

**Submission to the Select Committee on
The Landlord & Tenant Act**

**Residential Landlord Coalition
September 30, 2010**

We are making this submission to the Select Committee that is undertaking the review of the Landlord and Tenant Act.

We are a group of concerned, responsible landlords, and have a variety of accommodations that we rent, either for ourselves or manage on behalf of others.

We want to ensure that we, as a group of responsible Landlords, are not lumped in with the horror stories of Landlords that have been put forward by the groups looking at only the Tenant side.

We have concerns about the misleading content of some of submissions currently before the Committee and want to ensure that we are looking only at matters of fact rather than opinion.

The concerns and issues of both Landlords & Tenants need to be heard, and a new Act, that is fair to all, needs to be the outcome.

General

- 1). **Act needs clarity.** As the Select Committee has heard from all sources, the Act needs to be written in plain language and in a manner that makes it easily understood by both Tenants and Landlords. It also needs to be written in such a manner that there is no room for various interpretations of the Act.
- 2). **Change name of Act.** We propose a change to “Yukon Residential Tenancy Act” so not so to appear so dominating.
- 3). **Separate the Act-** Residential should be totally separate from commercial and mobile homes in the Act
- 4). **Balance of rights & responsibilities:** The new Act must look at both the Landlords and Tenants and have an Act that is fair and equitable for both.

Specifics

- 1). **Selection, screening and choice of tenants** without discrimination- Just as tenants can be selective about choosing a place to live, landlords must have the right to choose their tenants. It is important to choose the right fit for a long term tenancy. Landlords have the right to say who lives there, if children, pets, fish, birds, roommates or long-term guests, etc. are suitable for the rental situation (ei- seniors complexes). If “hard to house” tenants find it difficult to find housing, then the government should have a separate program for them to access. For some tenants, it is a “social housing” issue more than the “Act” problem.
- 2). **Housing Standards-** Landlords are responsible for providing a property that meets a defined set of standards. The tenants, by their Tenancy Agreement are responsible for the maintenance of the property to a certain standard.

Occupational Health & Safety inspectors should be allowed to inspect the premises following a complaint by either party & give a time frame for repairs to be done or a penalty given. If damages are made or caused by a tenant, the tenant should pay for repairs, to be done by person approved by landlord. A “Safe Housing Committee” as in Alberta, was another recommendation that might work.

There must be enforcement of a defined set of standards for the maintenance of properties.

Older buildings should not require the same building standards as new buildings, but should still have “safe” standards.

Landlords cannot threaten tenants with eviction due to legitimate complaints about living standards if the problem is the landlord’s responsibility to maintain.

- 3). Increase of rental rates:** There is currently no limit on the amount that rent can be raised by or how often this can be done following the first year of a tenancy.

There are a few factors to consider with respect to this. There are no “controls” on the amount that the City of Whitehorse is able to raise our utility bills or by how much they raise the property taxes. Even when the City has committed to no tax increases, the Territorial Government has raised the assessed value of the property, which in turn raises the taxes. Insurance and interest rates also continue to rise.

We would like to suggest that there be a limit on rent increases to a maximum of 10% per year. Under special circumstances (renovations, major cost increases, etc), a landlord can increase the rent above the 10% amount, providing there is proof to justify such increase.

- 4) Right to assign or sublet:** Section 11 of the current act reads as follows:

11(1) In every lease containing a covenant, condition, or agreement against assigning, subletting, or parting with the possession, or disposing of the land leased without licence or consent, the covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject

(a) to a proviso to the effect that the licence or consent shall not be unreasonably withheld; and

(b) to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of the licence or consent, but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to the licence or consent.

Based upon the wording in Section 11 (1), we understand this to state that if we have a provision that prohibits subletting, the tenant is prohibited from subletting. If I am reading this incorrectly, then I would like to see wording that ensures that the following happens

That as a Landlord, we must have the ability to select our tenants and can not transfer that responsibility to the current tenant. The end result being that there is no subletting permitted.

It is absolutely essential for the Landlord to have this control over who is occupying the rental premises as, under the Safer Neighbourhoods & Communities Act, a Landlord is held responsible and can be fined for the actions and activities of their tenants.

If we as Landlords are to be held responsible for the activities and actions of our tenants, we must have the ability to select who our tenants are.

5). **Termination of Tenancy Agreements & Evictions:**

- Landlords need to retain the right to terminate tenancy for “other reasons” like renovations, family moving in,
- Evictions with cause- Non-payment or wilful damage 14 days; no appeal time if evidence of cause is clear.

Another repeated issue has been that of evictions. Several submissions have cited “Evictions without Cause” and the need to have just cause for evicting a tenant.

Most commonly, a tenancy agreement is a contract for a tenant to occupy a premise for a period of time in exchange for monetary compensation.

Under the current Act, a month to month tenancy is just that, an agreement between the landlord and a tenant that is mutually renewed monthly. Should the Landlord choose not to renew a monthly tenancy with a tenant or the tenant with the Landlord, which is each of their rights. Notification times are set out in the Act for the termination of such tenancies.

Don’t confuse “Eviction without Cause” and the expiration of a tenancy agreement.

In the submission made by the Yukon Status Of Women’s Council and Working Group dated September 8th, 2010 the first three of their recommendations relate to evictions, and evictions without cause.

If a tenant was in a one year tenancy and was given notice that would terminate the tenancy prior to the expiration of the year, then we would agree that cause should be shown.

In their recommendation number 2 they ask for a list of acceptable causes and include “damage to property by tenants”. We agree that for the early termination of a Tenancy Agreement., there could be a list of acceptable causes only as a guideline, but not restricting it to specific reasons, as there are often various situations requiring an early termination.

While we agree that early termination of an agreement should show cause, expiration of an agreement should not meet this same requirement as this was a fixed term that both parties agreed to in the first place.

We would further like to see a similar responsibility placed on tenants. Should they give notice to leave prior to the expiration of the agreement, they have to show similar cause or be held financially responsible until the expiration of the Tenancy Agreement without the burden of mitigation of damages being placed upon the Landlord.

In their recommendation number 3 they ask for sufficient time, after an eviction notice, for remedial action by the tenant.

In the majority of cases, this just doesn't work. If a tenant is damaging the property, we as Landlords would then have to deal with the repair of the property and then monitor the tenant for future infractions. Not to mention recover the cost of the repair from the tenant. If it is non-payment of rent, then we likely have to cover the mortgage and wait a period of time for the tenant to pay the rent.

The basic concept of a tenancy is an exchange of money for housing. This is governed by a timeframe or term and comes with a set of rules. After the rules have been broken, so has the trust. Landlords want to ensure that the rules are followed, their premises are treated with respect and the rent is paid on time. If the tenants are not able to perform these tasks, they have likely breached their contract and the Landlord should have remedial action available, which has to include eviction.

Residential evictions and the expirations of tenancies can happen at any time of year.

The current Act allows for 14 days notice to a tenant for a substantial breach of their tenancy agreement. While in some cases this may be sufficient, in other cases it places a Landlords property at great risk. In cases of wilful damage and destruction we require an immediate remedy. We would like to see the immediate intervention of the RCMP and the immediate removal of tenants in any cases of any physical violence, threats or wilful damages. This is no more protection than a local hotel would be given under the same circumstances.

- 6). **Check out time:** The current Act does not have a check out time and by default allows a tenant possession until midnight on the final day of their tenancy. The British Columbia Act has a Check out time of 1:00 p.m. We would like to see the same.

- 7). **Damage/ Security Deposit / Last Month Rent**

The Act needs to define very clearly what a "Security deposit" is, as the interpretation of it now varies as to what it is and how it can be used .

Under the current Act, in the absence of a Property Condition Report, signed by both the tenant and the landlord, the tenant has the right to apply the Security Deposit towards the last months rent.

This is simply due to the fact that neither the Landlord nor the Tenant has written proof of the condition of the premises at occupancy and therefore there can be no holdback for damage.

Therefore if we make a Property Condition Report a mandatory part of creating a Tenancy Agreement, the issue of “Last Months Rent” goes away.

A Landlord, who does not create a Property Condition Report with the tenant’s participation upon the tenant moving in, cannot apply any of the security deposit held to damages, but, upon showing proof of debt, a Landlord should have the option of applying the deposit towards unpaid fees such as rent, late fees, utilities, etc.

Once again, the issue of “Last Months Rent” should not apply in the act at all, as the Landlord must have some secured funds to apply upon move-out if needed, either toward damages (if condition report is completed) or other debts owed from the tenant when details and proof are provided.

8). **Pet Deposits:**

There is very little, if anything in the current Act with respect to pets. For those Landlords that allow pets, we would like to propose additions that take the following in to consideration.

That the Landlord can prohibit pets, or restrict the size, kind or number of pets a tenant may keep on the residential property.

A Landlord may stipulate a tenant's obligations in respect of keeping a pet on the residential property.

The Landlord may not require a pet damage deposit at any time other than when the landlord and tenant enter into the tenancy agreement, or if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property,

A landlord may not require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property.

The amount of a Pet Deposit may not exceed the value of the monthly rent.

Interest is paid on a Pet Deposit in exactly the same manner as a security deposit.

9). **Interest on Deposits:**

In the submission made by the Yukon Status Of Women’s Council and Working Group dated September 8th, 2010, their recommendation number 14 states “*Include accrual of interest on security deposits paid for all residential tenancies, not just mobile homes (section 103).*”

This is currently quite clear in Section 63 (5) of the existing Act which states. *A landlord shall pay annually or 15 days after the tenancy is terminated, whichever is earlier, to the tenant, interest on the security deposit for rent referred to in subsection (1) at the rate of 10 per cent per annum or any other rate that may from time to time be prescribed.*

This further clarifies the need for much simpler wording in the Act and a separation of Commercial, Mobile Home and Residential, when the current Act is not able to be understood by groups such as this

One tool that we would like to see provided is an interest calculator. BC has an online calculator for Landlords. The interest rate paid on security deposits is set at the prime rate less 2%. You simply enter the start date of the tenancy, the last date of the tenancy and the amount of the security deposit and the system calculates the interest owing to the tenant. A printed copy of this could be provided to the tenant with the refund.

We would also recommend that the annual requirement to pay interest be removed and have all of the accrued interest paid to the tenant at the end of the tenancy.

10). Abandoned property:

Although rare, this is an issue that plagues Landlords when it happens.

When a tenant leaves a rental property, there may be some of their personal belongings left behind. This may be clothing in a closet or a vehicle left under the snow at the end of the driveway. Whatever form this takes, the Landlords need to deal with this immediately as there is likely another tenant coming to occupy the premises immediately.

It would be our suggestion that this be addressed in the Act in such a manner that makes it the Tenants responsibility to ensure that all of their personal belongings and goods are removed from the property prior to the final inspection being done.

Should this not be done, this could be addressed in the inspection report where the landlord does not refund the security deposit until all personal belongings have been removed from the property. However, this may adversely affect the Landlords ability to rent the property to the tenant moving in and even potentially delay the move in date for new tenants coming in. Therefore, it would be my suggestion that if the tenant leaves personal belongings or goods on the property beyond the duration of their tenancy, that the belongings become the property of the landlord and the landlord reserves the right to dispose of them with the expense being charged against the security deposit.

11). Proper Notice Terminating a Tenancy

In various submissions to the Select Committee we have seen the issue of notice and what constitutes sufficient notice raised over and over with many interpretations. We feel that with clarity, this is could be quite straightforward and easily understandable. We propose the following which is in line with the current Act.

For a monthly tenancy notice must be given prior to the end of the month previous. An example would be that notice would have to given sometime in the month of September to be effective October 31.

For a tenancy term longer than one month, notice must be given prior to the end of three months previous. An example would be that notice would have to given sometime in the month of July to be effective October 31.

Again, to be very clear, this is the termination of a tenancy on the date that has been mutually agreed to by both the landlord and the tenant at the beginning of the tenancy. This is not eviction.

12). **Domestic Violence**

In the submission made by the Yukon Status Of Women's Council and Working Group dated September 8th, 2010 there is a section on Domestic Abuse.

In this section they state that Ontario is contemplating passing a new law, the "Escaping Domestic Violence Act".

It is further stated that an abused woman would have the right to terminate a Tenancy Agreement on 28 days notice and that the Security Deposit would be used as last months rent.

While we sympathize with victims of domestic violence, such legislation would put Landlords at significant financial risk in two different ways.

First, 28 days notice is not sufficient to place another tenant who has given the required notice under the current Act. As well, if notice was given on the 10th of the month, the tenant would be vacating on approximately the 8th of the month following. It is very difficult to place a new tenant after the start of the month as most monthly agreements are from the first calendar day to the last calendar day of a month. This has the potential to cause the Landlord to have a vacancy for a period of time.

Second, to use the Security/Damage deposit as last months rent places an unreasonable financial risk upon the Landlord. Acknowledging that we have a domestic violence situation, this would then ask the Landlord to waive all financial holdbacks against any potential property damage. At the end of the tenancy, the Landlord would be holding nothing against potential damage.

With agreement of what is trying to be accomplished with this legislation, we would suggest a variation to this proposal that does not place such a financial risk on the Landlord.

Regardless of the term of the tenancy, allow the victim of domestic violence to give notice as though they were on a month to month tenancy. Eg: Notice at any point in September would be effective for October 31.

Rent is paid as normal and the landlord holds the Damage Deposit until after the final written inspection with the tenant. Rules for the return of the Security Deposit, with interest, would be consistent with the Act.

If for safety reasons, the tenant must leave the property quickly, perhaps a government agency acting on behalf of victims of domestic violence, could have funding available to assist such victims to fulfill their final rental payment obligations.

13). Landlord & Tenant Dispute Resolution- Various suggestions have been made for dispute resolutions such as: a “Rental Officer” or “a Panel or a Board” of people with no vested interest in the situation; or use of Small claims court. While the current landlord-tenant court system is available to both parties at no cost, it should be used as a last resort.

As others have recommended, it could be useful to have a prepared educational Handbook or Package of pamphlets on the Act, dispute resolution, & court process, etc. for the tenant to receive from the landlord at beginning of tenancy.

Also consideration should be given to have a “pro-bono” lawyer to assist underprivileged and to provide regular information workshops for organizations which help the underprivileged and for the public.

We feel that there should be a Rental Officer readily available who fully understands every aspect of the Act, and is therefore able to give unbiased information which can if necessary, be used in the courts. If both parties do agree to enter into the mediation process, they should still have the option of taking the matter to court later if they are not convinced that their legal rights have been protected. Often the mediation process is not currently used because the parties are not confident that the mediator will be unbiased and knowledgeable enough on all legalities of the situation.

Landlords must be able to retain control over their financial investments. It is their business, not a charitable contribution. The reality is that, if it becomes too difficult for landlords to stay in the rental market and make some marginal profit, they will cease to keep rental properties, resulting in even fewer rental units available to tenants.