



**Submissions of the
Office of the Citizens' Representative
on
Amendments to the *Residential Tenancies Act***

**November 7, 2012
St. John's, NL**

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Introduction

The Office of the Citizens' Representative (the OCR) provides a province-wide ombudsman service. This entails receiving, mediating and investigating complaints from citizens about provincial government policies and programs. Each year we receive between 300 and 400 inquiries and complaints. We receive thousands of requests for information and assistance about issues which are beyond our jurisdiction. In those cases we refer citizens, when possible, to agencies which can assist. During the course of this work we have gathered an in-depth understanding of the many problems facing citizens as they try to access a variety of forms of housing. That understanding has helped inform these submissions.

In preparing for these submissions we consulted with seniors and student groups about the types of problems they face when accessing housing. We also reviewed the residential tenancies legislation in other Canadian jurisdictions. This has been a useful exercise in that it broadened our understanding of the possible protections for landlords and tenants which can be incorporated into the *Residential Tenancies Act* (the "Act").

We understand that not all problems citizens face when acquiring and maintaining housing can be appropriately addressed through legislative change. Many of those problems are the result of market conditions which can prove troubling to regulate. Other problems can more appropriately be addressed through changes in policy and procedure within the Residential Tenancies Division. Irrespective of how robust the *Residential Tenancies Act* is with respect to the protection of citizens' rights, it will be ineffective if the administrative agency responsible for its implementation is not equipped with adequate resources and properly trained personnel. With those caveats in mind, what follow is the OCRs' recommendations for changes and amendments to the *Act*.

Language

The *Residential Tenancies Act* sets out the legal rights and responsibilities of landlords and tenants. In doing so it is required to be as precise as possible. The requirement of precision often leads to a document that is difficult to read and hard to understand. This, of course, is a characteristic of many laws. We appreciate that the legal rights contained in the *Act* can be more easily articulated through the educational and promotional material provided by the Residential Tenancies Division. Despite this, efforts should be made to make the document more user-friendly. It is, after all, the core instrument for establishing landlord and tenants' rights and obligations.

We were impressed during our review with the language used in the British Columbia *Residential Tenancy Act*. The language throughout the *Act* is relatively easy-to-follow and is written in a manner which answers many of the questions which landlords and tenants might have. A flavor of this language can be found in the section titles of Part One of that *Act*. The first seven sections are titled as follows;

1. Definitions
2. What this *Act* applies to
3. *Act* applies tenancy agreements with a minor
4. What this *Act* does not apply to
5. This *Act* cannot be avoided
6. Enforcing rights and obligations of landlords and tenants
7. Liability for not complying with this *Act* or a tenancy agreement

The OCR recommends that the language of the *Residential Tenancies Act* be changed to reflect a plain language user-friendly orientation.

Exemptions: Section 4(e) and (g)

Section 4 of the *Residential Tenancies Act* lists a wide variety of housing accommodations exempt from the rights and protections contained in the rest of the *Act*. Of particular concern are the exemptions contained in section 4 (e) and (g). Those subsections exempt the following:

(e) living accommodations provided in a hospital, nursing home or a home established to provide personal care for the aged;

(g) living accommodations provided by a religious, charitable or nonprofit organization for the purpose for which it is established;

Our review noted that these exemptions were not uncommon in other jurisdictions. Despite this, we fail to understand why these exemptions continue to persist. It is of particular note that the exemptions preclude the rights and protections contained in all of the rest of the *Act*. The rationale for having hospitals and charitable organizations exempt is self-evident. Not so for nursing homes, personal care homes for the elderly, and religious and nonprofit organizations. In the latter groups, citizens are often required to pay substantial rents. No readily apparent explanation exists as to why those citizens should not have the protections of the *Act*. It may be that after further consultations with the groups affected by these exemptions some or all of the protections of the *Act* could be afforded to citizens accessing these forms of accommodations.

The OCR recommends that the exemptions found in section 4 (e) and (g) be reviewed to determine whether plausible rationale exists for their continued exclusion of all the rights and responsibilities as outlined in the rest of the entire *Act*.

Exemption: Section 4 (f)

Section 4 (f) of the *Act* contains the following exemption:

4. (f) living accommodations provided by an educational institution to its students including housing units for students owned by Memorial University of Newfoundland.

Our consultation with students has indicated to us that this exemption is too broad. There are a variety of housing alternatives available on post secondary campuses. We understand that it is impractical to superimpose the regime established by the *Act* on residence or dormitory housing. Memorial University, however, also provides self-contained apartment units which are similar to apartments available throughout the Province. There is no reason why they should be exempt from the *Act*. Other jurisdictions have differentiated between the types of student housing which are exempt from Residential Tenancies Legislation. For example, section 2 (2) (e) of the *Alberta Residential Tenancies Act* contains the following exemption:

- (e) a tenancy agreement between an educational institution as landlord and a student of that institution as tenant if the tenant does not have exclusive possession of a self contained dwelling.

The OCR recommends that section 4 (f) of the *Residential Tenancies Act* be amended to delete its effect on self-contained housing units offered for rent by educational institutions.

Minors

The *Children's Law Act* provides that a person over the age of 16 can remove himself or herself from parental care. The *Age of Majority Act* provides that a

person does not reach the age of majority until their 19th birthday. It appears that the legal right of those between the ages of 16 and 19 to enter into contracts, including tenancy agreements, is in doubt. For the sake of clarity, the *Residential Tenancies Act* should be amended to specifically include residential tenancies agreements executed between minors and landlords. Section 3 of the British Columbia *Residential Tenancies Act* states;

3. a person who has not reached 19 years of age may enter into a tenancy agreement or a service agreement, and the agreement and this act and the regulations are enforceable by and against the person despite section 19 of the *Infants Act*.

The OCR recommends that the *Residential Tenancies Act* be amended to specifically include residential tenancies agreements executed between minors and landlords.

Members of the Canadian Forces, Victims of Domestic Violence and Stalking, and Those Moving to Care Facilities

The Manitoba *Residential Tenancies Act* contains unique provisions which provide for the provision of shorter notice of termination of the tenancies when certain preconditions can be established. For example, if the tenant is a member of the Canadian Forces and is deployed to a location more than 50 kilometers from his or her rental unit, he or she can give a minimum of one month's notice to terminate the tenancy. Similar shorter notice periods are available for victims of domestic violence and stalking or who move into a care facility. The legislative provisions put in place a procedure for documenting the veracity of these claims. These provisions only affect tenancies with a longer term than month-to-month. These provisions represent good public policy.

The OCR recommends that the *Residential Tenancies Act* be amended to provide for shorter notice periods for termination of tenancies when tenants are Canadian Forces personnel about to be deployed, victims of domestic violence or stalking, and those moving to care facilities.

Condition Inspections; Before and After Tenancies

We have heard from landlords about problems associated with making a claim against a damage deposit. Further, we have heard from tenants who have had problems with defending those claims or getting a damage deposit returned. Good evidence of the state of the rental unit prior to and after the tenancy would help mitigate these problems. Some jurisdictions assist landlords and tenants with this issue by requiring that they complete a condition inspection report in a prescribed form, prior to and at the end of a tenant's occupancy. The British Columbia *Residential Tenancy Act* makes it mandatory that these inspection reports be completed. The report is completed in duplicate, with each party retaining a copy. If a party refuses to sign either inspection report, his or her ability to make or defend a claim against a damage deposit is eliminated. Sections 23, 24, 35 and 36 of the British Columbia Tenancies Act state:

23. (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).

- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
 - (4) The landlord must complete a condition inspection report in accordance with the regulations.
 - (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
 - (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.
24. (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and
 - (b) the tenant has not participated on either occasion.
- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

35. (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.
36. (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The benefit of these provisions is that it requires both the landlord and the tenant to establish evidence relating to the condition of the rental unit prior to and at the end of the tenancy. The existence of this evidence would greatly diminish disputes which would require formal investigations by the director. The fact that the condition inspection reports are in a prescribed form would give consistency to the types of evidence needed to resolve damage deposit disputes.

The OCR recommends that the *Residential Tenancies Act* be amended by requiring both landlords and tenants to complete Condition Inspection Reports prior to and at the end of residential tenancies in a format similar to sections 23, 24, 35, and 36 of the British Columbia *Residential Tenancies Act*.

Damage Deposits – Paid to Director

We have heard numerous complaints from students who have rented private accommodations and are having trouble getting their damage deposits returned. This is particularly onerous for out-of-province students. At the time of their departure they may only have a few days in which to reacquire their damage deposits. While the current legislation states that the damage deposit is a trust held by a landlord, this provision is rendered useless if a landlord becomes insolvent or delays the release of a damage deposit. New Brunswick has legislated a novel approach to solving this problem. Section 8 (5) of its legislation states:

8. (5) each Rentalsman shall maintain a fund to be known as a security deposit fund
 - (a) into which are to be paid in accordance with this act amounts required to be provided under the terms of a tenancy agreement as security deposits; and
 - (b) out of which may be paid amounts to satisfy claims of landlords allowed by the Rentalsman under subsection 12 or as a result of the application of subsection 12.7

We appreciate that the introduction of this provision would create more administrative work for the Residential Tenancies Division, but this work would eliminate claims by tenants that they cannot legitimately have their damage deposit returned.

The OCR recommends that the *Residential Tenancies Act* be amended to provide a provision that landlords pay damage deposits to the Director of Residential Tenancies in a manner similar to that prescribed by section 85 of the New Brunswick *Residential Tenancies Act*.

Group Evictions

Group evictions can have a devastating impact upon effected tenants. This is particularly so in tight rental markets. Any particular tenant may find himself or herself looking for new living accommodations with a large group of similarly situate individuals. This can create a great deal of frustration and unease.

Section 24 of the *Residential Tenancies Act* deals with group evictions. It requires that landlords have all necessary approvals and permits in place prior to giving notice of group evictions. Tenants with more than five years of tenure in a rental unit have a 72 hour right-of-first refusal if their unit is being converted to

condominiums. This section does not modify the amount of notice required for the eviction, nor does it provide for compensation to affected tenants.

Section 52 of the Ontario *Residential Tenancies Act* states;

52. a landlord shall compensate a tenant in an amount equal to three months rent or offer the tenant another rental unit acceptable to the tenant if,
- (a) the tenant receives notice of termination of the tenancy for the purposes of demolition or conversion to nonresidential use;
 - (b) the residential complex in which the rental unit is located contains at least five residential units; and
 - (c) in the case of the demolition, it was not ordered to be carried out under the authority of any other act.

We believe that section 24 of the *Residential Tenancies Act* should be enhanced to provide more robust protections for tenants facing group evictions. An application for group evictions should be made to the Director of Residential Tenancies. An application would include documented evidence that all prior approvals and permits were in place prior to giving the tenant's notice. The Director should have the discretion to extend the notice, depending upon the prevailing market for rental accommodations. The landlord should be obliged to compile a list of alternative rental accommodations available covering a range of rent. Tenants should be able to apply to the Director for compensation as a result of the group evictions.

The OCR recommends that section 24 of the *Residential Tenancies Act* be amended by requiring all landlords who plan on issuing group evictions to apply to the Director for approval. The Director should have discretion to determine what preconditions should be in place prior to the granting of the application.

Miscellaneous Amendments

Section 39 (1) of the *Act* states that the Director may prescribe rules of procedure and evidence for a hearing. Rules of procedure and evidence are fundamental to the principles of procedural fairness. As such, they should be published.

Therefore, the OCR recommends that section 39(1) of the *Act* be amended by adding the words “and publish” after the word “prescribe” in section 39(1)(.).

Section 43 of the *Act* permits a landlord or tenant to apply to the Director for a reconsideration of an order the Director has previously made. The scheme of the *Act* is such that the Director is cloaked with the responsibility of endeavouring to settle complaints, and failing that, making an order pursuant to section 41 and subsequently reconsidering that order under section 43. Our review indicates that many jurisdictions permit the Director, or equivalent, to facilitate a mediator and then make an order. Many jurisdictions, then, have a reconsideration conducted by someone other than the Director. This gives a fresh perspective to the issue and ameliorates any perception of administrative bias. The OCR recommends that a reconsideration mechanism be put in place to permit a first look at the issue in dispute.

Finally, the OCR recommends that the fine contained in the Office section of the *Act* (s.45) be increased to \$3000.00.

The OCR recommends that the *Residential Tenancies Act* be amended to require that rules of evidence and procedure be published, a fresh review would be undertaken during a reconsideration and the fines contained in section 45 be increased to \$3000.00.

Conclusion

The OCR commends Service NL for undertaking public consultations and possible amendments to the *Residential Tenancies Act*. The process has permitted a broad range of perspectives to be heard. We wish Service NL insight and wisdom as it undertakes its review of this legislation.

APPENDIX

Recommendations

1. The OCR recommends that the language of the *Residential Tenancies Act* be changed to reflect a plain language user-friendly orientation.
2. The OCR recommends that the exemptions found in section 4 (e) and (g) be reviewed to determine whether plausible rationale exists for their continued exclusion of all the rights and responsibilities as outlined in the rest of the entire *Act*.
3. The OCR recommends that section 4 (f) of the *Residential Tenancies Act* be amended to delete its effect on self-contained housing units offered for rent by educational institutions.
4. The OCR recommends that the *Residential Tenancies Act* be amended to specifically include residential tenancies agreements executed between minors and landlords.
5. The OCR recommends that the *Residential Tenancies Act* be amended to provide for shorter notice periods for termination of tenancies when tenants are Canadian Forces personnel about to be deployed, victims of domestic violence or stalking, and those moving to care facilities.
6. The OCR recommends that the *Residential Tenancies Act* be amended by requiring both landlords and tenants to complete Condition Inspection Reports prior to and at the end of residential tenancies in a format similar to sections 23, 24, 35, and 36 of the British Columbia *Residential Tenancies Act*.

7. The OCR recommends that the *Residential Tenancies Act* be amended to provide a provision that landlords pay damage deposits to the Director of Residential Tenancies in a manner prescribed by section 85 of the New Brunswick *Residential Tenancies Act*.
8. The OCR recommends that section 24 of the *Residential Tenancies Act* be amended by requiring all landlords who plan on issuing group evictions to apply to the Director for approval. The Director should have discretion to determine what preconditions should be in place prior to the granting of the application.
9. The OCR recommends that the *Residential Tenancies Act* be amended to require that rules of evidence and procedure be published, a fresh review would be undertaken during a reconsideration and the fines contained in section 45 be increased to \$3000.00.