

SUBMISSION OF YUKON HUMAN RIGHTS COMMISSION TO THE SELECT COMMITTEE ON YUKON *LANDLORD AND TENANT ACT*

September 2010

Housing is a human right

Housing is a human right and must be protected by law. Many international covenants (treaties), which Canada has signed, recognize that housing is a fundamental and universal human right. The *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights* recognize the right of human beings to housing. The *Convention on the Rights of Persons with Disabilities* recognizes their right to equal access to housing, (Article 9) and also “the opportunity to choose their place of residence where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement” (Article 19).

Non-discrimination in housing – how does this apply?

While many landlords and housing providers in Yukon take their human rights responsibilities seriously, Yukon Human Rights Commission does receive complaints alleging human rights violations taking place in some residential tenancy situations. Inquiries and complaints have come forward to the Commission, some of which have been solved with the Commission’s help, or investigated and taken to hearing, whereas others fall outside the scope of the *Human Rights Act*. Following are some examples of situations that we have dealt with or heard about, with recommendations for changes to the *Landlord and Tenant Act*:

a) Selecting tenants/evicting tenants

Residents living in hotels, who are on social assistance and on “long-stay” arrangements, have reported being charged a higher rate than non-social assistance “long-stay” residents. As well, some “long-stay” residents on social assistance living in hotels in the winter are evicted during the summer tourist season. It has been reported these evicted residents are forced to find other living space such as the Robert Service campground or to “couch surf” at the home of acquaintances and relatives. (Note: These reports have not been investigated or proven but have been brought to the Commission as inquiries by people who did not want to file a complaint for fear of retaliation.)

It is unclear whether or not the *Landlord and Tenant Act* or the *Hotel/Motel Establishment Act* would apply in this situation as this issue has not been finally decided by the courts. Section 23 of the *Hotel/Motel Establishment Act* states: “**Subject to the *Human Rights Act***, an operator may remove any person from

their establishment who in their opinion is undesirable if the operator has requested that person to leave the establishment and has given the person a reasonable opportunity to do so." Under the *Landlord and Tenant Act*, there is currently no reference to the Yukon *Human Rights Act*, although under the *Human Rights Act*, tenancy, facilities and services to the public are protected. The Yukon *Human Rights Act* states at Section 9: "No person shall discriminate a) when offering or providing services, goods or facilities to the public. . ." and under "d) in connection with any aspect of the occupancy, possession, lease, or sale of property offered to the public;. . .". So if a landlord removed people because they were "undesirable" and this related to their source of income (e.g., social assistance) or their disability (including addictions such as alcoholism) or their age or their First Nation ancestry, this would be discriminatory according to the Yukon's human rights law. Two jurisdictions, Ontario and NWT, specifically mention human rights protection in their Residential Tenancies Acts. Section 7.(2) of the NWT *Residential Tenancies Act* states: "The *Human Rights Act* applies to a tenancy agreement." The Ontario *Residential Tenancy Act* provides in section 4 and 10, as follows:

Conflict with other Acts

(4) If a provision of this Act conflicts with a provision of another Act, other than the *Human Rights Code*, the provision of this Act applies. 2006, c. 17, s. 3 (4).

Selecting prospective tenants

(10). In selecting prospective tenants, landlords may use, in the manner prescribed in the regulations made under the *Human Rights Code*, income information, credit checks, credit references, rental history, guarantees, or other similar business practices as prescribed in those regulations. 2006, c. 17, s. 10.

Recommendation 1: In order to clarify the situation of renters in hotels and motels, the definition of "tenant" in the *Landlord and Tenant Act* should include those living in hotels or motels or other situations where they are renting their living space or residing. Then these residents would fall under the *Landlord and Tenant Act*.

Recommendation 2: The *Landlord and Tenant Act* should include a section clearly stating that the *Human Rights Act* applies to a tenancy agreement.

Recommendation 3: The *Landlord and Tenant Act* should include a section that recognizes the paramountcy of the Yukon *Human Rights Act*, similar to the wording of the "Conflict with other Acts" section of the Ontario *Act*.

Section 29 of the Yukon *Human Rights Act* states: "This Act supersedes every other Act, whether enacted before or after this Act, unless it is expressly declared by the other Act that it shall supersede this Act." Including such language in the *Landlord and Tenant Act* means that landlords and tenants who read or know about that law will be aware of their rights and obligations under Yukon's human rights law. This would improve awareness and understanding and in turn increase access to justice for both landlords and tenants.

Recommendation 4: The *Act* should state that when a landlord evicts a tenant, there must be cause for the eviction and those causes should be clearly identified. Evictions based even in part on any of the personal characteristics protected under human rights law, such as source of income, family status, disability, etc. are discriminatory.

b) Accommodating the needs of tenants protected under human rights law

Under section 8(1) of the Yukon *Human Rights Act*, a landlord has an obligation to reasonably accommodate the needs of protected people, to the point of undue hardship. Although the *Act* says "those special needs arising from physical disability" must be accommodated, because of past human rights cases and because of the *Charter of Rights and Freedoms*, this duty to accommodate applies to all of the personal characteristics protected under human rights such as family status, religion or mental disabilities. Here is an example of a recent Yukon "accommodation" case:

In a complaint heard by the Yukon Human Rights Board of Adjudication in September 2009, the Board ruled that an adult with Fetal Alcohol Spectrum Disorder ("FASD") was discriminated against by Sternwheeler Holdings Ltd. due to her disability. She and her common-law partner had rented an apartment and the manager was told by a support worker from Fetal Alcohol Syndrome Society Yukon (FASSY) that one of their workers would facilitate the landlord-tenant relationship and assist when required. The tenant was evicted about 8 months later because she had not completed the lease documents, had not paid for a \$60 window that was broken when the tenant was away, and also had not dealt with creditors who made calls to the manager in an attempt to reach the tenants. The Board of Adjudication decided that the manager had not made adequate efforts to resolve the outstanding problems through the FASSY workers. This case showed that a landlord has a duty to accommodate the needs of people with disabilities, including people with FASD.

Housing providers have a duty to accommodate the needs of tenants with disabilities to the point of undue hardship. Accommodations can include lowering counters, installing different door handles or bathroom fixtures, providing designated parking or ramps, having visual fire alarms and doorbells for the hearing

impaired, etc. It can also include changing or waiving rules such as allowing working dogs who assist visually impaired people in a building with a “no pets” policy.

c) Housing issues of women and girls

In addition, the Commission has conducted research into human rights issues for girls and women. In the Commission’s “Report on the Human Rights of Women and Girls in the Yukon” (April 2008), women reported landlords sexually harassing them, refusing to rent to women with children or to women with a criminal record. They also reported that some landlords take advantage of people on social assistance. As well, the report found that “violence against women surfaces in the area of housing when women are forced to leave their homes and communities for their safety. One senior reported experiencing violence in a senior’s residence but the manager did not do anything about it. In another instance, a woman was evicted from her apartment because of the damage done by her ex-partner, which she believed he did in retaliation for her leaving him.”

In addition, Hrenchuk & Bopp in their 2007 study, *A Little Kindness Would Go a Long Way: A Study of Women’s Homelessness in the Yukon*, reported that due to the shortage of low-income and affordable housing in the Yukon, women feel vulnerable to retaliation if they complain about discriminatory behaviour by a landlord.

Recommendation 5: The *Landlord and Tenant Act* should state the responsibilities of the landlord include complying with the *Human Rights Act*, such as protecting tenants from harassment, and reasonably accommodating the needs of tenants arising from disabilities and other protected characteristics under the *Human Rights Act* to the point of undue hardship, as defined in the *Act* under Section 8(2). Tenants also have the responsibility to make the landlord aware of their accommodation needs and to facilitate a reasonable accommodation of those needs. They should advise the landlords when they are harassed by other tenants or employees of the building, so that a landlord can take steps to rectify the situation.

Education for landlords and tenants

People have a right to information about their rights and responsibilities. For example one landlord, Dan Cable, made an excellent suggestion in his on-line submission as follows:

“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. . . .”

The Act should be written in plain language, so it is better understood by both parties. In addition, the Department responsible for the Act and its enforcement should ensure that print and website information is accessible to persons with disabilities and in plain language.

Recommendation 6: The Yukon *Landlord and Tenant Act* requires updating and revisions to make it more understandable to the public.

We appreciate the opportunity to identify human rights related issues and recommendations for updating and revising the Yukon *Landlord and Tenant Act*.

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