

**Yukon Anti-Poverty Coalition  
Submission to  
Yukon Legislative Assembly  
Select Committee on the Landlord Tenant Act**

**March 2010**

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**1. INTRODUCTION – Perspectives**

The Yukon Anti-Poverty Coalition (YAPC) was formed in 1996. Our mandate is to facilitate the elimination of poverty in the Yukon through awareness, advocacy and action. We currently have more than 135 members including individuals, politicians and representatives from the NGO community, the business community and the faith community.

Our focus in this submission is the interests and concerns of persons of low income. That being said, it is evident that a more balanced and clear approach in the Act will not only assist tenants, but will assist landlords as well. There is an acute need for affordable, safe, and adequate rental accommodation in Yukon - we would like to see a regulatory climate that enables property owners to view being a landlord as a viable business opportunity.

We encourage you to ensure that you understand the perspectives of all players as you develop your recommendations. To that end we encourage the Committee to hold public meetings. Ideally, a paper discussing some of the areas already in question would be available and would allow for a more fulsome discussion by the public.

Our review of the Landlord and Tenant Act focused solely on residential tenancies. We looked at ways in which the legislation does not work for Yukoners living with low income and in poverty. These are people who are particularly vulnerable to inadequate protections and who have difficulty accessing protections that may exist.

## **2. FRAMEWORK CONSIDERATIONS**

### **2.1 Language and Layout**

It took members of YAPC's Housing Task Force an unrealistic amount of time to read the current Act to determine how various issues of interest to low income tenants are, or are not, addressed. To say the Act is not user -friendly would be an understatement. It is also dramatically out of date, having been passed in 1972 with no substantial amendments made to date. We urge the Committee to consider changes to the language and to the organization of this legislation. It should reflect today's understanding of basic human rights as demonstrated in the Universal Declaration of Human Rights.

We are concerned that the provisions with respect to residential tenancies are not consolidated. While Part 4 contains most of these provisions, the first section includes a number of qualifications that have the conscientious reader flipping back and forth between parts 1, 2, 3 and 4. In many other jurisdictions residential tenancies are addressed in distinct, free-standing legislation. We encourage you to consider this approach or at least make the relevant part in an umbrella Act more independent.

We certainly hope that any re-working of this Act will follow Government of Yukon's recent practice of using plain language. Plain language is critical in this area of law. In the present Act, the wording is confusing and archaic as soon as the reader gets beyond the initial definitions.

The practice used in a number of recent pieces of Yukon legislation of including a preamble or statement of the purpose of the legislation would be helpful. It is important to set a tone of why this legislation exists and what it is trying to do. It would be useful to have in writing that the intent of the Act is to treat all parties with fairness and balance, that everything included in the Act falls within the Charter of Human Rights and that the intent is to have a balanced piece of legislation that is easily interpreted and enacted.

### **2.2 Rights and Responsibilities**

YAPC would like to see the Act set out in detail not only the responsibilities of landlords and tenants, but their rights as well. Section.76. does lay out the responsibilities of both, although the heading does not reflect this.

A "rights and responsibilities" approach is empowering - rather than the more restrictive "responsibilities" approach. We also suggest these provisions should be delineated

clearly in the Act and serve as a foundation and reference point for everything that follows.

It is important that the Act take a balanced approach to the expectations and entitlements of all parties. As the housing markets ebb and flow either party could become vulnerable to poor treatment – tenants when the rental market is tight and landlords when there is a high vacancy rate.

### **2.3 Accessibility**

The protections of law are only useful if they are known and understood. We feel that there must be good public education for landlords and tenants, but particularly for tenants. A landlord likely spoke to experts such as a lawyer, accountant, real estate agent, insurance broker etc., before becoming a landlord and received considerable advice about the implications of the role. This is not the case for tenants.

While we appreciate that the Act may not be the appropriate place to detail what manner of public education and resource material should exist, it should at least set out the need for such education.

We are aware that the Rentals Officer role in s.79 includes providing information and advice but we would like to see this role have more statutory teeth. A requirement to provide an “ongoing comprehensive public education campaign” would be more appropriate. We would hope such a campaign would include use of a variety of media, distribution systems and materials at varying levels of complexity. The present document “The Landlord Tenant Handbook” is a nice start but it is limited and not widely accessible.

We would also hope that the Rental Officer role could gain prominence. The public needs to know the office exists and feel comfortable accessing services. Residents of rural Yukon should be able to easily access service by telephone and expect a timely response when local on-the-ground follow-up is required, such as in the investigation of a complaint. We hope intra-government processes can be established (or already are) so a rental officer can call on colleagues in Yukon Housing, territorial agents or others to ensure their mandate is effectively implemented throughout Yukon.

We feel the Rental Officer is an under-utilized resource for tenants who need advice, assistance or advocacy. Much of this could be remedied with better awareness of the role, including the investigation, mediation and arbitration roles. Some of the under-use of this office may be due to systemic problems such as fear of retaliation. We will discuss these issues later in this submission.

### **3. PROTECTIONS IN THE LAW**

#### **3.1 Standards**

Perhaps the most fundamental issue for tenants, particular those with low income who need low cost basic accommodation, is housing standards. Unfortunately many people who live in poverty rent accommodation that are substandard. These places do not meet common standards of adequacy including being safe, clean, having all features and appliances in working order, etc. It is essential that landlord and tenant legislation ensure rental accommodation meets basic standards.

We are aware that the present Act contains an obligation for landlords to provide and maintain premises in good, safe, healthy, and tenantable state of repair (s. 76(1)). The problem is that these provisions are either too vague and/or are not well enforced.

We suggest that the Act mandate minimum rental standards. One simple way would be to have rental standards explicitly mirror established building standards and health and safety requirements.

#### **3.2 Eviction**

Termination of a tenancy by eviction is the biggest fear or risk for tenants. While we understand that there may be a wide range of circumstances that give rise to a landlord-initiated termination of tenancy or eviction, it is important that these circumstances be defined. Eviction without cause is not acceptable. Eviction with spurious cause is equally unacceptable.

Eviction for causes related to tenant behaviour should be spelled out in the legislation. The cause must be substantive (e.g chronic failure to pay rent on time, or significant damage caused by the tenant and not repaired in a timely manner, or frequent noisy parties despite warnings). Causes which are personality-based (“I don’t like you”) or which are illegal (discrimination under human rights legislation) must not be allowed. Tenants must receive defined reasonable notice of the eviction. Tenants must also be given reasonable opportunity to remedy the action leading to the eviction, usually by written warning and stipulation of the required remedy.

Landlords should certainly have the right to evict tenants for reasons other than non-performance of their responsibilities (putting a building to another use, major renovations, etc.) but the Act should clearly stipulate a requirement for notice in such cases.

Our basic point is that “cause” must be spelled out in order to offer clarity to the tenant and the landlord. There must also be due process laid out in the legislation that the landlord or the tenant can follow. If the process is not followed, there must also be repercussions laid out in the legislation so that every party to the legislation is clear of their rights and responsibilities.

### **3.3 Rent**

Rent increases are probably inevitable in long-term tenancy situations. It is only reasonable that landlords be permitted to raise rents when they have cost increases (fuel, taxes, etc). It is not acceptable for landlords to increase rents as a back-door approach to eviction.

The current provisions that prohibit rent increases in the first year and require three months written notice of subsequent increases seem reasonable. The weakness of the current provisions is a lack of cap on rent increases or at least justification if the increase is above a certain percentage.

We found varied understandings of how the rules about rent increases apply to monthly tenancies. The application needs to be made more explicit.

## **4. CONSEQUENCES AND REMEDIES**

### **4.1 Links to Other Legislation**

A number of the tenancy issues affecting people living in poverty relate to protections they should have under other legislation as well as under the Landlord and Tenant Act. The two most significant examples are assurance of accommodation that meets basic health, safety and construction standards and protection from being evicted for discriminatory reasons such as race or source of income.

It is important that the Landlord and Tenant Act mirror provisions provided elsewhere so that these protections are explicit and enforceable as violations of the Landlord and Tenant Act. It is not satisfactory to require a tenant whose premises are unsafe or unhealthy to try to figure out how to navigate various pieces of public health legislation. Nor is it reasonable to require a tenant who is being evicted because they are on welfare to seek relief through the Human Rights Commission processes which take months at best.

### **4.2 Mediation and Arbitration**

Mediation should be the first step in addressing an alleged failure by any party to abide by the Act. We are happy that the legislation provides for mediation by the Rentals Officer and would like to see the scope of this role strengthened. We also appreciate the provision that, on consent, the Rentals Officer can offer binding arbitration.

It is our understanding that these provisions are not well used. It is important to investigate why this is and what can be done to ensure all parties are willing to participate in timely mediation or arbitration of their conflicts. (The Act should be amended to reflect the results of an investigation of why the current provisions are not used.)

### **4.3 Courts**

Recourse to the courts must always be an option. We encourage you to ensure this is a real option for both landlords and tenants. Issues from no understanding of legal processes to lack of funds for legal fees can make court processes inaccessible. This inaccessibility is particularly true for low-income tenants.

### **4.4 Retaliation**

The biggest threat to tenants exercising their rights to the protections of the Landlord and Tenant Act is fear of retaliation. Simply put, tenants fear that if they complain they will be harassed or evicted.

Some of the above-noted suggestions such as requiring cause for eviction will mitigate some of the risk of retaliation but explicit prohibitions against retaliation and harassment are required nonetheless. Simply put, the law must protect tenants from retaliation. It is not acceptable to require a tenant who has suffered retaliation or harassment because they exercised their rights under the Landlord and Tenant Act, to then complain and follow another legal process, such as human rights legislation, that may not be timely or cover the situation.

## **5. SUMMARY RECOMMENDATIONS**

Hold public meetings to promote discussion of issues by all stakeholders.

Write legislation in plain language.

Consolidate all provisions respecting residential tenancies in one act or part.

Include purpose and rights and responsibilities.

Mandate public education.

Increase prominence of Rentals Officer role.

Articulate minimum rental standards.

Require explicit legal cause for eviction.

Ensure rent increase rules cover all rented residential premises.

Require justification of large rent increases.

Provide enforcement provisions within the act, not other acts.

Promote mediation and arbitration of disputes.

Promote equal access to court processes.

Prohibit retaliation or harassment for complaints and provide consequences.