Manufactured Housing Association of Atlantic Canada

Association de l'habitation usinée du Canada atlantique

MHAAC

Introduction: Kevin Arbuckle, Director of Property Management (MHC) at Killam Properties Inc. and speaking on behalf of the Manufactured Housing Association of Atlantic Canada.

I would first like to take the opportunity to thank the Law Amendments Committee for the chance to be heard here today. I would also like to thank the Minister for Service Nova Scotia and Municipal Relations, the Hon. John MacDonell, and the Director of Residential Tenancy, Dean Johnston, for including the Manufactured Housing Association of Atlantic Canada (MHAAC) in the consultation process.

Overall, the MHAAC feels that the proposed changes to the Act will be positive and will help to balance the rights of tenants and landlords. These changes are long overdue and we believe that they will improve some of the long standing inefficiencies within the Act.

The biggest concern that the MHAAC has with the proposed changes to the Act is the omission in the text of Clause 2 of Bill 110. We feel that the intent of Clause 2 is a very good addition to the Act; however, the wording will not achieve the desired results. The purpose of this clause is to streamline the system for dealing with simple non-payment of rents and to reduce the work load for the Tenancy Officers. However, the wording of Clause 2 of Bill 110 will actually increase the number of hearings, thereby over loading an already taxed system. As it is currently proposed, the new wording would mean that once the landlord has followed the appropriate steps to have a tenant evicted for non-payment of rent, the landlord may apply for an order requiring the tenant to pay any rent owing, **but ONLY for the month in which the notice is given**. Therefore, any additional rent owing prior to the month of notice will require the landlord to apply for another hearing.

Our Proposed Solution: Simply add the phrase "and any prior period rental arrears" to the end of Subsections 10 -6D (a), 6D(e) 6D (f) and 6E (b) and 6E (c).

The MHAAC is also very pleased with the decision to repeal Chapter 66 of the Acts of 2008, which deals with Landlord consent to allow a home to stay in a land lease community and to approve a new tenant. We feel that the proposed process in clause 1(b)of Bill 110 meets the desired intent of the repealed section, but does so in a way that is fair to both tenants and landlords. Our only concern with the proposed process has to do with privacy issues. Section 1A requires the current tenant who wants to sell their home, to apply to the Landlord for tenancy on behalf of the prospective new owner of the home. Section 1B says that the Landlord cannot "arbitrarily or unreasonably" withhold its consent. Section 1D requires the Landlord to respond within 10 days of the request. We are in agreement with these two steps, however, we have a concern with the process if the Landlord is refusing consent as a result of a credit and/or criminal reference check. The Privacy Act prevents the Landlord from making the current tenant aware that the prospective buyer has bad credit or a criminal record. This scenario would put the Landlord in the position of having to give written notice to the current tenant, as per 1D, that the buyer of their home is not approved as a tenant, but the Landlord will not be able to provide a reason. The Landlord would also not be able to share this information with a Tenancy Officer and this would be a problem, because it is certain that if a Landlord refused to grant consent without a reason, as would happen due to Privacy concerns, the tenant would take the matter to the tenancy board.

We are not sure if this can simply be dealt with in the wording of the regulations and the form to be produced by the Director of Tenancy. If dealing with it on the form is enough, then the proposed solution is simply to add the clause "I/we hereby authorize the release of information obtained by the landlord in relation to the consent of my/our tenancy to _____ (tenants)" and have same signed by the prospective tenant(s).

We appreciate having had the opportunity to participate in this process and look forward to working with the Director and his staff, as the regulations to support Clause 1(b) are developed (as per Clause 4). I would like to reiterate that the Privacy Act must be considered during this process, otherwise it may create unnecessary issues in the future that will require further changes. As for the new process for consent to allow homes to stay within the community, the MHAAC supports the comments made by Minister MacDonell to the House during the second reading of this Bill. Specifically, that "landlords will be able to request that sellers make upgrades to their manufactured homes only when required by municipal bylaws or community guidelines attached to the seller's lease..." This should bring clarity to both the tenant and the landlord in these situations.

Once again, thank you for your time and the opportunity to speak on this matter.

FOR NEXT MEETING

Bill #110
Residential Tenancies Act (amended)

CHANGES RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE
BY THE MINISTER OF SERVICE NOVA SCOTIA
AND MUNICIPAL RELATIONS

PAGE 2, subclause 1, proposed subsection (6D),

(a) proposed clause (e) - delete and substitute the following:

(e) an order requiring the tenant to pay to the landlord any rent owing for the month in which the notice to quit is given to the tenant and any rent in arrears for months previous to that month;

(b) proposed clause (f) - delete and substitute the following:

(f) an order permitting the landlord to retain the tenant's security deposit and interest to be applied against any rent found to be owing for the month in which the notice to quit is given to the tenant and against any rent in arrears for months previous to that month.

PAGE 2, subclause (2), proposed subsection (6E),

(a) proposed clause (b) - delete and substitute the following:

(b) the tenant pay to the landlord all rent owing for the month in which the notice to quit was given and pay any rent in arrears for months previous to that month;

(b) proposed clause (c) - delete and substitute the following:

(c) that the landlord retain the tenant's security deposit and interest to be applied against any rent found to be owing for the month in which the notice to quit was given and for any rent found to be owing and in arrears for months previous to that month.

Investment Property Owners Association of Nova Scotia
5121 Sackville Street, Suite 603
Halifax Nova Scotia, B3J 1K1

November 27, 2011

Gordon Hebb, Q.C.
Legislative Counsel
Ninth Floor
Joseph Howe Building
1690 Hollis Street ,Halifax, Nova Scotia
P. O. Box 1116
Halifax, Nova Scotia
B3J 2X1

Re : Bill 110 – An Act to Amend Chapter 401 of the Revised Statutes, 1989, the Residential Tenancies Act

Dear Mr. Hebb :

I am writing to make an important submission to the Law Amendments Committee to correct what we believe to be a drafting error in a piece of legislation that is before the Committee. I make the comment about this in earnest, as we believe that there is no other logical explanation for a small nuance in the wording of the bill as presented in the bill's first and second readings.

The Investment Property Owners Association of Nova Scotia ("IPOANS") is the industry association that represents the residential rental industry in Nova Scotia. Over the past several years, IPOANS has worked tirelessly with the Director of Residential Tenancies – Department of Service Nova Scotia and Municipal Relations ("SNSMR") to identify issues that should be addressed in the Residential Tenancies Act to ensure that the residential rental housing market operates efficiently and continues to provide affordable, high quality housing solutions for Nova Scotians, while maintaining a reasonable balance between the interests of residential rental property owners ("Landlords" under the Act) and their customers or residents ("Tenants" under the Act).

SNSMR has conducted extensive consultations with IPOANS involvement over the last several years, and IPOANS has presented a large number of problematic areas to SNSMR for consideration with an overall interest in improving the operation of the residential rental market. During this consultation, SNSMR has identified and agreed that there is a problematic area in Nova Scotia's former Residential Tenancies Act ("RTA") in the requirement for a prolonged amount of time between a Tenant failing to pay rent when due and a Landlord being able to provide a formal "Notice to Quit" to the Tenant. In addition, the former Act created a system that required SNSMR to hold hearings to deal with straight-forward undisputed rental arrears situations. SNSMR has become taxed to the point where – in many cases - it takes six to eight weeks to hold hearings on these undisputed rental arrears situations – which causes the system to start to break down with an overload of hearings.

In late 2010, amendments were made to the RTA to deal with a number of shortcomings in the Act, including the introduction of a new process to efficiently and effectively deal with uncontested rental arrears situations.

The process which was agreed between IPOANS and SNSMR as a reasonable, balanced approach to reduce the system's problems and overload in trying to deal with these simple rental arrears situations was :

a) The Landlord would be able to provide a Notice to Quit to the Tenant after the rental payment is 15 days late;

and equally important :

b) Simple (i.e. uncontested) rental arrears would be dealt with in an application process that would not require a formal hearing.

There was clear agreement during consultations between IPOANS and SNSMR that this uncontested rental arrears application process would deal with current month arrears ("the month in which the Notice to Quit is given", and previous period rental arrears.

Our understanding from consultations with SNSMR during 2011 is that SNSMR was compelled to fine-tune the exact wording that was introduced in the 2010 RTA changes in order to ensure that the process was defined in the legislation in an unambiguous manner. During the 2011 consultations between IPOANS and SNSMR, the requirement for the "previous period rental arrears" to be included in the simplified application process was dissected and discussed in detail, and it was agreed without dispute or hesitation by IPOANS and the Director of Residential Tenancies as an important component of the new process.

We have reviewed the proposed Bill 110 and are horrified to see that the proposed wording does not clarify the process as required – and it actually makes the situation worse than that that exists today.

The proposed new RTA as modified by Bill 110 would envision a procedure that is simple and straight-forward to deal with the rental amounts outstanding "for the month in which the notice is given", but it is silent in how prior period rental arrears may be dealt with. The default understanding would be that uncontested rental arrears from prior periods could not be dealt with in the simple application process. This will effectively double the number of applications for uncontested rental arrears that SNSMR will have to deal with. This will crush the department – which is overloaded in its major offices already ...

Landlords often do not provide a Notice to Quit to Tenants at the earliest opportunity that they are permitted to under legislation. Landlords very often give Tenants extra time to make payment arrangements, or take a "wait and see" approach with Tenants. Requiring Tenants to vacate rental premises is not something that Landlords typically desire and Landlords often try to avoid these situations by working with Tenants during times of financial hardship. However, unfortunately, in many of these situations the Tenant is not able to get back on track and caught up on their rental arrears and the Landlord is forced to act to mitigate their damages.

The ability for Landlords to be able to deal with rental arrears "for the month in which the notice is given" and prior rental arrears provides landlords with the flexibility to use discretion and judgment in dealing with situations based on the details that exist for the particular circumstance. To require Landlords and SNSMR to participate in two different proceedings –

1B. The consent of the landlord required by Statutory Condition 1A. will not arbitrarily or unreasonably be withheld.

1C. The landlord shall not charge a commission or fee for granting consent required by Statutory Condition 1A., other than the landlord's reasonable expenses actually incurred in respect to the grant of consent.

1D. The landlord shall in writing, within ten days of receipt of the request made pursuant to Statutory Condition 1A., consent to the request or set out the reasons why consent is being withheld, failing which the landlord is deemed to have given consent to the request.

2 (1) Subsection 10(6D) of Chapter 401 is repealed and the following subsection substituted:

(6D) Where a notice to quit has been given by the landlord under subsection (6) and

(a) the notice to quit has not been voided under clause (6A)(a) by the tenant paying to the landlord the rent that is in arrears within fifteen days after receiving the notice to quit; and any prior period rental arrears

(b) the tenant has not disputed the notice by making an application to the Director under clause (6A)(b); and

(c) the fifteen day time period for making the application under subsection (6A) has expired,

the landlord may apply to the Director under Section 13 for any one or more of the following:

(d) an order to vacate the residential premises;

(e) an order requiring the tenant to pay to the landlord any rent owing for the month in which the notice to quit is given to the tenant; and any prior period rental arrears

(f) an order permitting the landlord to retain the tenant's security deposit to be applied against any rent found to be owing for the month in which notice to quit is given to the tenant. and any prior period rental arrears

(2) Subsection 10(6E) of Chapter 401 is repealed and the following subsection substituted:

(6E) Notwithstanding Sections 16 and 17, in the circumstances described in subsection (6D), the Director may, without investigating and endeavouring to mediate a settlement and without holding a hearing, order any one or more of the following:

(a) that the tenant vacate the premises;

(b) that the tenant pay to the landlord the rent owing for the month in which the notice to quit was given; and any prior period rental arrears

(c) that the landlord retain the tenant's security deposit to be applied against any rent found to be owing for the month in which notice to quit is given to the tenant. and any prior period rental arrears

3 Clause 11(2)(d) of Chapter 401, as enacted by Chapter 40 of the Acts of 1993 and amended by Chapter 72 of the Acts of 2010, is further amended by adding "space" immediately after "home" in the first line.

4 Subsection 26(1) of Chapter 401, as amended by Chapter 31 of the Acts of 1992, Chapter 40 of the Acts of 1993, Chapter 7 of the Acts of 1997, Chapter 10 of the Acts of 2002 and Chapter 72 of the Acts of 2010, is further amended by adding immediately after clause (ce) the following clauses:

(cea) requiring the tenant to provide information concerning the tenancy of the manufactured home space upon which the manufactured home is located to the person who wishes to acquire title or possession of the manufactured home for the purpose of Statutory Condition 1A. in subsection 9(2);

the simplified application PLUS a traditional hearing (with a six to eight ~~month~~ WEEK wait time) is hugely problematic and appears to be the result of a simple drafting error by the writer of the current legislation. There is no other logical, rationale explanation for the outcome that will ensue if Bill 110 is passed in its current form.

We have discussed the exact specifics of the implications of the current wording with the Director of Residential Tenancies and there is clear agreement between IPOANS and the Director on three things :

1. The proposed wording is not as agreed between IPOANS and the Director;

2. The proposed wording will severely restrict a Landlord's ability and willingness to attempt to give Tenants extra time to "work out" rental arrears situations; and

3. The proposed wording will crush the existing system with a deluge of duplicate applications – one "for the month in which the notice is given"; and a separate formal hearing for prior period rental arrears.

The solution to this major problem is very simple – to add the phrase "and any prior period rental arrears" to the end of Subsections 10 [6D(a), 6D(e), 6D(f)] , and Subsection 10 [6E(b) and 6E(c)]. As I find the clause numbering to be confusing, and to remove any ambiguity, I have attached a marked up copy of the proposed Bill 110 with the additions noted.

We look forward to making formal presentations to the Law Amendments Committee on this matter and look forward to seeing this apparent error being corrected before the bill moves forward so that the bill properly and fully reflects the intent and agreement between IPOANS and the Director of SNSMR which was formed and finalized during years of consultations.

Yours truly,

Peter Polley

IPOANS Legislative Chair

cc: Law Amendments Committee
Dean Johnson, Director Residential Tenancies, SNSMR via email.

Dalhousie Legal Aid Service
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December 2, 2011

Law Amendments Committee
Legislative Counsel Office

VIA EMAIL

Dear Members of the Law Amendments Committee,

Re: Bill 110 - Residential Tenancies Act

Bill 110 amends the previous Bill 119 dealing with the Residential Tenancies Act. Bill 119 was passed but has not been proclaimed, and the changes effected in that legislation have not been felt.

Our submissions relate to two provisions of Bill 110:

1. Section 2

   This Section amends sections 10(6)(D-E) of Bill 119, in particular by adding s. 10(6)(D)(e) and (f) and s. 10(6)(E)(b) and (c).
   We object to these amendments, and specifically the expansion of the summary process beyond vacant possession to include landlord's claims for rental arrears.

2. Section 1(b)

   This Section restates and clarifies Bill 118, which provides a process for a tenant to seek consent of the landlord to a new tenancy of the mobile home space on behalf of a prospective new owner/occupant of the mobile home.
   We support this amendment but suggest it does not go far enough.

Background

Bill 119 created a truncated, shortened process for landlords to obtain **vacant possession** of the residential premises (that process is not yet in effect as the Bill has not been proclaimed).

Bill 110 expands the scope of this process to include **rental arrears.**

Truncated Process

The process is truncated because it allows the Director to issue an order for vacant possession without a hearing based on a Notice to Quit issued by the Landlord, without providing the tenant

with a notice of hearing and opportunity to be heard. As such it will often be one-sided, where tenants are unaware or unable to avail themselves of their right to a hearing.
The rationale for removing the requirement for a hearing, in order to expedite the process of removing tenants was justified by landlords on the basis that they required speedy access to their property and an opportunity to re-rent quickly. The same rationale does not apply to rental arrears.

Expansion of landlord's powers

The landlords have argued that this Committee should go further than the current provision that provides for the Director to make an order for vacant possession and amend Bill 110 from the current provision, for the rent for the month in which the Notice to Quit is served, and to **expand** the rental arrears provisions contained in Bill 110 to include previous months rent (see s. 10(6)(D) (e) and (f) and s. 10(6)(E) (b) and (c)).

An Order for rental arrears has no place in this truncated process. While we opposed the truncated, shortened process for eviction contained in Bill 119, there is clearly no rationale to go further than an Order for vacant possession.

The shortcut provided to landlords in the form of shortened notice periods for rental arrears are unwarranted and unjust, because the same urgency does not exist, and it deprives the tenant of vital procedural protections.

Unpaid rent is often linked/intertwined with other issues like failure to repair or withdrawal of services as well as return of security deposit. There is no reason that rental arrears should not be dealt with as other monetary issues such as:

- Failure to return a security deposit
- Failure to make repairs
- Breach of minimum standards by-laws

These issues should be dealt with using the regular process including a notice of hearing, and opportunity to be heard as they are under Bill 119.

The asymmetrical and unbalanced eviction procedures which allow landlords to obtain orders without due process should not be extended to rental arrears.

Tenants do not have access to summary procedures when landlord's fail to comply with their obligations for instance for:

- Return of security deposit
- Failure to make repairs
- Breach of minimum standards by-laws

In light of the inclusion of rental arrears, there is a heightened concern that there will be unfairness both procedurally and substantively. To guard against this one-sided process, we recommend that the regulations passed as a result of Bills 110 and 119 require the landlords to include in the Notice to Quit on the same form an Application form for tenant's to contest the eviction and/or the rental arrears, and that there be no fee for such an Application.

More needs to be done to protect the rights of tenants in Nova Scotia, and to keep up with legislative reforms undertaken in other provinces. Rental abatement for breach of the duty to repair and maintain habitability, payment of rent and security deposits to the Director in trust, and stronger enforcement mechanisms for tenants who are locked out, or find themselves in premises that do not meet minimum standards by-laws are required. Attached is the brief filed by TALONS in respect of previous RTA amendments that address these concerns in more detail.

Yours Truly,

Claire McNeil
Staff Lawyer

Cole Webber
Community Legal Worker

CARRIED

Bill #110
Residential Tenancies Act (amended)

CHANGES RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE
BY THE MINISTER OF SERVICE NOVA SCOTIA
AND MUNICIPAL RELATIONS

PAGE 2, subclause 1, proposed subsection (6D),

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(e) an order requiring the tenant to pay to the landlord any rent owing for the month in which the notice to quit is given to the tenant and any rent in arrears for months previous to that month;

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(f) an order permitting the landlord to retain the tenant's security deposit and interest to be applied against any rent found to be owing for the month in which the notice to quit is given to the tenant and against any rent in arrears for months previous to that month.

PAGE 2, subclause (2), proposed subsection (6E),

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(b) the tenant pay to the landlord all rent owing for the month in which the notice to quit was given and pay any rent in arrears for months previous to that month;

(b) proposed clause (c) - delete and substitute the following:

(c) that the landlord retain the tenant's security deposit and interest to be applied against any rent found to be owing for the month in which the notice to quit was given and for any rent found to be owing and in arrears for months previous to that month.

TENANT ALLIANCE OF NOVA SCOTIA

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December 2, 2010

Law Amendments Committee
Nova Scotia House of Assembly

To the Members of the Law Amendments Committee:

Re: Bill 119 – *Residential Tenancies Act*
Submissions of the Tenant Alliance of Nova Scotia (TALONS)

TALONS fully supports the Legislature in granting immediáte security of tenure to Nova Scotia renters. Immediate security of tenure means tenants will not be evicted from their homes without valid reasons. This is a progressive step forward that will bring the *Nova Scotia's Residential Tenancies Act* ("the Act") in line with tenancy legislation across Canada.

We are concerned that some aspects of Bill 119 ("the Bill") are unfair to tenants in Nova Scotia, particularly those which amend the Notice to Quit provisions. We also think the Legislature can do more to protect tenants with regard to security deposits and repair enforcement.

This Brief addresses the following issues:

1. **Notice to Quit - Rental Arrears**
2. **Notice to Quit - Breach of Statutory Conditions**
3. **Security Deposits**
4. **Repairs Enforcement**

1. Notice to Quit - Rental Arrears

Section 5 (6A) of the Bill proposes to amend section 10 of the *Act* to allow landlords to give Notice to Quit to a tenant fifteen days in arrears of their rent. Once Notice to Quit is provided by the landlord using the prescribed form, the tenant has fifteen days to take one of two actions to have the Notice to Quit set aside. The tenant may:

- pay the arrears in full, or;
- file an Application to the Director disputing the Notice to Quit.

If the tenant doesn't make application, the landlord may apply to the Director for an Order of Vacant Possession, and the Director may "without investigating and endeavouring to mediate a settlement and without holding a hearing, order the tenant to vacate the residential premises."[1]

Under the current legislation, landlords must apply to the Director for an Order of Vacant Possession, and a Hearing is held to which the landlord must provide notice to the tenant.

Our concern is that this amendment to the legislation will result in Vacant Possession Orders being rubber stamped by Residential Tenancies Division without providing tenants adequate

[1] Bill No. 119, s. 5 (9) (7B)

opportunity to contest the Notice to Quit. The landlord may apply for an Order, and if the tenant doesn't respond, automatically get what he seeks.

TALONS position is that there should be a Residential Tenancies Hearing held before the Director makes any Order so that the tenant has an opportunity to respond to the claim.

It should be noted that British Colombia is the only Canadian jurisdiction which follows the procedure proposed by the Bill.

2. Notice to Quit - Breach of Statutory Conditions

Section 5(9) of the Bill proposes providing the landlord with powers to provide Notice to Quit to a tenant immediately, if the tenant breaches statutory conditions (3), (4) or (5), under section 9 of the *Act*. We are mostly concerned about the wordings of subsection 3 and 4. These sections are vague, and do not give either the tenants or landlord a clear idea of what constitutes a violation.

These conditions are as follows:

> 3. **Good Behaviour** - A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.
>
> 4. **Obligation of the Tenant** - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by willful or negligent acts of the tenant or of any person whom the tenant permits on the premises.

Good Behaviour

With regards to good behaviour under s. 9(3), other jurisdictions have employed the following terms:

Ontario

Termination for cause, reasonable enjoyment

64. (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

Manitoba

Duty not to disturb others

73 A tenant shall not unreasonably disturb, or allow another person the tenant permits in the residential complex to unreasonably disturb,

(a) the enjoyment for all usual purposes of the residential complex or any other rental unit by the landlord, another tenant or occupant of the residential complex, or a person permitted in the residential complex by any of those persons;

(b) the enjoyment of adjacent property for all usual purposes by occupants of that property.

British Columbia

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
(d) the tenant or a person permitted on the residential property by the tenant has
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
(iii) put the landlord's property at significant risk;

All three *RTA*s above qualify the terms interfere/disturb. The *RTA* of Ontario uses the word 'substantially', the *RTA* of Manitoba uses the term 'unreasonably', and the *RTA* of British Columbia employs the terms 'significantly' and 'unreasonably'.

Nova Scotia's *RTA* does not specify the degree of interference necessary before a landlord can evict a tenant. As the Bill proposes to allow landlords to evict tenants immediately if they fail to comply with s. 9(3), this section should be modified to include a term which quantifies the level of interference. This will ensure that landlords do not have the ability to evict tenants for minor levels of interference.

Obligation of the Tenant

With regards to the s. 9(4), obligations of the tenant with regards to cleanliness and damage, other jurisdictions have used the following wording:

Ontario

Termination for cause, damage

62. (1) A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit, or a person whom the tenant permits in the residential complex willfully or negligently causes undue damage to the rental unit or the residential complex.

Manitoba

Obligation to take care and repair damage

72(1) A tenant shall take reasonable care, and ensure that any person he or she permits in the residential complex takes reasonable care, not to damage willfully, negligently or by omission the rental unit or residential complex, including services and facilities, and shall, subject to subsection (2), repair any damage in a good and workmanlike manner, or pay

compensation to the landlord, within a reasonable time after receiving a written notice to do so by the landlord.

Exception for reasonable wear and tear

72(2) A tenant is not liable for reasonable wear and tear to the rental unit or residential complex, including services and facilities provided by the landlord.

British Columbia

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

> (f) the tenant, or a person permitted on the residential property by the tenant, has caused extraordinary damage to a rental unit or residential property;
> (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

The *RTA*s of Manitoba and British Columbia only allow the landlord to evict a tenant if they have failed to repair damages within a reasonable time. The *RTA* of Manitoba also provides an exception to the section by stating that a tenant is not liable for damage due to normal wear and tear. The *RTA* of Ontario qualifies the terms of the section by using the words 'undue damage' while the *RTA* of British Columbia uses the term 'extraordinary damage'.

If the landlords in Nova Scotia are to be given the power to evict the tenant immediately for damage, the *Act* should characterize the damage as undue or extraordinary damage, and specify that it does not apply to normal wear and tear. Moreover, the clause should provide a reasonable amount of time for the tenants to make repairs to any such damages.

It should be noted that s. 10 (7A) of the Act already provides that;

(7A) Notwithstanding subsections (1), (6) and (7), where a tenant poses a risk to the safety or security of the landlord or other tenants in the same building on account of the contravention or breach by that tenant of any enactment, Notice of Termination may be given to the tenant effective not earlier than five days, or such shorter period as the Director may direct, after the Notice is given.

In addition to these concerns, we would request that the Legislature include a provision that would allow the tenant to provide Notice to Quit where the landlord is in violation of the statutory conditions under s. 9. In the case of *MacDougall v MacDonald*, the Supreme Court of Nova Scotia ruled that when the landlord breaches a statutory condition, the tenant is entitled to end the lease and move out immediately.[2]

3. Security Deposits

The Bill does not amend s. 12 of the *Act* respecting security deposits.

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[2] *MacDougall v MacDonald*, 109 NSR 2d 188

Most tenants in Nova Scotia are required to pay a security deposit at the beginning of their tenancy agreements. Most landlords require that tenants pay a security deposit in the amount of half the cost of one month's rent, a significant sum. Landlords are required to return tenants' security deposit at the end of the tenancy when the tenant moves out. Unfortunately, at the expense of tenants, many landlords do return security deposits to their tenants.

Security deposits are intended to cover a landlord's costs at the end of a tenancy agreement for any damage caused by a tenant to their property, outside of the regular "wear and tear" of day-to-day living. As it is named in the *RTA*, a Security Deposit is meant as a *deposit*, and not as an application fee. Under the *RTA*, landlords are prohibited from charging application fees to tenants. The current *RTA* requires that when landlords wish to retain a portion, or the entire sum of a tenant's security deposit, the landlord must make an application to the Director of Residential Tenancies, and justify the amount retained to a Residential Tenancies Officer.

The reality is that some landlords fail to return tenants' security deposits, and do not apply to the Director, putting the onus on their tenants to apply to the Director in order to have their deposit returned. Residential Tenancies has provided us with the statistic that between January 2005 and January 2009, there were 607 Applications to Director in Nova Scotia regarding retention or return of security deposits[3]. Unfortunately, Residential Tenancies' reporting system does not distinguish between applications made by landlords, and applications by tenants. In our experience, many tenants, unfamiliar with the Residential Tenancies process and without time or resources to pursue a claim, do not apply to the Director, and simply lose their deposit.

The purpose of the security deposit provision of the *RTA* is to ensure that landlords' costs are covered when tenants damage their property. Saddling tenants with the unfair burden of initiating an administrative process in order to get back what is their money was not the intent of the Legislature.

In New Brunswick, security deposits must be paid in trust by tenants to the Office of the Rentalsman. Where landlords wish to retain any portion of a tenants' security deposit, the landlord must file the prescribed forms with the Rentalsman, who acts as an adjudicator on the issue. This system ensures that tenants are not burdened by having to initiate an administrative process to have their security deposits returned[4].

We recommend that the Legislature amend the *RTA* to require that when landlords wish to charge their tenants' security deposits, the deposits be paid in trust to Residential Tenancies. The deposits would then be returned to the tenant at the end of their tenancy agreement. The interest on deposits could pay for any added administration costs.

Landlords who wish to retain a portion, or the entire sum of their tenant's security deposit should be required to apply to the Director, and to justify retaining the deposit at a Hearing before a Residential Tenancies Officer.

It should be noted that our recommendation regarding security deposits is consistent with the recommendation of the Commission of Inquiry on Rents in 1983[5].

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3 Report on Nova Scotia Residential Tenancies Statistics January 1, 2005 to January 1, 2009

4 New Brunswick Residential Tenancies Act, s. 8, "Security Deposit Fund"

5 Commission of Inquiry on Rents, p.98.

4. Repairs Enforcement

The Bill does not amend the *Act* with respect to the enforcement of repairs for tenants. It should.

Across Nova Scotia, many tenants live in housing that fails to meet basic health, safety, and general habitability standards. More than one thousand Applications to Director were made by tenants from 2005 to 2009, seeking repairs by their landlords[6]. The Statutory Conditions in the *RTA* provide only minimal guidelines for reasonable housing standards. A much larger problem, however, is that the *Residential Tenancies Act* does not provide for adequate enforcement of the standards that it does set.

The United Nations International Convention on Economic, Social, and Cultural Rights (ICESCR), of which Canada is a signatory, states that everyone has the right to adequate and affordable housing.

The current enforcement mechanisms and remedies for breaches of the *RTA* place an undue burden on tenants. The only remedy currently allowed a tenant is to file a complaint with the Residential Tenancies Division. This involves paying a fee, as well as having the confidence and ability to navigate the bureaucratic process. This process tends to disadvantage low-income tenants. If a tenant makes a successful application, and a Residential Tenancies Officer issues an Order requiring that their landlord make needed repairs, there is the additional problem that there is currently no follow-up on Orders made by Residential Tenancies Officers.

Thus, if a landlord fails to comply with an Order, the tenant must file a second complaint, again with no guarantee that their problem will be resolved. This complaint-driven enforcement model is ineffective for those tenants who need the most protection, and, in combination with other weaknesses of the *RTA* such as the absence of rent control, leaves tenants vulnerable to retaliation for attempting to enforce their rights.

In Manitoba, the Residential Tenancies division has a field of Residential Tenancies Officers who will inspect units where tenants have complained of needing repairs, and their landlords failing to make those repairs. The Officers can then issue an Order to the landlord to make repairs. If the landlord does not comply within the given time-frame, the Officer can then order that the tenant's rent be redirected to the Residential Tenancies Division. The Division has the discretion to use the redirected money to pay contractors to make the repairs[7].

We propose a similar enforcement process. We recommend that the *RTA* be amended to include a mechanism to ensure that Orders made by Residential Tenancies Officers are followed. As well, other remedies need to be made available that put power in the hands of tenants, thus providing more balance between rights of tenants and of landlords. Specifically, the framework of Implied Warranty of Habitability provides for the tenant remedies of repair and deduct (where minor repairs are needed to bring a dwelling up to the habitability standard) and rent withholding (where major repairs are needed).

While requiring a follow-up inspection, or Hearing, to ensure that an Order made by a Residential Tenancies Officer has been followed will increase the time required to resolve each individual complaint brought before the Residential Tenancies Division, our experience has been that many instances where a tenant cannot resolve a maintenance problem with a landlord without recourse to the Residential Tenancies Division involve landlords who are repeat

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[6] Report on Nova Scotia Residential Tenancies Statistics January 1, 2005 to January 1, 2009

[7] Manitoba Residential Tenancies Act, s.154 "Re-direction and set-off of rent"

offenders. We expect that following up on Orders made will thus decrease the number of complaints filed by tenants, as these landlords face stronger consequences for their failure to comply with Orders, and as a result, inadequate housing is finally brought up to habitable standards. Allowing the tenant remedies of repair and deduct, and rent withholding, will also promote settlement of disputes over repairs between tenants and landlords without recourse to the Residential Tenancies Division.

Along with having the option of rent withholding when major repairs are needed to bring a dwelling up to habitable standards, we propose that, as in Manitoba, Residential Tenancies Officers be given greater power to disburse rent paid in trust to the Residential Tenancies Division to local municipalities, and to work together with municipal offices responsible for enforcing local housing by-laws. This would provide greater flexibility to accommodate the different needs of rural and urban communities.

It should be noted that the Commission of Inquiry on Rents recommended that where a landlord has failed to make promised or ordered repairs, that they be disallowed or limited in raising a tenant's rent.[8] Also, in the case of *MacDougall v MacDonald*, the Supreme Court of Nova Scotia ruled that when the landlord breaches a statutory condition, the tenant is entitled to end the lease and move out immediately, and receive a refund for the balance of that month's rent[9].

Respectfully submitted,

Cole Webber.

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8 Commission of Inquiry on Rents, p. 100

9 *MacDougall v MacDonald, Supra* note 2