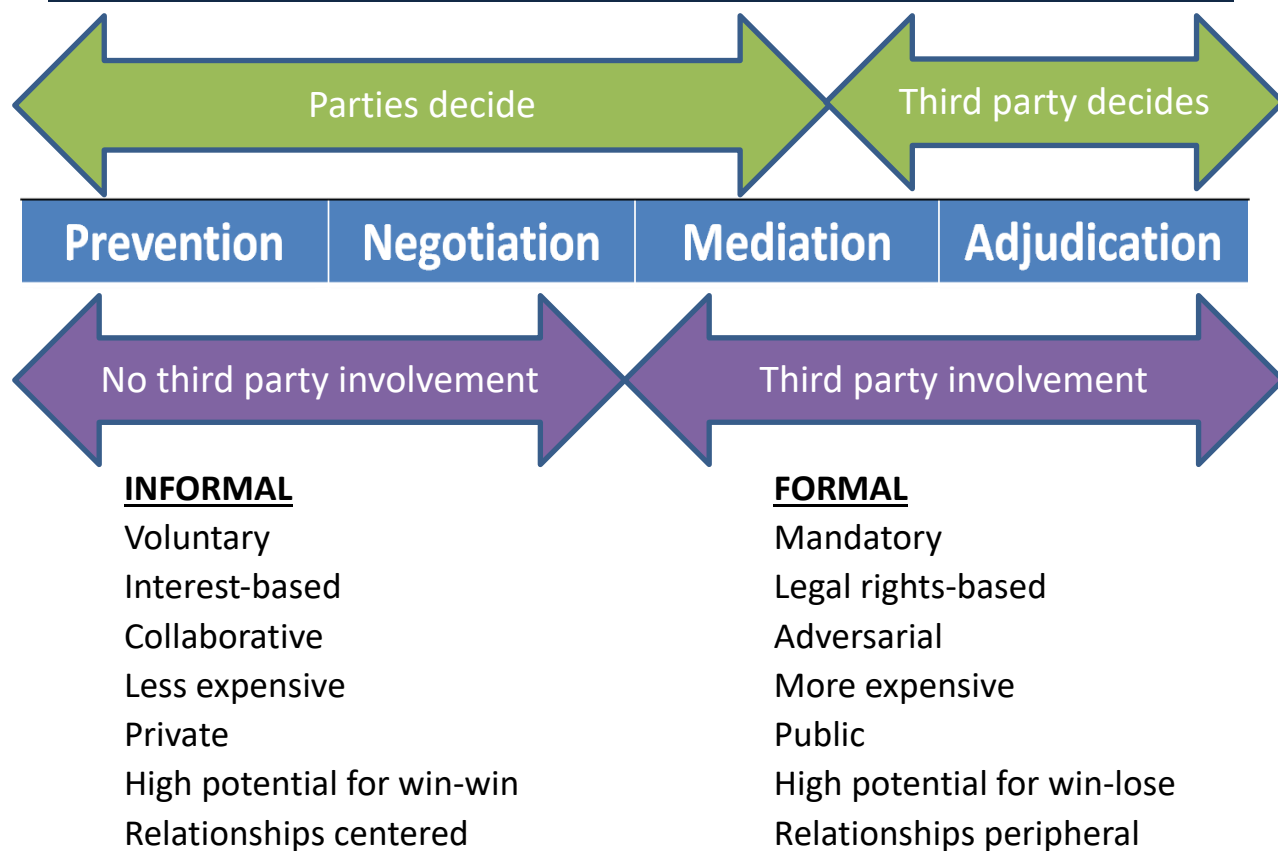
based approaches, the parties retain the decision-making power for themselves; they do not give it up to others.

There are various criteria to look at when determining which kind of process (rights-based or interest-based) is best suited for parties to a dispute. Criteria to consider include:

- Transaction costs to resolving the dispute including
 - Time
 - Emotional energy
 - Financial cost (legal, mediator and other professional fees)
 - Lost opportunity
- The effect that the chosen process will have on the relationship between the parties (and other affected persons)
- The chances of the dispute recurring – will the result of the process be likely to endure or will the conflict continue?
- The parties' cultural familiarity with the type of process being offered.

There are many different types of processes that can be used to resolve disputes. These processes run from the very informal to very formal. The following illustration sets out some common dispute resolution processes.

BASIC DISPUTE RESOLUTION SPECTRUM



5.1 Prevention:

In the basic dispute resolution spectrum shown above, we put emphasis on preventing disputes.

The best way to resolve a dispute is to *prevent* it in the first place. The adage “An ounce of prevention is worth a pound of cure.” is important to remember when we think about designing a dispute resolution system. All effective systems should encompass preventive measures to help “nip conflict in the bud”. Some things that can be done to prevent residential tenancy disputes include:

- Readily available and plainly worded information about the obligations and rights of both landlords and tenants;
- Easy ways for tenants and landlords to contact each other so they can deal with problems before they escalate;

- Regularly scheduled information and feedback sessions between tenants and landlords.

5.2 Negotiation:

Despite attempts to prevent disputes, they will inevitably occur. Once a dispute has developed, we recommend trying to resolve it at the lowest level and in the most cost effective way. This is through direct conversation or negotiation.

Negotiation is a face-to-face conversation between the tenant and the Housing Manager. It is organized so that they can have a safe, respectful and focused conversation directly between themselves to solve the problem as early as possible.

Sometimes it is helpful for tenants to have a friend or support person attend the meeting to help them keep the conversation on track. Simple guidelines setting out how to prepare for the meeting, and what information to gather in advance, or bring to the meeting, will make these discussions more effective.

If an agreement is reached about what is to be done to resolve the problem, the agreement is put into writing. It should clearly set out what each party must do and by when it must be done. Each party gets a copy of the agreement and its terms are enforceable in the same way that an arbitration award can be enforced.

5.3 Mediation:

Mediation is a voluntary process for resolving disputes in which an acceptable, impartial and neutral third party, who has no decision-making power, assists in a face-to-face meeting between the tenant and the Housing Manager, with the aim of having them reach a mutually satisfactory agreement.

Like in the negotiation process, if an agreement is reached about what is to be done to resolve the problem, the agreement is put into writing. It should clearly set out what each party must do and by when it must be done.

Each party gets a copy of the agreement and its terms are enforceable in the same way that an arbitration award can be enforced.

Experience has shown that mediated settlements often come at less cost in both time and money, and result in more durable solutions, than disputes which have gone to arbitration.

5.4 Arbitration (or Adjudication):

If the parties chose not to go to mediation, or if they are unable to solve the issues at mediation, then they can go to arbitration. Arbitration is the final option.

Arbitration is a process in which a neutral third party renders a decision after hearing each party's presentation.

Once the parties decide to go to arbitration, they lose control of the decision-making power and give it over to the arbitrator. Generally, there is no right of appeal from an arbitrator's decision (which is usually called an arbitrator's "award").

Some systems may allow for an appeal but usually the right to appeal is quite limited, for example, if there is a question that the arbitrator may have made an error in law. There are other limited situations where the arbitrator's award may be challenged. These include such things as:

- An error of law or mixed fact and law;
- The arbitrator lacked or exceeded jurisdiction;
- The arbitrator was guilty of misconduct.

5.5 Special Considerations for Indigenous Systems:

When designing an indigenous residential tenancy system, cultural and historical differences between indigenous and western approaches to dispute resolution should be considered.

Western approaches are often described as more "individualistic"; whereas indigenous approaches are often described as more "collectivist" in nature.

More specifically, each community has its own unique environment and set of traditions, protocols, ceremonies, and the like that need to be taken into account when designing the system that will work best for it.

Processes that consider local traditions are more easily understood, more user-friendly, and more accepted, than those that are “taken off the shelf” and imposed on the community. The best systems are not “cookie cutter” but have been developed with significant community input.

The following table highlights some of the differences in indigenous and western approaches to the mediation process, and may provide system designers with some ideas about what characteristics would be best suited for their dispute resolution system.

Mediation Approaches: Individualist vs, Collectivist Models		
	Individualistic Model	Collectivist Model
Entry	<ul style="list-style-type: none"> • Mediator is neutral, disinterested, unknown to either party. • Mediation held in a neutral setting. 	<ul style="list-style-type: none"> • In some cases, it may be acceptable for the mediator to be familiar with the parties. • May hold mediation in the community.
Timing	<ul style="list-style-type: none"> • Time limits are placed on each session and on the process as a whole 	<ul style="list-style-type: none"> • The time frame may have to be expanded to allow for assembling and meeting with groups.
The parties	<ul style="list-style-type: none"> • Process is confidential and limited to the immediate parties. • Mediator may talk to each party privately. 	<ul style="list-style-type: none"> • The process may include others outside of the immediate parties, under confidentiality rules that allow for collective as well as individual participation. • May need to gather collective as well as individual perspectives. • Caucusing may be by group rather than individual.

Mediation Approaches: Individualist vs, Collectivist Models		
	Individualistic Model	Collectivist Model
Identifying interests	<ul style="list-style-type: none"> • The mediator seeks to identify each individual party's core interests. 	<ul style="list-style-type: none"> • The interests of parties may be determined by collective as well as individual values and needs.
Negotiation and agreement	<ul style="list-style-type: none"> • The negotiation involves just the parties to the dispute. • The responsibility for solutions is exclusively in the hands of the disputants. • A written agreement with enough specificity to be enforceable is produced. • The mediator's role ends when an agreement is produced. 	<ul style="list-style-type: none"> • The negotiation may require the participation of group representatives. • There may be greater mediator involvement in creating the solution. • Collective members may have to be parties to the agreement. • The range of outcomes may have to include group as well and individual responsibilities. • The agreement may not be able to cover all contingencies. • The mediator may be expected to monitor compliance with the agreement.

5.6 Checklist for Designing Your Residential Tenancy Dispute Resolution System

5.6.1 I. Leadership, Values & Principles

1. Who will be on System Design leadership team (e.g. Housing Manager, elders, community representatives, tenant representatives etc.)

2. What are the principles and values for the system (e.g. accessibility, fairness, efficiency, indigenous teachings and legal traditions etc.)?
3. Who are the champions for change?
4. Who will implement the change?

Staffing the System Design Team:

1. Who
2. Decision making authority
3. Location in organization
4. Relationship with personnel and groups that are currently performing dispute resolution functions within the organization.

Clarifying Responsibilities of System Team Members & Consultant (if any):

1. Level of involvement and time commitment
2. Reporting relationship
3. In-team communications
4. Decision-making authority

5.6.2 II. Analyzing the Current Situation:

An initial step in building a dispute resolution system for a community residential tenancy program is to do an analysis of the existing situation (or system, if any). The following process outline may help in that analysis.

1. What are the current types of disputes?
 - What are the major issues?
 - Who are the typical parties and those who get involved?
 - What is causing the disputes? (e.g. payment of rent, rent increases, repair to the premises, number of inhabitants in rental property etc.)
 - How frequent and widespread are these disputes?
 - How likely are these disputes to continue?

- Are there factors that might contribute to increased disputes?
2. How are these disputes handled now?
 - What do people do if they have a complaint or problem?
 - Are there interest-based approaches available?
 - What do people do when interest-based approaches break down?
 - Are there rights-based (adjudicatory) procedures available?
 - What are the overall costs/benefits of these procedures? What is working well now? What is not working well?
 - How much avoiding takes place now? What are the costs/benefits of this approach?
 3. How well are any of these systems working?
 - Are the systems being used or are they only “on the books”?
 - Are people generally satisfied with the processes? (e.g. perceived fairness, satisfactions with outcomes, timeliness etc.)
 - Are there disputes that are not addressed or are being addressed poorly, or on only an ad hoc basis?
 4. Why are certain procedures being used or not used?
 - What procedures are currently available?
 - What is the motivation of parties? (e.g. to settle, to get attention to an issue, to protest etc.)
 - What are the skill levels of the parties'? (e.g. for communication, negotiation, problem solving, constructive confrontation etc.)
 - What resources are currently available? (e.g. people to whom disputants can go for help, dispute resolution service providers, coaches, advisors, information sources etc.)
 5. What dynamics are working for or against change?

- What are the vested interests at play for change?
- What are the vested interests at play against change?

5.6.3 III. System Design:

The Design Process:

1. Developing a collaborative and participatory process
2. Defining parameters and type of involvement of system stakeholders
3. Building in a feedback loop to receive comments, suggestions

Identification of General and Specific Goals and Outcomes for the New System

1. Review of diagnosis of current situation or system (if any)
2. Re-check for consensus

Exploring Systemic and Procedural Options

1. With the System Design Team, review of types of disputes and desired outcomes of the systems and procedures.
2. Presentation of the continuum of dispute resolution procedures and description of what each process can and cannot do.
3. Comparison of different procedures with types of disputes, potential/desired outcomes and potential for procedures to achieve desired change.
4. Selection of appropriate procedures.
5. Identification of different dispute resolution paths, for diverse kinds of problems or disputes, if necessary.
6. Sequencing the dispute resolution procedures.
7. Setting timelines and procedures to access and navigate the system.
8. Developing of appeal procedures.
9. Identification of personnel to manage the system.

10. Identification of the resources that will be needed to implement the new system.

Design Review and Commitment Process

1. Circulate proposed design to appropriate people/groups for input before final design is formalized.
2. Modify design as appropriate based on new input.
3. Circulate again to gain commitment and support.

Identifying Organizational Champions and Preparing Them for Work

1. Identify champions of the new system (formal or informal).
2. Prepare them to promote the new system through briefing and education.
3. Target groups to be persuaded or changed.
4. Develop a change/marketing plan.

Go Through Formal Organizational Decision-Making Channels for Final Approval

1. Get formal approval.
2. Public announcement of new program.

Develop an Educational and Marketing Plan for Affected Populations

1. Consider: presentations, videos, leaflets, memos, notices in newsletters etc.
2. Explain: How the system works, benefits to users, how to connect with the system.

5.6.4 IV Implementation and Continuous Monitoring and Improvement

Designing an Action Plan

1. Identification of implementation tasks.
2. Identification of staffing.
3. Assignment of tasks and responsibilities.
4. Development of an implementation time line and milestones.

Training System Operators

1. Education and marketing.
2. Intake.
3. Referral to the right process to handle the dispute.
4. Service providers – internal and/or external.
5. Quality control and monitoring.
6. Record keeping.

Training Parties to Use the System

1. Promotional and educational presentations.
2. Formal training programs.

Ongoing Management/Supervision

1. Day-to-day management and operations.
2. Strategic planning for the future.

Monitoring and Quality Control

1. Client feedback.
2. Observation.
3. Group meetings and supervision.
4. Systematic case monitoring and statistical record keeping.

Feedback and Organizational Learning

1. Making appropriate changes based on feedback from participants.
2. Routine and ongoing reviews of composite case data to determine how changes in the system or organizational operation can be implemented.

Ongoing Training & Education

1. Systems operators.
2. Service providers.
3. Clients.

6 Rental Housing Policy Template

FNNBOA has produced a document on rental housing programs. The document provides a template for how to establish a rental program within your community.

It includes a draft by-law, a draft Band resolution and a leasing agreement.

For a copy of this document see www.fnnboa.ca

7 Maintenance Check List

The First Nations National Building Officers Association (FNNBOA) has developed two important documents for the Housing Departments to be given to your tenants or community members.

The *Healthy Home Maintenance Checklist* gives tenants a list of items in their home that require tasks to be completed seasonally.

As a tenant renting or residing in a Band-owned home, there are regular home maintenance tasks that will help keep their home healthy.

Most tenants think maintenance is the responsibility of the Housing Department, but in many cases, it is the tenant's responsibility. Just as regular oil changes for your car keep the engine running smoothly, keeping up with home maintenance tasks will keep your home healthy and prevent bigger problems later.

The checklist suggests items that can be handled by tenants and other tasks that should be handled by the Housing Department or contractors.

The checklist is printable and should be taped inside a kitchen or closet door.

The *Basic Home Maintenance Guide for Tenants in First Nations Communities* provides an overview of the most important home maintenance repairs for tenants. The guide is a reference for tenants to conduct basic home maintenance repairs such as cleaning dryer vents; checking batteries in smoke and carbon monoxide alarms; changing filters in furnaces; and conducting a walk around to inspect the outside of the house.

Many of the basic maintenance tasks just take a few minutes.

The guide should be kept in a handy location.

If the tenant cannot do the repairs, it is best to contact the Housing Department.

Copies of the checklist and basic home maintenance guide can be found on our website at www.fnnboa.ca

We Can Customize the Checklist or Guide for Your Community

If your Housing Department wants to place their First Nations logo or information on the checklist or guide, please forward the logo in a format that can be copied and your contact information to info@fnnboa.ca

FNNBOA will place the logo/information on the document and send it back to you.

We trust you will find these documents useful.

Any comments or suggestions for improvements to these documents are welcome. Please forward them to info@fnnboa.ca

Appendix A



Lennox Island First Nation



Tackling rent collection and other community challenges head-on

Collecting rent is one of the most common challenges many First Nations face. Rent is a vital source of revenue for many Aboriginal communities, which can help support the long-term viability of their housing. But when a tenant is missing his/her rent payments, many communities have little or no recourse as to how to fix the problem.

Up until about two years ago, Lennox Island First Nation, on the northwest coast of Prince Edward Island, was no exception. As a community with about 400 people living on reserve, Lennox Island simply wasn't in a financial position to pay the mortgages and operating costs on all of its members' homes. But when one of its tenants failed to pay the rent, the Band's Housing Department had no real process in place to deal with it.



In 2010, the Band Council decided to tackle this problem head-on by creating a new housing policy that would ensure all members have access to adequate housing in a fair and structured manner.

"The Lennox Island First Nation takes great pride in providing our membership with solid relevant programming and service delivery," explains Chief Darlene Bernard. "To ensure fairness, accountability and transparency in decision making, the Band Council recognizes that policy development and implementation is key to our successful growth."

"Over the years, the Band has been very successful in securing a variety of housing assets to our inventory, hence the need to update our Housing Policy to better reflect our members' needs."

The first step the Band took was to approach Canada Mortgage and Housing Corporation (CMHC) for training and advice in how to develop a housing policy. CMHC provided a series of workshops that allowed the Band's representatives to learn more about policy development in general, as well as some of the best practices that had already been adopted by other First Nation communities who were facing similar challenges.

Next, the Band created a Policy Committee consisting of three staff from the First Nation and three representatives from the Mi'kmaq Confederacy of Prince Edward Island (MCPEI). The Committee's first order of business was to determine how the new policy should be shaped, to ensure it met with the present-day needs of both the Band Council and the community.

With that goal in mind, the Committee took an innovative step: it reached out to the members of Lennox Island, to get their input directly.



Canada

Working together for housing solutions



Lennox Island First Nation

"We held three community meetings to hear what the members had to say about it," says Lennox Island Band Administrator, Corinne Dymont. "Because they were involved right from the start of the process, the majority of the members were on side with all the changes. They also offered some good ideas that will be incorporated into the final policy."

The Committee also took the time to explain why the Band has to collect rent. The idea was that, by explaining why rent is so important, they would encourage the membership to take ownership of the problem and play an active role in finding a solution.

Today, the Policy Committee is still working on the final details of the policy, which will then be submitted to the Band Council and made available to the community at large. In the meantime, several important changes are already underway.

For one, the Committee recommended appointing a designated Rental Officer to oversee the Band's rental program and administer its housing portfolio.

The Band has also tightened the eligibility criteria for tenants, including adding credit checks and an affordability analysis. This is intended to help determine whether or not prospective tenants are in a financial position to pay their rent on a consistent basis.

"It was a huge undertaking and a lot of work, but in the end, it's been a great success," Dymont says. "If any other communities are thinking about developing their own housing policies, all I would say is: don't be afraid to ask for help."

"We couldn't have gotten to where we are now without the assistance of CMHC and MCPEI, and the input of our members. Now, we will soon have a completely new and updated policy which will hopefully allow us to meet both our members' needs, and the needs of the entire Band, for many more years to come."

CMHC works with First Nation communities to support their efforts to take charge of their housing, to build new and improve existing housing and to further develop their capacity to manage and maintain all aspects of their housing.

For further information, contact your local CMHC office; or call 1-800-668-2642 or visit the CMHC website at www.cmhc.ca/firstnations.
