

17th Legislative Assembly of the Northwest Territories

Standing Committee on Social Programs

Report on the Review of
Bill 42: *An Act to Amend the
Residential Tenancies Act*

Chair: Mr. Alfred Moses

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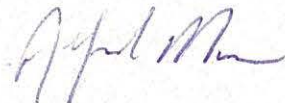
Patricia Langlois
Committee Advisor

March 10, 2015

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Programs is pleased to provide its Report on the Review of Bill 42: *An Act to Amend the Residential Tenancies Act* and commends it to the House.



Alfred Moses, MLA
Chairperson

**STANDING COMMITTEE ON
SOCIAL PROGRAMS**

**REPORT ON THE REVIEW OF
BILL 42: *AN ACT TO AMEND THE
RESIDENTIAL TENANCIES ACT***

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STANDING COMMITTEE ON SOCIAL PROGRAMS

REPORT ON THE REVIEW OF BILL 42: *AN ACT TO AMEND THE RESIDENTIAL TENANCIES ACT*

INTRODUCTION

Bill 42, *An Act to Amend the Residential Tenancies Act*, makes substantial improvements to the *Residential Tenancies Act*. The Standing Committee on Social Programs commends the Minister for presenting the Bill. It is the result of extensive consultation with stakeholders and the public.

Bill 42 will amend the *Act* in a number of ways, including: allowing decisions of the rental officer to be enforced as an order of the Supreme Court of the Northwest Territories; allowing for early termination of a tenancy where family violence has occurred; establishing that termination procedures for public housing apply to monthly tenancies; requiring landlords to provide rent receipts on request; providing a remedy for improper termination resulting from a notice of rent increase; and clarifying that a condominium corporation may make applications to the rental officer.

Bill 42 was referred to the Committee on November 6, 2014. The public hearing was held on February 2, 2015, and the clause-by-clause review was held on March 9, 2015. During the clause-by-clause review, the Committee passed two motions to amend the Bill, with the Minister's agreement. These amendments are discussed below.

The Committee heard from ten stakeholders, including the Northwest Territories Rental Officer and the Deputy Rental Officer; the Northwest Territories Information and Privacy Commissioner; Northern Properties Real Estate Investment Trust; the Salvation Army; the Northwest Territories Human Rights Commission; and a handful of private citizens and community advocates. While stakeholders indicated broad support for the Bill, they also raised concerns. The remainder of this report addresses these concerns and recommends several courses of action.

ENFORCEABILITY OF THE RENTAL OFFICER'S DECISIONS

Public consultation on proposed amendments to the *Residential Tenancies Act* took place in 2013. One prominent theme was the *Act's* failure to adequately support the enforcement of orders of the rental officer. While the *Act* allows for orders to be filed with the territorial courts, these courts lack the broader enforcement powers of the Supreme Court of the Northwest Territories. Separate legal steps are often required if a landlord or tenant fails to obey an order filed with the territorial court. This results in additional work and delays.

The Committee is pleased that Bill 42 will strengthen enforceability by allowing any decision of a rental officer, including an eviction order, to be filed with the Supreme Court of the Northwest Territories.

However, the Committee urges the Department to address the potential for increased costs by, first, creating a separate fee schedule for enforcement of rental officer orders and, second, ensuring that Supreme Court fees remain in line with existing Territorial Court fees.

TRANSITIONAL HOUSING

The *Residential Tenancies Act* does not apply to certain types of accommodations, such as transitional housing, hotels, and assisted-living units. In such arrangements, landlords and tenants do not have rights, obligations or protections under the *Act*.

The Committee found that stakeholders were divided in their views on transitional housing, including how to define it and whether to exempt it from the *Act*. The Salvation Army's written submission recommended an exemption for transitional housing. This would give transitional housing providers clear discretion to ban individuals who pose a safety risk. On the other hand, the rental officer and one community advocate argued that transitional housing tenants should be protected just like market housing tenants. The community advocate further noted that facilities such as Bailey House and YWCA shelters charge substantial rent and use formal rental agreements, yet tenants must comply with very restrictive rules.

The Committee subsequently asked the Department to clarify its position on transitional housing. The Department's view was that transitional housing should be exempt from the *Act*. It noted that subsection 6(2) effectively exempts transitional housing because it excludes shelters that house people temporarily and housing used for therapeutic or rehabilitative purposes. In other jurisdictions, the Department continued, exemptions for transitional housing are common.

The Department explained that transitional housing tenants who wish to seek redress can bring complaints to any of the following: the provider of the transitional housing; the Human Rights Commission; Members of the Legislative Assembly; the Minister responsible for funding the provider; or the Supreme Court of the Northwest Territories.

The Department also advised against including a definition for transitional housing, providing three reasons: first, it would require further consultation with stakeholders; second, it may have unintended consequences such as reducing the level of support individuals now enjoy; and third, the *Act*, in its current form, already effectively exempts transitional housing.

The Committee ultimately determined that any amendments pertaining to transitional housing were outside the principle, or scope, of the Bill. According to parliamentary convention, the Committee is bound by the decision of the House in favour of the principle of the Bill at second reading, and is unable to amend the Bill in a manner that is inconsistent or beyond the principle or scope of the Bill.

However, the Committee agreed to put forward three recommended actions pertaining to transitional housing. First, the Committee is urging the Department to provide a definition for transitional housing in the next round of statutory amendments.

Second, the Committee is urging the Department to establish a definition for transitional housing under the regulations. As an interim measure, this would assist the rental officers in the course of their duties and eliminate ambiguity for transitional housing providers and the people they house.

Third, the Committee is urging the Department to provide protection for transitional housing tenants outside of the *Residential Tenancies Act*. The Committee believes it is not fair that transitional housing tenants pay market rates, or close to market rates, and yet are not protected against unreasonable restrictions on personal freedom and arbitrary evictions.

PROVISIONS FOR VICTIMS OF DOMESTIC VIOLENCE

During the 2013 public consultation, stakeholders asked for a special provision that would allow victims of domestic violence to apply for early termination of a tenancy agreement. The Department complied. Bill 42 relies on the definition of domestic violence provided in the *Protection Against Family Violence Act* and includes new provisions allowing a victim of family violence to apply for early termination. The application must be accompanied by a valid court document.

The Information and Privacy Commissioner cautioned that there may be significant consequences if a landlord or rental officer fails to keep confidential the information pertaining to such an application. The Committee looked into the matter and determined that, in the absence of an explicit offence provision, the *Act* would merely establish a mandatory duty to keep information confidential but would not make a breach of confidentiality a punishable offence. For this reason, the Committee requested an explicit offence provision. The Minister agreed, and a motion in support of the amendment was passed at the clause-by-clause review.

Other stakeholders raised questions about these provisions. A community advocate recommended an amendment to ensure that the violent spouse can be removed from a tenancy agreement and that the victim of violence is entitled to remain in the unit. The Committee confirmed that provisions in the *Protection Against Family Violence Act* ensure that an applicant of a protection order or an emergency protection order cannot be evicted by a landlord simply because they are not a party to the tenancy agreement. The community advocate also recommended that police reports or convictions qualify as evidence for a domestic violence application, and the Committee is making a recommendation to this effect.

The Northwest Territories Human Rights Commission recommended incorporating a provision to ensure that a victim of domestic violence is not held financially responsible for damage caused by a violent spouse. The Department noted that a statutory remedy is already available through a separate application to the rental officer.

The Deputy Rental Officer recommended a change to the *Act* pertaining to the assignment of a new tenancy agreement where domestic violence has occurred. She noted that current provisions for assigning a new tenancy require the consent of the landlord, the current tenant, and the new tenant. This, she indicated, is clearly impossible where the current tenant and new tenant have been ordered by the court not to have contact. However, the Committee noted that Bill 42 explicitly allows a landlord to enter into a new tenancy arrangement with a victim of family violence.

The Deputy Rental Officer also recommended a consequential amendment to the *Protection Against Family Violence Act* to clarify the distinction between sole and joint tenancies. The Committee looked into this matter and found no need for such an amendment. The *Protection Against Family Violence Act* allows a court to grant a victim exclusive occupation of a family residence even if the victim is not a party to the rental agreement. It also prohibits a landlord from evicting the victim solely because the victim is not a party to the tenancy agreement. It further gives the victim the option of taking over the tenancy agreement. Any

landlord who wishes to proceed with an eviction must do so under the terms of the *Residential Tenancies Act* and have grounds for eviction under the *Act*.

SECURITY OF TENURE

In market housing, a landlord who wishes to end a tenancy must generally obtain the agreement of the tenant. This means the tenant has security-of-tenure. However, since 2010, a new provision in the *Act* allows a public housing landlord to end a fixed-term tenancy by giving 30 days' notice, with a reason for termination. This provision contrasts with the security-of-tenure enjoyed by market housing tenants.

The Committee noted that the matter of differential treatment for subsidized housing received considerable attention prior to the 2010 amendments. The Rental Officer and numerous organizations viewed it as discriminatory. On the other hand, the Northwest Territories Housing Corporation (NWT HC) viewed it as essential for effective delivery of social housing.

During the review of Bill 42, the Rental Officer recommended repealing the provisions which effectively deny public housing tenants security-of-tenure. The Department disagreed, stating that these provisions allow flexibility to deal with changing circumstances of those occupying public housing, and also ensure that public housing is reserved for low-income tenants.

At the request of the Committee, the Department clarified its rationale for excluding public housing tenants from security-of-tenure provisions and provided a discussion paper written by the NWT HC. The discussion paper made three main points. First, because fixed-term agreements for public housing tenants do not include security-of-tenure, the NWT HC can give high-risk tenants a second chance where such tenants would be unable to secure a market rental. The NWT HC requires a mechanism for ending the tenancy if the problem behaviour continues. If the provision were to be removed, the NWT HC would have to discontinue its practice of giving high-risk tenants a second chance. The NWT HC maintains that this would not be in the public interest.

Second, the NWT HC believes that a reversal of the current provisions would have a cascade effect. For example, it would be difficult to rent out a unit when the primary tenant is away at school and wishes to return to the unit. As well, fixed-term agreements allow for short-term tenancies in an alternate unit if a fire or flood has damaged the tenant's primary unit.

Third, if a tenant's fixed-term agreement is terminated, there are numerous options for tenants who feel they have been unfairly treated: they can raise the issue at a public meeting of the local housing office (LHO); they can raise the

issue with the NWTTC's district office; they can launch an appeal; or they can request assistance from their Members of the Legislative Assembly.

The Department further asserted that security-of-tenure provisions for subsidized housing in the Northwest Territories are generous compared to those in many other jurisdictions, citing British Columbia, Alberta, New Brunswick, Newfoundland, Nova Scotia, Manitoba and Nunavut as examples.

In the matter of security-of-tenure provisions, the Committee members' views were not uniform. Some believe that, in the case of market rentals, security-of-tenure provisions are too onerous for landlords.

ADDITIONAL CONSIDERATIONS

A number of other matters were raised by stakeholders. First, a community advocate asked the Committee to ensure that amendments align with human rights legislation. Specifically, he sought to ensure that Aurora College students have the right to receive a copy of their tenancy agreement. Some students have been denied this request in the past, which prevented them from voting. He further recommended ensuring that landlords do not have the right to enter student premises without notice or a police warrant. The Committee noted that the *Act* exempts student accommodations which do not have a self-contained bathroom and kitchen facilities.

Second, a Hay River constituent provided a written submission and gave an oral presentation at the public hearing. He outlined his concerns regarding the Rental Officer and recommended that Bill 42 be tabled until his case has been heard by the Supreme Court of the Northwest Territories. The Committee did not consider this request reasonable. The gentleman further opposed the Bill because he believes it will give the Rental Officer power to overturn decisions of the Supreme Court of Northwest Territories and give the Rental Officer the same powers as the Supreme Court of Northwest Territories. The Committee noted that this is not the case. An order may be registered, and as such is fully enforceable as an order of the court. However, the order may still be challenged by application to the Supreme Court. The Committee regretted that many of this individual's concerns were outside the scope of its review.

Finally, at the Minister's request, the Committee passed a motion to address a technical concern that had been identified during the drafting process. The change will ensure that no one can file an order or decision of the rental officer (with the exception of an eviction order) with the Supreme Court until the fourteen-day appeal period has expired. This will allow all parties to exercise their right to appeal.

RECOMMENDED ACTIONS

The Standing Committee on Social Programs recommends the following courses of action:

- 1) That the Department of Justice develop a communication campaign to ensure that stakeholders are aware of new statutory requirements;
- 2) That the Department of Justice establish a definition for transitional housing in the regulations;
- 3) That the Department of Justice provide a definition for transitional housing in the next round of statutory amendments and clarify its position on an exemption for this type of housing;
- 4) That the Department of Justice provide better protection for transitional housing tenants against unreasonable restrictions on personal freedom and arbitrary evictions;
- 5) That the Department of Justice ensure that fees are reasonable and align with fee amounts in other jurisdictions;
- 6) That the Department of Justice increase its support for the rental office to ensure that applications are handled in a timely manner;
- 7) That the Department of Justice allow police reports or convictions to qualify as evidence for an application for early termination due to domestic violence;
- 8) That the Department of Justice address the potential for increased costs of filing with the Supreme Court of the Northwest Territories by creating a separate fee schedule specific to enforcement of rental officer orders and by ensuring that Supreme Court fees are in line with existing Territorial Court fees; and
- 9) That the Department of Justice work with the Department of Education, Culture and Employment to ensure that any students who reside at Aurora College are provided with a copy of their tenancy agreement on request and therefore not unduly prevented from voting.

RECOMMENDATIONS

Recommendation 1

That the Government of the Northwest Territories provide a comprehensive response to this report within 120 days.

CONCLUSION

The Standing Committee on Social Programs thanks all stakeholders who provided comments on Bill 42 or attended the public hearing.

The Committee advises that it supports Bill 42 as amended and reprinted and presents it for consideration to the Committee of the Whole.