

Select Committee on the
Landlord and Tenant Act
Yukon Legislative Assembly Office
Box 2703
Whitehorse Yukon
Y1A2C6

March 6, 2010

Re: Input for the Select Committee on possible changes to the Landlord and Tenant Act

Dear Sirs,

I am writing to give my input for your report to the house on the Landlord and Tenant Act. I have reviewed Hansard on the debate and some of the material that is publicly available from various sources (as of this writing there are no exhibits on the Select Committee web page) and I have come to the conclusion that there is a lot of misinformation circulating about the landlord and tenant relationship in the Yukon. Further, there appears to be a move afoot to use the Landlord and Tenant Act discussion to deal with poverty and social housing issues through the back door in the Landlord and Tenant Act, rather than through social programming by the state. Rather than go through a litany of woes from the landlord perspective, a listing equally wearisome I'm sure from both sides of the landlord and tenant relationship, I will go through what I see as the major issues based on complaints that are commonly made and then give a suggested action that may or may not be a legislative solution.

Landlord Tenant Dispute Resolution

Currently, the Landlord and Tenant Act clearly specifies that disputes between a landlord and tenant that cannot be dealt with between the parties on their own are settled in a court process. That court process is spelled out in the Landlord Tenant Act and also in the rules of court established under the Judicature Act. There is an argument being made that this is not an accessible court and that tenants find the process daunting. Landlords may also find this process of dealing with the court daunting; certainly this is viewed as a last resort by most landlords I have spoken to and by my wife and me in managing our properties. However, by replacing this process with another process that uses a board as the first level of dispute resolution and then court at the appellate to that resolution process results in further costs borne by the parties, along with further time spent. The dispute board unfortunately is the structure that other Landlord and Tenant Acts across Canada employ and it is very costly for landlords and is a constant source of complaints by landlords as unfair and costly. This cost will ultimately be paid for by the tenants because this goes to the cost of being a landlord. This is an important consideration in that there is already a tight supply.

Proposed Solution

Create a package that is given to each tenant by the landlord when they sign the lease agreement or take up residence that explains how the process works and the rights of the parties. Community Services has some material but by the time someone accesses it, they are usually already in a dispute. If there was a better understanding by both landlords and tenants on their rights and responsibilities then there might be less friction in that relationship. Creating more and expensive government structures will only add to the costs of the landlords and those costs will be passed onto the tenants.

The alternative could be to have landlord and tenant matters in Small Claims Court. In Small Claims Court the new limit for settlements is \$25,000 and this threshold should be more than enough to deal with most disputes where damages may be claimed. The Small Claims Court is an accessible court with low fees and a dispute resolution process built into it already. It seems to me that if we already have an accessible court where persons can represent themselves then this is the place to deal with landlord and tenant matters. In the end the best dispute prevention is through education and in that the government does bear some responsibility since it is their act that governs this relationship.

Landlords or Tenants Not Maintaining a Residence

This is one of the most serious issues that has the simplest solution. The Landlord and Tenant Act under section 76 has the obligations of the Landlord and the tenant spelled out in them and they are fairly clear. The problem is that there is no enforcement except by going to court. This is a structural problem with the Act and has a relatively simple solution.

Proposed Solution

Empower under this Act to have the Occupational Health and Safety inspectors to go into tenancies, with due notice to both the tenant and the landlord and to carry out an inspection of that premise. If that tenancy is not found to be adequately maintained by the landlord, or if the tenant by their actions is damaging the property then empower the inspector to issue a repair order to the landlord, the tenant or both and give them a time frame to fix the problem and follow up with an inspection. The inspector should be able to go into a residence following a complaint from either the landlord or the tenant or on their own motion. The goal here is to ensure that both the landlord and tenant are held to a standard. There should also be a set of penalties built in for failing to comply that are commensurate with the infraction. Both landlords and tenants who keep their places clean and their tenancies in order, and who have a good relationship, do not want to be tarred with the same brush as landlords and tenants who are not responsible persons. This will go a long way to fixing the problem of substandard tenancies or tenants who damage property and raise the bar for all landlord and tenant relationships. However there will be a cost to doing this and this should be

contemplated by the select committee, in that as usual, most costs, other than government program costs will be born by tenants under the market system.

Damage / Security Deposit / Last Months Rent

The damage or security deposit issue is one that vexes landlords and tenants alike. This is one area that needs some fixing if the Act is going to be opened. Firstly, using the Average interest rate over a number of years to a long term tenant on their deposit is plain stupid unless the Department of Community Services wants to publish on their web site the average interest rates in each year.

Second, there is no clear provision defining a damage deposit vs security deposit vs last months rent. This is the greatest cause for confusion by all parties and is a constant source of irritation. Damage deposits are a foggy area for landlords and tenants because of the lack of spelling out in statute how they can be used and because of the practice of landlords and tenants not having an adequate damage check list on entering into the agreement.

Proposed Solution

Spell out clearly in statute what constitutes a damage deposit including how damage can be inventoried. I think that unless a check list is created by the parties at the beginning of the tenancy, this kind of deposit should not be allowed because of the need for interpretation. If both parties agree to a damage check list that itemizes damage and in this day of electronic photography and e-mail has pictures to back it up, then this kind of deposit can be allowed. If that is not present, then landlords should not be using this kind of deposit.

For security deposits, presumably someone is using this kind of deposit for both damages and as a security against a tenant who skips out on rent. The rules around this kind of deposit should be made clearer in that both a check list and by agreement on that check list or in the tenancy agreement itself, the security deposit can be used for both damages or to make up unpaid rent.

Last months rent is a fairly simple sounding concept but a clear definition that it is not to be used for damages should be spelled out in statute. If someone wants a damage deposit and last months rent it should be possible under this structure to achieve this.

Finally, the issue of interest is a bizarre maze for both the landlord and the tenant. Make it simple, 2 per cent per year interest, payable annually or at the end of the tenancy by agreement. This is approximate average consumer price index for the last 20 years.

Evictions / Notice of Termination of a Rental Agreement

There has been much discussion about evictions in some of the material that various poverty organizations have put out and in the debate on the motion in the legislature. Other than some factual errors about the landlords' powers of

evictions in one of the publications there seems to be some discussion that gives one impressions that there is a power imbalance created by the act in this area. In fact the Act appears to cut both ways equally. The tenant can leave on the relatively short notice of one month at any time of the year, and the landlord can terminate the tenancy on one months notice at any time of the year. This is an equitable arrangement since in most cases, tenants and landlords who have a good relationship, usually caused by the tenant living up to their obligations and the landlord living up to theirs, want the relationship to continue as long as possible. Some landlord and tenants enter into longer term tenancy agreements with longer notice as stipulations in the contract but this should be left to the parties, rather than set out in statute. The landlord and tenant relationship is after all a contractual relationship between the parties and subject to the act is entirely negotiable.

At this time evictions with cause is addressed by the ability of the landlord to begin a court action. There are two common reasons for evictions with cause and they are non payment and willful damages caused by the tenant. In these cases the landlord must be able to remove tenants quickly in order to prepare the tenancy for re-rental. Landlords must be paid on time according to the act and they must be able to ensure that their property is not willfully damaged by the tenant.

Finally, there has been some discussion about not allowing evictions in winter from property. In the modern context with a social safety network in place one has to wonder why the landlord should be limited during the winter months in this way while a tenant is not encumbered in the same way. I think this idea is a foolish one and raises the expectation that the landlord is responsible for more than offering the residential space for rent and instead says that the landlord must also offer a social service. The landlord is not the government and if they need to give notice to the tenant that they are being evicted without cause then the amount should remain at one month unless a longer time is agreed to by the parties.

Proposed Solution

While I think the Act is appropriate as it is currently written in this regard, if the government feels compelled to act to increase the notice required for eviction without cause, then this could be increased with the caveat that if the tenant agrees to one month in a tenancy agreement then that is the standard for the agreement. If it is to be a longer period and it is not specified in the agreement then the default could be up to two months.

There should be no restrictions on seasons for evictions other than for trailers in trailer courts as already specified in the Act. This is because the vacancy rate, while low is not zero (2.6 per cent at present) and while it is certainly tight, putting further restrictions on landlords will add to their costs.

Summary

In summary, it would appear that with some minor changes the act could be improved for all. The most important part of the equation, adequate housing, can only be partially addressed in the Landlord and Tenant Act by enforcing standards on landlords and to a lesser degree tenants alike. I have noted that for a person entering this business today it is a marginal activity. There have been no large apartments with only for rent suites built in Whitehorse for many years because of the cost of entry into the market. Instead, many of the housing needs have been person's creating suites in their homes to supplement their incomes or renting out individual homes or even condos where it is allowed. The cost barriers of entering the residential rental business are very high and getting higher. This is partially why the vacancy rates are so low. If the legislative assembly is not careful, they may drive prices of entry even higher and make the landlord business for new entries even less appealing, this at a time of large rises expected in interest rates. Further, there was not much discussion in the legislative assembly about the need to consult with First Nations in any kind of proposed changes to the Act. This oversight is a large one since First Nations are some of the largest landlords in the Territory and the Landlord and Tenant Act is a law of general application.

I think legislators should thoroughly review what can be achieved here with careful thought before they look wistfully at models from elsewhere. By creating more barriers for landlords you may find that you price more would be investors out of the market and some that are in it now will withdraw, further exacerbating the tight housing market. This perverse effect can be seen in any jurisdiction where government has tried to legislate away their problem of a lack of housing for the poor or hard to house persons instead of dealing with those issues directly under government support programs. Government's role should be one of supervising the market so that it works. If government wants to create housing for the poor or hard to house then by all means do so but under the guise of government programming, not back door offloading of social responsibility. If you want landlords to fix their places up then enforce your legislation. If landlords need tenants who abuse property to clean up their acts then they should have access to the same enforcement. The current system is not perfect but the landlord tenant relationship is a varied one and all persons who are in the relationships in Yukon should not be cast under the same dark cloud created by a few. Remember, landlords and tenants need each other, and landlords will act in their best interests and that is to retain tenants.

Sincerely,

Dan Cable