

No. 97

1st Session, 15th Legislature, Alberta
12 Elizabeth II

BILL 97

A Bill respecting the Termination of Tenancies

HON. MR. MANNING

Explanatory Note

General. This Bill deals with certain matters that commonly arise between landlords and tenants. It deals with the question of when and how a tenancy may be terminated by either the landlord or the tenant and provides a procedure whereby a landlord may recover possession of the premises if the tenant does not vacate when required to do so. Certain incidental matters are also dealt with.

2. The Bill will not affect mineral leases.

3. Where a tenancy can be terminated by notice, the form of notice, the period of notice to be given and the manner of giving the notice shall be in accordance with this Bill, unless the landlord and tenant agree to different arrangements.

4. (1) Notice may be given by the tenant or by the landlord orally or in writing.

(2) Contents of a notice in writing.

(3) No particular form is required in a notice.

BILL

No. 97 of 1964

An Act respecting the Termination of Tenancies

(Assented to _____, 1964)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Landlord and Tenant Act*".

2. This Act does not apply to minerals or any dealings in minerals.

3. (1) A weekly or monthly or year to year tenancy may be terminated by either the landlord or the tenant upon notice to the other and, unless otherwise agreed upon, the notice

(a) shall meet the requirements of section 4,

(b) shall be given in the manner prescribed by section 5, and

(c) shall be given in sufficient time to give the period of notice required by section 6, 7 or 8, as the case may be.

(2) Any other kind of tenancy determinable on notice may, unless otherwise agreed upon, be terminated as provided by sections 4 and 5.

4. (1) A landlord or a tenant may give notice either orally or in writing, but a notice by a landlord to a tenant is not enforceable under sections 10 to 14 unless it is in writing.

(2) A notice in writing

(a) shall be signed by the person giving the notice, or his agent,

(b) shall identify the premises in respect of which the notice is given, and

(c) shall state the date on which the tenancy is to terminate or that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice.

(3) A notice need not be in any particular form, but a notice by a landlord to a tenant may be in Form A of the Schedule and a notice by a tenant to a landlord may be in Form B of the Schedule.

5. Manner of giving notice to the landlord or to the tenant.

6. With a weekly tenancy one week's notice is required.

7. With a monthly tenancy one month's notice is required.

8. With a year to year tenancy 60 days' notice is required.

5. (1) Notice by a tenant to a landlord may be given personally to the landlord, or his agent, or may be sent to him by ordinary mail at the address where the rent is payable.

(2) Except as provided in this section, a notice by a landlord to a tenant shall be given personally to the tenant.

(3) Where the tenant cannot be given notice by reason of his absence from the premises, or by reason of his evading service, the notice may be given to the tenant,

(a) by giving it to any adult person who apparently resides with the tenant, or

(b) by posting it up in a conspicuous place upon some part of the premises, or

(c) by sending it by registered mail to the tenant at the address where he resides.

(4) Notwithstanding anything in this section, a notice to a corporation may be given in the manner permitted under section 270 of *The Companies Act*.

6. (1) A notice to terminate a weekly tenancy shall be given on or before the last day of one week of tenancy to be effective on the last day of the following week of the tenancy.

(2) For the purposes of this section, "week of the tenancy" means the weekly period on which the tenancy is based and not necessarily a calendar week and, unless otherwise specifically agreed upon, the week shall be deemed to begin on the day upon which rent is payable.

7. (1) A notice to terminate a monthly tenancy shall be given on or before the last day of one month of the tenancy to be effective on the last day of the following month of the tenancy.

(2) For the purposes of this section, "month of the tenancy" means the monthly period on which the tenancy is based and not necessarily a calendar month and, unless otherwise specifically agreed upon the month shall be deemed to begin on the day upon which rent is payable.

8. (1) A notice to terminate a year to year tenancy shall be given on or before the sixtieth day before the last day of any year of the tenancy to be effective on the last day of that year of the tenancy.

(2) For the purposes of this section, "year of the tenancy" means the yearly period on which the tenancy is based and not necessarily a calendar year, and unless otherwise agreed upon, the year shall be deemed to begin on the day, or the anniversary of the day, on which the tenant first became entitled to possession.

9. A landlord is entitled to compensation for the use and occupation of the premises if the tenant does not get out at the end of the tenancy.

10. When a tenant does not vacate the premises when he is obliged to, the landlord may apply to a judge for an order of possession.

11. When applying for an order for possession, a landlord may also make a claim for arrears in rent and for compensation for use and occupation.

12. Power of the judge to deal with the application.

9. (1) A landlord is entitled to compensation for the use and occupation of premises after the tenancy has expired or been terminated and the acceptance by a landlord of rent or compensation after the expiration of the tenancy or after notice of termination of a tenancy has been given does not operate as a waiver of the notice or as a reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree.

(2) The burden of proof that the notice has been waived or the tenancy has been reinstated or a new tenancy created is upon the person so claiming.

(3) A landlord's claim for arrears of rent or compensation for use and occupation by a tenant after the expiration or termination of the tenancy may be enforced by action or as provided in section 11.

10. (1) Where a tenant, after his tenancy has expired or has been terminated, does not go out of possession of the premises held by him, the landlord may apply by originating notice of motion to a judge of the Supreme Court for an order for possession.

(2) The originating notice shall be served at least three days before the day named in the notice for hearing of the application.

(3) The application of the landlord shall be supported by an affidavit

- (a) setting forth the terms of the tenancy,
- (b) proving the expiration or termination of the tenancy,
- (c) stating the failure of the tenant to deliver up possession and the reasons given for the failure, if any were given, and
- (d) stating any other relevant facts.

11. (1) The originating notice of motion of the landlord may also include a claim for arrears of rent and for compensation for use and occupation of the premises by the tenant after the expiration or termination of the tenancy.

(2) Where a claim is made under subsection (1) the affidavit in support of the motion shall also show

- (a) where a claim is made for rent, the amount of rent in arrear and the time during which it has been in arrear, and
- (b) where a claim is made for compensation, particulars of the use made of the premises after the expiration or termination of the tenancy, so far as is known.

12. (1) Upon hearing the motion, or, where it is opposed, upon hearing and considering, in a summary way, the oral and affidavit evidence of the parties and their witnesses, the judge may

13. Terms and effect of an order for possession.

14. Where the tenant vacates the premises before the granting of an order for possession the landlord may still continue the proceedings with respect to the claim for rent and compensation.

15. The Lieutenant Governor in Council may make regulations.

16. Commencement of Act.

- (a) if he is satisfied that the tenancy has expired or has been terminated, give an order for possession,
 - (b) where a claim for rent is made, give judgment for the amount of rent proven to him to be in arrear,
 - (c) where a claim for compensation is made, give judgment in such amount as the judge may determine as compensation for the use and occupation of the premises after the expiration or termination of the tenancy, having regard to the nature of the use and occupation and the rent payable during the tenancy, and
 - (d) make such order as to costs as he thinks just.
- (2) The judge may grant or dismiss the application in whole or in part and may direct the trial of an issue to determine any matter in dispute.

13. (1) An order under section 12 granting possession

- (a) shall direct the tenant to deliver up possession of the premises to the landlord by a specified date or within a specified time after service of the order on the tenant, and
 - (b) shall state that if the order is not obeyed by the specified date or within the specified time a writ of possession will issue without any further order.
- (2) The order may be served in the same manner as a notice may be served on a tenant pursuant to section 5.

(3) Where the order is not obeyed by the specified date or within the specified time, the landlord is entitled, without any further order, to be issued a writ of possession on filing an affidavit showing service of the order and that it has not been obeyed.

14. Proceedings in respect of a claim for arrears of rent or compensation may continue to judgment notwithstanding that the tenant delivers up possession of or vacates the premises after service upon him of the originating notice of motion.

15. The Lieutenant Governor in Council may make regulations for the purpose of carrying out the intent of this Act and, without restricting the generality of the foregoing may

- (a) prescribe forms to be used in proceedings under this Act, and
- (b) prescribe a tariff of court fees and solicitors' costs in connection with proceedings under this Act.

16. This Act comes into force on the first day of July, 1964.

SCHEDULE

FORM A

NOTICE TO TENANT

TO (Name of Tenant)

I hereby give you notice to deliver up possession of the premises which you hold
(identify the premises)
of me as tenant, on the day of
next, or on the last day of the period of your tenancy next
following the giving of this notice.

Dated this day of 19.....

.....
(Landlord)

FORM B

NOTICE TO LANDLORD

TO (Name of Landlord)

I hereby give you notice that I am giving up possession of the premises which I
(identify the premises)
hold of you as tenant, on the day of
next, or on the last day of the period of my tenancy next
following the giving of this notice.

Dated this day of 19.....

.....
(Tenant)

No. 97

FIRST SESSION

FIFTEENTH LEGISLATURE

12 ELIZABETH II

1964

BILL

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of Tenancies

Received and read the

First time

Second time

Third time

HON. MR. MANNING
