



THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN
Yukon Branch • Division du Yukon

PO Box 31712 RPO Main Street
Whitehorse, YT Y1A 6L3
Tel: (867) 393-4769
Fax: (867) 393-4769
cbayukon@northwestel.net

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Select Committee on the *Landlord and Tenant Act*
Yukon Legislative Assembly Office
P.O. Box 2703 (A-9)
Whitehorse, Yukon
Y1A 2C6

By Email: yla@gov.yk.ca

Dear Sirs:

Re: Landlord & Tenant Act Submission

We are writing on behalf of the Landlord and Tenant Law Section of the Canadian Bar Association (CBA) - Yukon Branch. We appreciate the opportunity to provide a submission on behalf of the local CBA branch to the Select Committee on the *Landlord & Tenant Act*. The CBA is a national organization representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada, dedicated to the improvement of the administration of justice and promotion of equality in the justice system. The CBA Yukon Branch currently has 61 members among local lawyers.

CBA's role with respect to law reform

The mandate of the CBA includes improvement of the law and the administration of justice, equality in the law, and advocacy to protect the public interest.

Themes that the CBA focuses on within its mandate include access to justice and fairness in the legal system.

Given that the CBA's interest is to pursue improvement in the law and the administration of justice, we felt that it was important that there be a submission with respect to the possible reform of this *Act* from the local branch of the CBA. Our members frequently utilize this *Act* on behalf of our various clients, who are both commercial and residential landlords and tenants. This submission was

largely prepared by a volunteer *ad hoc* working group on behalf of the local branch of the CBA. It was then reviewed and approved by the Executive.

Our submission focuses on three areas that we have identified as being important in terms of improving the *Landlord and Tenant Act*:

- 1) the need for plain language to improve accessibility;
- 2) bringing the *Act* more in line with similar legislation across the country; and
- 3) improving procedural fairness and access to remedies.

Recommendations

Recommendation #1: *Divide the current Act into two separate Acts, one dealing with residential tenancies (the Residential Tenancy Act) and another dealing with commercial and other non-residential tenancies (the Commercial Tenancy Act).*

As it currently reads, the *Act* (and particularly the applicability of parts 1, 2, and 3 to residential tenancies) is confusing and largely inaccessible to many users. In order to promote and facilitate access to justice and understanding about one's rights, remedies, and obligations under the *Act*, it is proposed that Part 4 be removed from the *Act* and that that Part comprise the basis of a new *Act* specific to residential tenancies. The names of the two separate Acts could then better describe the intent of each.

Yukon is one of only two jurisdictions in Canada which has one piece of legislation to address both residential and commercial tenancies.

Recommendation #2: *Both of the suggested new Acts should be re-written using plain language.*

The *Act*, as presently written, is convoluted, and uses unnecessary legal jargon. For example, paragraph 6(1)(a) reads in part: "every tenant for years and every tenant for life is liable to their landlord and to every other person for the time being having a reversionary interest in the leased premises for voluntary waste and for permissive waste...". Even experienced lawyers have a hard time understanding many of the provisions of the current Act.

Using plain language will help both landlords and tenants understand their roles

and responsibilities, and will allow the courts to better interpret the intent of the legislation. The use of plain language is also in keeping with best practices in law-making in Canada.

Even the current definitions of "landlord" and "tenant" are overly legalistic and archaic.

It is submitted that, for both residential and commercial tenancies, these terms should be clarified with regard to who is included in these definitions.

Recommendation #3: *Forms for dealing with a residential tenancy matter in Court should be user-friendly and either included as part of the Regulations to the Act OR the forms should be easily accessible from Consumer Services and on their website.*

Although there are forms currently available to assist residential landlords and tenants on the YPLEA website, and through the Territorial Court, they can be difficult to get a hold of, especially for those without access to a computer or the internet.

The forms should be readily accessible, user-friendly, and formatted to allow for both landlords and tenants to bring an application forward.

Recommendation #4: *All information with respect to landlord-tenant matters, including Court forms, should be available in both English and French.*

The forms are currently only available in English. This is likely in violation of the *Languages Act*, R.S.Y. 2002, c. 133. In *Kilrich Industries Ltd. v. Halotier*, 2007 YKCA 12 the Yukon Court of Appeal found that providing Supreme Court forms only in English was a violation of the *Languages Act*. That case is similar to the situation here, and as such, forms should be equally available in French and English.

Recommendation #5: *The provisions of the current Act and Regulations dealing with residential tenancy security deposits should be revised to clarify the definition of a security deposit, as well as the process of calculating interest at the end of the tenancy.*

The relevant sections of the current *Act* and *Regulations* are currently a source of confusion for both landlords and tenants. Landlords are entitled to ask for a "security deposit" from tenants. The current Act then says that the "security

deposit" must be applied to the last month's rent unless the landlord and the tenant "have signed a statement as to the condition of residential premises", in which case it may be "applied toward the rectification of damage done to the premises during the term of the tenancy after the signing of the statement". Neither landlords nor tenants generally understand those provisions. That leads to unnecessary disputes.

As well, it is difficult for both landlords and tenants to calculate what amount of interest has been earned on a security deposit. While the Consumer Services website provides a lengthy explanation about how to calculate the interest on security deposits, the process is not simple. The department should consider providing an online calculator to assist both landlords and tenants in making this calculation.

Recommendation #6: *The Yukon government should provide public legal education with respect to the proposed new Residential Tenancy Act for both landlords and tenants.*

In order to increase access to justice and ensure that landlords and tenants are aware, not only of their rights and responsibilities, but also of the legal remedies available to them, we recommend that enhanced legal support be provided. This could take the form of public legal education materials prepared in plain language for both tenants and landlords, up-to-date information on the internet specific to the Yukon legislation, and workshops informing landlords and tenants of their rights and responsibilities under the proposed new *Residential Tenancy Act*.

Recommendation #7: *Amend the proposed new Residential Tenancy Act to include a definition of "tenantable state of repair" and amend it, or related legislation such as the Public Health and Safety Act, to include minimum standards for residential rental properties and to provide for the enforcement of those standards.*

Section 76 of the current Act sets out the responsibilities of both landlords and tenants in residential tenancies. One of the duties of the landlord is "to provide and maintain in a good, safe, healthy, and tenantable state of repair" . The intent of the provision is clearly to impose the duty on landlords to only make properties available for residential tenancies that are fit for habitation.

However, there are no real guidelines to follow for either landlords or tenants in assessing whether a property is fit for use as residential premises. In our view, there should be such standards. Establishing minimum standards for residential

premises will help maintain public health and safety. Clearly defined standards for residential premises will assist both tenants and landlords and will reduce disputes.

This will also bring the Yukon in line with other jurisdictions where such standards are set through provincial or municipal legislation.

We also recommend, given the shortage of available rental housing options in the Yukon, that any enforcement steps taken regarding substandard residential rental housing not require tenants to vacate that property, except where continued occupation of the premises is clearly dangerous to the tenant's health or safety.

Recommendation #8: *Change the definition of "residential premises" in the Act to specifically include people living in hotels or motels.*

Many Whitehorse residents live in hotel rooms as their only residence for months at a time. Indeed, the Yukon government relies upon local motels and hotels to house many social assistance recipients. To ensure that all tenants receive the same treatment under the *Landlord and Tenant Act*, it is proposed that the definition of 'residential premises' be amended to explicitly state that people residing long-term in hotels and motels have the same rights and responsibilities as tenants living in other forms of housing, and that hotel and motel operators renting rooms in these circumstances have the same rights and responsibilities as other landlords.

Recommendation #9: *Make a policy decision as to whether landlords in the Yukon should be entitled to terminate residential tenancies, other than those agreed in advance to be for a fixed term only, for reasons other than cause or the intention to use the premises for themselves.*

In the majority of other Canadian provinces and territories, landlords cannot evict tenants who are not on a fixed term lease without cause, unless it is because they wish to use their property for their own use. For instance, the BC *Residential Tenancy Act* allows the landlord to terminate a non-fixed term tenancy for only the following reasons:

- Non-payment of rent;
- Other cause;
- End of employment (where the employer has supplied accommodation);
- Landlords intention to use the property for other purposes; and
- Tenant ceases to qualify (for instance if they are in subsidized housing).

This type of legislation protects tenants and is in accordance with Article 25 of the *Universal Declaration of Human Rights* and Article 11(1) of the *International Covenant on Economic and Social Rights*.

The Yukon's current Act permits landlords to terminate residential tenancies without having to provide any reason for doing so, provided that the notice periods applicable to the type of tenancy are met. As a result, landlords in the Yukon are presently able to evict residential tenants effectively without cause.

Recommendation #10: *If Yukon chooses to retain the right of landlords to evict tenants with indeterminate residential leases without cause in the proposed Residential Tenancy Act, then: 1) extend the current notice periods substantially; 2) require landlords to provide a reason for the termination of the tenancy (even if cause is not alleged); and 3) prohibit landlords from retaliating against tenants who attempt to exercise their rights through eviction without cause.*

If the Yukon wishes to retain the right of landlords to evict residential tenants without cause, it is important in our view that the current notice periods in the Act be extended so that a residential tenant being evicted without cause has adequate time to make other living arrangements. Currently the Act provides that a landlord need only provide 1 week's notice for eviction without cause for a weekly tenancy (s. 89), 1 month's notice for a monthly tenancy (s. 90), and 3 month's notice for a yearly tenancy (s. 91).

Landlords may have legitimate reasons for wishing to end indeterminate tenancies. However, they also may have illegitimate reasons. Illegitimate reasons would include such things as retaliation for a tenant having exercised his rights or for reasons contrary to the provisions of the *Human Rights Act*.

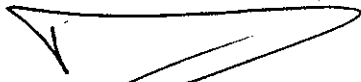
It has been the experience of CBA members representing tenants that many tenants do not want to use the remedies available under the current Act, including the rentals officer (which requires the voluntary co-operation of both the landlord and tenant in any event) and the Territorial Court, because they fear retaliation and eviction by landlords for attempting to exercise their rights under the Act as it is currently written.

In Whitehorse's limited rental housing market, such a fear is legitimate. If the proposed new Act continues to allow evictions without cause on very short notice, a tenant could use the remedies set out in the Act, for instance with respect to the supply of sub-standard housing, only to then be evicted "without cause" unless such retaliation is prohibited.

In our view, if landlords are to retain the right to evict without specific cause, it is not unreasonable to ask them to explain their reasons for the eviction to the tenant. In doing so, the tenant would at least have the opportunity to challenge an eviction done for illegitimate reasons.

We thank you for considering our recommendations as part of your review of this *Act*.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Peter Morawsky', written over a horizontal line.

Peter Morawsky, President
CBA - Yukon Branch