Residential Tenancies Act Consultation

What We Heard

Service NL has completed a comprehensive consultation process of the *Residential Tenancies Act,* which regulates residential landlord/tenant relations. A consultation document was released on September 24, 2012 and consultations concluded on November 7, 2012. The general public was invited to take part in the consultation process either in person or via electronic mail or regular mail.

Public consultations were conducted at the following dates and locations:

Monday, October 1, 2012	-	Marystown Hotel, Marystown
Tuesday, October 2, 2012	-	St. Jude Hotel, Clarenville
Wednesday, October 3, 2012	-	Albatross Hotel, Gander
Thursday, October 4, 2012	-	Mount Peyton Hotel, Grand Falls-Windsor
Tuesday, October 9, 2012	-	Glynmill Inn, Corner Brook
Wednesday, October 10, 2012	-	Holiday Inn, Stephenville
Monday, October 29, 2012	-	Two Seasons Inn, Labrador City
Tuesday, October 30, 2012	-	Hotel North 2, Happy Valley-Goose Bay
Thursday, November 1, 2012	-	Sheraton Hotel, St. John's
Thursday, November 1, 2012	-	Capital Hotel, St. John's

Service NL would like to thank all those who participated in the consultation process. The input of all parties in this consultation was extremely valuable and appreciated.

The following is a breakdown of comments and suggestions that were presented during the consultation process.

Definitions (Section 2)

We received several comments from those affected by the *Act* to the effect that they would like to see an amendment to the definition of "tenant" in Section 2(l). In the current legislation, a "tenant" includes "that person's heir, assign, and personal representative." The response we have received indicates that we ought to remove those words in the legislation.

Applications of the Act (Section 3)

The current legislation outlines several types of living accommodations which fall outside of the jurisdiction of this *Act*—these include hotels, hospitals and vacation homes, to name a few. We received overwhelming support during the consultation process that boarding houses (or, bed-sitters), as well as living accommodations which are provided by religious or charitable organizations, which are currently exempt, ought to be governed by the *Act*. There was also some support for the view that nursing homes should lose their exempt status as well.

Provision of Rental Agreement and Information (Section 5)

We heard concerns about the correct interpretation of subsections (3) and (4). The *Act*, as it currently stands, states that a tenant may withhold rent from a landlord if that landlord does not provide the tenant with a "duplicate copy of the executed rental agreement" (a requirement of subsection (2)). However, we heard that there is some confusion about rent payments once the landlord does provide a copy of the agreement to the tenant. Does the tenant have to pay the back-rent that he/she had been withholding? Or does the tenant only need to start paying rent from the date the landlord provides a copy of the agreement? The feedback we received indicates that the *Act*, as it currently stands, is not clear on this issue, and should be re-written to rectify this confusion.

Statutory Conditions (Section 8)

Section 8(1) of the *Act* outlines the statutory conditions landlords and tenants are bound to once they enter into a rental agreement. Statutory condition three states that a tenant may terminate a rental agreement by subletting or assigning that unit to a new tenant, "subject to the consent of the landlord." We heard from some that the landlord's consent ought to be in writing and that this requirement should be reflected in the *Act*. We also heard that there were concerns about the relationship between landlords and any sub-lessors put in place by the tenant as the *Act* does not regard this new relationship as a landlord-tenant relationship.

Future Rent (Section 10)

The current legislation does not permit a landlord to collect future rent, and this includes a prohibition from collecting rent for the last month of a rental agreement. We heard from some landlords that they ought to be permitted to collect the last month's rent once a tenancy starts. Subsection (2) does allow that a landlord may collect post-dated cheques and there were suggestions that this section could be re-written to reflect the fact that rent can also be paid electronically (through INTERAC e-transfers, pre-debit authorizations, etc.)

Security Deposit (Section 12)

There was a general consensus among landlords that they should be permitted to collect a security deposit larger than ¾ of the monthly rent allowed under the current legislation. The general consensus appeared to be that landlords should be permitted to collect a full-month's rent as a deposit. Many tenants indicated that the amount of time they must wait to have the security deposit returned should be shortened from 15 days to 10 days. There were also suggestions that tenants who had not received their refund of the security deposit from the landlord after the required wait-period, should be able to apply to the Director for an order to have the deposit returned without conducting a hearing. As it currently stands, tenants must apply to the Director to have a hearing to decide the matter. Some of those we heard from pointed out that in New Brunswick security deposits are not paid to the landlord but a "rentalsman". It was suggested that this process be adopted in this province as well.

Fee for Failure to Pay Rent (Section 13)

According to the *Act*, as it currently stands, the fees charged for failure to pay rent and fees charged for cheques returned for the "reason of not sufficient funds" are set by the Minister of Service NL, but are not explicitly stated in the *Act*. The Minister has set the fees for failure to pay rent at $5.00 for the first day and $2.00 for each day thereafter to a maximum of $75.00 per late period. The Minister has set the fees for cheques returned for the "reason of not sufficient funds" to a maximum of $25.00. Some of those we heard from indicated that these fees ought to be stated in the *Act*. Some landlords also pointed out that some financial institutions charge fees which are greater than that which can be collected under current legislation.

Rental Increase (Section 14)

Throughout the consultation, we heard from tenants who indicated that rents were prohibitively high and that some rental increases were so great that they were forced to vacate. There was a concern that unregulated rent increases were particularly disadvantageous to those from lower socio-economic backgrounds. We heard suggestions that rental increases ought to be capped or based on a pre-approved allowable percentage (anywhere from two per cent to 10 per cent per year) which could be written into the new *Act*. There was also a suggestion that landlords ought to be required to apply to the Director for a hearing to have any rental increases approved.

Notices of Termination (General—Sections 17 to 25)

The *Act* currently allows tenants and landlords to terminate a tenancy by serving a written notification on the other party. Section 17 of the *Act* outlines the procedures landlords and tenants must follow if they wish to terminate a tenancy without cause, while sections 18 through 23 deal with terminations for cause (e.g., failure to pay rent, interference with peaceful enjoyment, etc.). In each of these sections, the *Act* provides guidance with respect to the content and form of these notices. Termination notices must be in writing,

signed by the party giving the notice, indicate the address of the rental unit and state the effective date of termination. We received suggestions about additional content which ought to be included in these notices. Some of those we heard from stated that there should be a requirement that these notices specify the section of the *Act* under which the notice is issued, or at least state the reason why the party is issuing the notice. It was also suggested that it ought to be a requirement that these notices identify the individual (i.e., the tenant, landlord or property manager) to whom the notice is issued.

Notice of Termination of Rental Agreement (Section 17)

The *Act* currently allows landlords and tenants to terminate tenancies, without cause, so long as they provide the proper notice to the other party. In month-to-month tenancies, a tenant is only required to give a one month notice of termination and a landlord is required to give a three month notice. In fixed-term rental agreements, a tenant is required to give notice two months before the end of the term and a landlord is required to give a notice three months before the end of the term. During the consultation, we heard that the notice periods for landlords and tenants ought to be the same. For example, some of those we heard from suggested that landlords should only have to provide a one month notice in a month-to-month tenancy. It was also suggested that where a landlord has provided a tenant with a three month termination notice, the tenant should be permitted to issue a notice to the landlord indicating the date she/he intends to vacate within that three month period, and that the notice period in such a circumstance could be shorter than the notice periods set out in sections 17(2)(b) and 17(2)(c).

Notice Where failure to Pay Rent (Section 18)

Many landlords indicated that it was unfair that they were required by the current legislation to wait 15 days before they were permitted to issue a termination notice to tenants who have not paid their rent on time. It was suggested by some that landlords ought to be permitted to issue a termination notice immediately if rent is late; others suggested the wait time should be decreased to anywhere between three and 10 days. We also heard from some landlords that Orders of Possession issued after a hearing ought to be immediately enforceable. As it currently stands, after receiving an Order of Possession, landlords have to wait up to an additional 18 days before that Order can be enforced by a Sherriff.

Notice Where Material Breach of Rental Agreement (Section 19)

Some tenants expressed their frustration that landlords sometimes ignore their requests to have repairs carried out on their units. It was suggested that a tenant ought to be permitted to withhold rent if a landlord does not comply with a tenant's request. We also received a suggestion that the definition of "material breach" is too narrow and ought to be removed or re-written.

Notice Where Premises Uninhabitable (Section 20)

Where premises are deemed to be uninhabitable, landlords and tenants are permitted to give notice that the tenancy is immediately terminated. Some of those we heard from expressed concerns that "uninhabitable" is not clearly defined in the *Act*. It was suggested that any new legislation should specify who has the authority to determine whether a unit is uninhabitable (e.g., a municipal inspector, etc.). We also heard from some that rental units which are determined to be unsafe should also be considered uninhabitable.

Notice for Failure to Provide Peaceful Enjoyment (Sections 22/23)

We heard from some that "peaceful enjoyment" ought to be defined in the *Act* in such a way as to make reference to municipal by-laws. It was also suggested that, in extenuating circumstances, the time periods required to process an application for a hearing to deal with validity of the termination notice as well as the wait-time to have an Order of Possession certified for enforcement after a successful hearing should be dramatically reduced.

Group Eviction (Section 24)

Subsections 7, 8 and 9 of this section deal with a tenant's right of first refusal to purchase the unit they have been renting in if it has been converted to a condominium. It was suggested that these subsections ought to be removed from this section of the *Act,* as they make no reference to group evictions, and be made into their own separate section.

Termination for Invalid Purpose (Section 25)

Section 25 of the *Act* states that a landlord may not terminate a tenancy in retaliation for, or as an attempt to deter, a complaint made by a tenant to a governmental agency concerning the residential premises. It was suggested that this section include a time-limit on that restriction to one year after the tenant makes the complaint in order to allow a landlord to exercise her/his right to terminate a tenancy without cause under section 17.

Abandonment of Premises by Tenant (Section 27)

Section 27 of the *Act* outlines the steps a landlord must take after she/he suspects that her/his tenant has abandoned the rental unit. The current legislation requires that a landlord post a notice on the rental unit indicating her/his belief that the tenant has abandoned the unit and indicating her/his intention to enter after 24 hours and take possession of the unit. Currently, the *Act* states that a tenant "is considered to have abandoned residential premises where the rental agreement is not terminated in accordance with this *Act* or the agreement". Some of those we heard from indicated that this definition is vague and needs to be more specific or indicate some more definite criteria of "abandonment". We also received suggestions indicating that before a landlord can take possession of a rented unit which she/he suspects her/his tenant has

abandoned, she/he must first be required to apply to the Director for a hearing to determine if the tenancy is terminated and abandoned. In this way, the landlord would only be permitted to take possession of the unit after she/he had received an Order of Possession.

Abandoned Personal Property (Section 28)

We received feedback on the issue of personal property which has been abandoned by tenants after a tenancy had ended. The current legislation requires landlords to remove the abandoned property from the rental unit and place it in safe storage for a period not less than 60 days. A landlord is also required to provide the Director with an inventory of the abandoned items. We heard from many landlords who felt that the 60 day requirement was too long and many had suggested that 30 days would be more reasonable. It was also pointed out that landlords ought to be permitted to store the abandoned property in the rental unit itself and that the requirement that the items be removed and placed in safe storage be deleted from the *Act*.

Subsection 4 outlines the procedures a landlord must follow if she/he desires to dispose of the abandoned items where the landlord believes that those item are "of no monetary value", are "unsanitary or unsafe to store" or are "such that the sale of the property would realize an amount that is less than the cost of the removal, storage and sale." Under the current legislation, a landlord must submit an inventory of the items to the Director and the Director, in writing, may authorize the landlord to dispose of those items. Many of those we heard from stated that landlords also ought to be required to submit photographs of the abandoned items to corroborate their belief that they are of no monetary value, or are unsanitary, etc. Some others suggested that instead of the landlord being authorized (by the Director or other front-line staff) to dispose of the abandoned items after submitting an inventory of the items, the landlord should be required to file a claim and apply for a hearing to have the matter heard by an adjudicator, and that only after a successful hearing would a landlord be granted an Order of disposal.

Service of Notice (Section 30)

Section 30 of the *Act* outlines the methods by which notices may be served by landlords and tenants—these methods include, personal service, posting it in a conspicuous place on the landlord's or tenant's residence or sending it by registered mail or express post. We heard from several people that this section of the *Act* ought to be updated to reflect recent advances in digital communication. In particular, it was suggested that serving notices by fax and e-mail should be considered legitimate means of service if it could be established by the serving party that the document or notice had been delivered and received.

Appointment of Director (Section 31)

In this section, and throughout the *Act*, reference is made to a "Director of Residential Tenancies" and "Deputy Director of Residential Tenancies." It was pointed out that these titles ought to be changed in any new legislation to reflect the actual titles currently in use, *viz*.: "Director of Consumer Affairs" and "Manager of Residential Tenancies".

Application to Director (Section 35)

The current legislation allows a landlord or tenant to apply to the Director "within two years after termination of the tenancy" to determine a question arising under the *Act*, or to determine whether a provision of the *Act* or a rental agreement has been contravened. This section also outlines the method of service an applicant is required to follow in serving the other parties to the application. Several of those we heard from indicated that this time frame should be reduced to one year. We also heard that the regulations here should be loosened, as they are in section 30 (which deals with service of notices), to allow service on a party to an application by serving "a person 16 years of age or older and who apparently resides" with that party, and, in the case where a landlord is a company, by "giving it personally to a director, manager or other officer of that company or by leaving it at, or sending it to the registered office of that company by a method of traceable mail."

Order of the Director (Section 41)

Section 41 of the *Act* indicates the kinds of orders which may be issued by the Director—these include orders to pay rent, to return a security deposit, vacate a rental unit, effect repairs, etc. It was suggested that this section could be expanded to provide the Director with powers to order that a tenant be put into possession of a rental unit if it could be established that the landlord had improperly locked the tenant out. It was also suggested that all the orders issued by the Director should be certified on issuance so they could be immediately enforced. As it currently stands, before an order issued by the Director can be certified, the parties to the application must wait approximately 18 days to allow the opposing party the opportunity to file an application for reconsideration.

Reconsiderations of Order (Section 43)

The *Act*, as it currently stands, not only allows the Director to issue an Order after a party has made the appropriate application under section 35, but it also allows the Director to "confirm, vary or cancel" an Order after she/he has received an application for reconsideration of that Order. We heard from several people that the person approving the Orders for release should be different from the person reviewing the Orders after an application for reconsideration had been filed. It was also suggested that the power of reconsideration should be removed from the Director altogether and that any application for an appeal of an Order should be directly filed with the Trial Division of the Supreme Court, as outlined in section 44 of the *Act*.

Offence (Section 45)

According to section 45(1) of the current *Act*: "a person who contravenes or fails to comply with this *Act* or an order under this *Act* is guilty of an offence and is liable on summary conviction to a fine not exceeding $400, and in default of payment, to imprisonment for a term not exceeding four months." Many of those we heard from voiced their concerns about particular violations of the *Act*, including violations by some landlords who change the locks on their tenant's doors and remove their possessions without properly terminating the lease. It was suggested that some of these violations could be curtailed if the maximum fine allowed in this section was increased and we received suggestions that it be increased up to $3,000.

Miscellaneous

There were various other comments and suggested improvements received at these consultations, and many of them did not deal directly with any particular section of the *Act*, but were rather directed to the implementation of the *Act* through the Residential Tenancies Section. A common concern that we heard, for example, was that the *Act* was difficult to understand, and that a short, "layman's" version ought to be produced and made publicly accessible.

At several occasions it was suggested that there should be some sort of registry that the public could access with the names of the landlords and tenants that have been at a hearing before Residential Tenancies and with the outcomes noted.
During some of the consultations it was noted that there should be a requirement of landlords to register or be licensed with the Residential Tenancies section, in order to offer properties for rent.

Also, there were many occurrences where the public indicated that it is very difficult to make phone contact with our office and upon visiting the office it was noted that it was obvious because of what appeared to be a result of understaffing.