

Bill 215
Mr. King

BILL 215

1972

THE LANDLORD AND TENANT ACT, 1972

(Assented to _____, 1972)

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

1. This Act does not apply to minerals held separately from the surface of the land, or any dealings in minerals.

2. (1) In this Act:

- (a) "rent" means a cash consideration, service or labour, or the payment of charges (i.e. utilities) or any combination of the aforementioned exchanged on a daily, weekly, monthly or annual basis, for the sole or joint use of residential premises;
- (b) "rent deposit" means the payment before, or coincident with taking possession of residential premises of the rent for the last month of occupancy;
- (c) "residential premises" means premises used primarily for residential purposes, including premises used incidentally for the purpose of carrying on a business, trade, or profession; and does not include premises occupied for business purposes with living accommodation attached under a single lease;
- (d) "security deposit" means money or any property or right paid or given by a tenant of residential premises to a landlord as security for the performance of an obligation or the payment of a liability of the tenant or to be returned to the tenant upon the happening of a condition;
- (e) "tenancy agreement" means an agreement between a landlord and a tenant for possession of residential premises, whether written, oral or implied;
- (f) "local board of health" means the board appointed in each provincial health district pursuant to *The Public Health Act*.

(2) This Act applies to tenancies of residential premises and tenancy agreements notwithstanding any Act of the

Legislature other than *The Alberta Bill of Rights* and *The Individual Rights Protection Act* and notwithstanding any agreement or waiver to the contrary, except as specially provided herein.

3. Covenants concerning things which touch and concern rented premises run with the land whether or not the things are in existence at the time of the demise.

4. The doctrine of *interesse termini* is abolished, and all tenancy agreements are capable of taking effect in law or in equity from the date fixed for commencement of the term without actual entry or possession.

5. The doctrine of frustration of contract applies to all tenancy agreements and *The Frustrated Contracts Act* applies thereto.

6. The common law rules respecting the effect of the breach of a material covenant by one party to a contract on the obligation of the other party to perform apply to tenancy agreements.

7. A landlord or his agent may not deny tenancy of residential premises to any person or people for reasons of race, religion, age, sex, marital status, governmental support or assistance, or membership in a tenant's association.

8. (1) A landlord or his agent shall provide a copy of this Act to be in each and all residential premises owned, operated or managed by him, at all times.

(2) A copy of each and every amendment to this Act must be delivered, by the landlord or his agent, personally or by First Class Mail, to each and all residential premises owned, operated or managed by him, within fifteen (15) days of the coming into force of such amendments.

9. (1) Where a tenancy agreement in writing is executed by a tenant after the commencement of this section, the landlord shall ensure that a fully executed duplicate original copy of the tenancy agreement is delivered to the tenant within 21 days after its execution and delivery by the tenant.

(2) Where the copy of the tenancy agreement is not delivered in accordance with subsection (1), the obligations of the tenant thereunder cease until such copy is delivered to him.

10. (1) A landlord or his agent shall provide, with each and every tenancy agreement, the name(s), address(es) of the owner(s) of the premises, and where the owner is a corporate body, the name and address of the chief executive officer.

(2) A landlord or his agent shall provide, each and every tenant with a revised list of owners within fifteen (15) days of a change in the name(s) or address(es) of the owners.

11. Any term or condition in a tenancy agreement:

(a) that contravenes any of the provisions of this Act; or

(b) that has the effect of nullifying or negating the intent or provisions of this Act,

is void and has no effect.

12. Except as specifically provided, this Act applies to municipal or provincial governments as landlords, and to the residents of government institutions as tenants, with the following exceptions:

(a) active treatment hospitals,

(b) jails and correctional institutions, and

(c) hospitals or homes for the mentally ill.

13. (1) A landlord, his servant, or agent shall not as a condition of the grant, renewal or continuance of a tenancy agreement require or receive from a tenant the payment of a security deposit, or any premium bonus, fine or other pecuniary consideration in addition to the rent reserved in the tenancy agreement.

(2) Notwithstanding subsection (1) a landlord may demand and receive, as security for rent only, the rent payment for a rent period not exceeding one month, which payment shall be applied in payment of the rent for the last rent period under the tenancy agreement.

(3) The landlord holds each rent deposit referred to in subsection (2) paid or given to him or his agent, or to anyone on his behalf, as trustee for the tenant, and where the rent deposit consists of money, the landlord may invest the money in investments authorized by *The Trustee Act* for the investment of trust funds.

(4) The landlord shall pay annually to the tenant interest on the rent deposit referred to in subsection (2) at the rate of 4 per cent per year.

(5) The landlord is entitled to retain any interest and any profit resulting from the investment of a rent deposit

in excess of the amount of interest payable under subsection (4).

(6) Where the landlord and tenant agree that interest shall be payable under this section at a rate of interest higher than 6 per cent per year, subsections (4) and (5) shall be deemed to refer to the higher rate.

(7) Security deposits which have been paid under tenancy agreements prior to the first of January 1973 shall be deemed to have been demanded and received as security for rent only and shall be treated as rent deposits in accordance with subsections (2) and (6).

(8) A purchaser of the landlord's interest by sale, assignment or otherwise has the same obligations under this section as the original landlord.

14. A landlord or a tenancy agreement shall not require the delivery of a post-dated cheque or other negotiable investment to be used for payment of rent.

15. (1) Except where a tenant abandons the premises no landlord shall distrain for default in the payment of rent whether a right of distress has heretofore existed by statute, the common law, or contract.

(2) Where a tenant abandons the premises in breach of the tenancy agreement, the landlord's right to damages is subject to the same obligation to mitigate his damages as applied generally under the rule of law relating to breaches of contract.

16. (1) Residential premises shall be maintained by the landlord in a good state of repair and fit for human habitation during the term of the tenancy and the landlord is responsible for complying with health and safety standards, including any housing standards, required by law, and notwithstanding that any state of non-repair existed to the knowledge of the tenant before the tenancy agreement was entered into.

(2) For great certainty, but not so as to restrict the application of *The Public Health Act* or the regulations thereunder, or any other health, safety or housing legislation, to residential premises, the landlord shall:

- (a) provide and maintain the residential premises in a good state of repair with respect to the roof, the walls, the floor, the windows, the doors, and the stairs;
- (b) provide and maintain the electrical system and the water and sewage systems in compliance with health and safety standards required by law;

(c) provide and maintain the insulation and the heating system of the residential premises in such a state of repair that any set temperature between 65 degrees Fahrenheit and 75 degrees Fahrenheit can be constantly maintained when the external temperature is lower.

(3) The tenant is responsible for ordinary cleanliness of the rented premises and for the repair and damage caused by his wilful or negligent conduct or that of persons who are permitted on the premises by him, fair wear and tear excepted.

(4) The obligations imposed under this section form part of every tenancy agreement and may be enforced in the same manner as any other breach of covenant contained or implied by law in tenancy agreements.

(5) Notwithstanding subsection (4) where a tenant complains to the landlord or to the local board of health that the residential premises do not comply with the health, safety or housing standards required by law, and the local board of health gives both the landlord and the tenant written notice that the premises have been inspected and found not to be in compliance with health, safety or housing standards required by law, the obligation of the tenant to pay rent ceases and the tenant may withhold his rental payments until the landlord has completed the repairs necessary to bring the rented premises into compliance with the health, safety or housing standards required by law.

(6) Where a tenant withholds rent in accordance with subsection (5) he shall not be deemed to be in breach of his covenant to pay rent.

17. (1) Except as provided in subsection (2) acceleration clauses in tenancy agreements which provide that by reason of a default having occurred in the observance by the tenant of any of his obligations under the tenancy agreement the whole or any part of the remaining rent for the term of the tenancy becomes due and payable are void and unenforceable.

(2) A tenancy agreement may provide that by reason of a default having occurred in the payment of rent due under the tenancy agreement the whole or any part of the remaining rent for the term of the tenancy becomes due and payable, and where a tenancy agreement so provides

(a) at any time following the tenant's default and before the commencement of an action for the enforcement of the rights of the landlord, or of any person claiming through or under him, the tenant may pay the rent due under the tenancy agreement, together with interest thereon, exclusive of

the rent not payable by reason merely of lapse of time, and pay any reasonable expenses necessarily incurred by the landlord, and thereupon the tenant is relieved from the consequences of the default; or

- (b) in an action for the enforcement of the rights of the landlord, or of any person claiming through or under him, the tenant may pay the rent due under the tenancy agreement, together with interest thereon, exclusive of the rent not payable by reason merely of lapse of time, and upon payment of the costs of the action,
 - (i) if judgment has not been recovered the court may dismiss the action; or
 - (ii) if judgment has been recovered but recovery of possession of the residential premises has taken place the court may stay proceedings in the action.

18. Where a landlord applies to the District Court for an order for possession pursuant to section 33 and it appears to the court

- (a) that notice to quit was given because of the tenant's complaint to any government authority of the landlord's violation of any statute or municipal by-law dealing with health and safety standards, including any housing standards law; or
- (b) that notice to quit was given because of the tenant's attempt to secure or enforce his legal rights the Court may refuse an order or writ for possession and may declare the notice to quit invalid and the notice to quit shall be deemed not to have been given.

19. (1) No landlord, his servant, or agent shall demand or receive any payment or advantage from any tradesman or deliveryman in exchange for the privilege of exclusive access to any residential premises.

(2) No landlord, his servant, or agent shall impose any unreasonable restrictions on access to residential premises by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly, any office in municipal government or a school board for the purpose of canvassing or distribution of election material.

20. (1) A landlord or a tenant shall not, during the occupancy of the residential premises by the tenant, alter or cause to be altered the locking system on any door giving entry to the residential premises except by mutual consent.

(2) Where the locking system of the residential premises has been changed by mutual consent the landlord shall deliver a duplicate set of keys immediately to the tenant.

21. (1) Subject to subsection (2) a tenant has the right to assign, sublet or otherwise part with possession of the rented premises notwithstanding any covenant, condition or agreement to the contrary.

(2) A tenancy agreement may provide that the right of a tenant to assign, sublet or otherwise part with possession of the residential premises is subject to the consent of the landlord, and, where it is so provided, such consent shall not be arbitrarily or unreasonably withheld.

(3) A landlord shall not make any charge for giving his consent referred to in subsection (2), except his reasonable expenses incurred thereby.

(4) A landlord or a tenant may apply to a provincial judge to determine any question arising out of subsections (2) and (3).

(5) This section does not apply to a tenant of residential premises administered by or for the Government of Canada or Alberta or a municipality, or any agency thereof, developed and financed under *The National Housing Act*, (Canada).

22. Except in cases of emergency and except where the landlord has a right to show the residential premises to prospective tenants at reasonable hours after notice of termination of the tenancy has been given, the landlord, his servant, or agent, shall not exercise a right to enter the residential premises unless he has first given written notice to the tenant at least 24 hours before the time of entry, and the time of entry shall be during daylight hours and specified in the notice, except that nothing in this section shall be construed to prohibit entry with the consent of the tenant given at the time of entry.

23. (1) A landlord shall not increase the rent payable under a tenancy agreement or be entitled to recover any additional rent resulting from such an increase, unless he gives to the tenant written notice of the increase in rent at least 90 days before the date on which the increase is to be effective.

(2) Subsection (1) does not apply where the tenancy agreement provides for a period of notice longer than 90 days before the increase in rent is effective.

24. Any person who contravenes sections 8, 9, 10, 11, 14, 15, 20, 21 or 34 is guilty of an offence and liable on

summary conviction to a fine of not more than \$1,000 for each offence.

25. (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 requirement of section 27,
- (b) shall be given in the manner prescribed in section 28, and
- (c) shall be given in sufficient time to give the period of notice required by section 29, 30 or 31, 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 29 and 30.

26. (1) A landlord or a tenant may give notice, orally or in writing, but a notice by the landlord to a tenant is not enforceable under sections 34 to 37 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 notice is given, and
 - (c) shall state the date on which the tenancy is to terminate on the last day of the period of tenancy next following the giving of the notice,
 - (d) shall state the cause for which the tenancy is being terminated.

27. (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 the 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 289 of The Companies Act.

28. (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 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.

29. (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.

30. (1) A notice to terminate a year-to-year tenancy shall be given on or before the 60th 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 to 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.

31. (1) A landlord is entitled to compensation for the use and occupation of the premises after the tenancy has expired or been terminated and the acceptance by a landlord of arrears of rent or compensation after the expiration of the tenancy or after notice of termination of 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.

32. (1) A landlord or a tenant may commence proceedings in the District Court of the district in which the premises are situate by way of an originating notice of motion returnable upon four days clear notice for an order declaring that the tenancy agreement is terminated, and claiming arrears of rent or compensation.

(2) A notice of motion shall state the grounds upon which the tenancy agreement is alleged to be terminated.

(a) For greater certainty, but, not so as to restrict the generality of the foregoing, failure to pay rent due within 4 days after any of the days on which it ought to have been paid is sufficient grounds for which to terminate a tenancy.

(3) A notice of motion originated pursuant to this section or an order under this section shall be effected by:

(a) personal notice upon the respondent, or

(b) by leaving the notice with an apparently adult person at the place of abode of the respondent, or

(c) by posting the notice up in a conspicuous place upon the premises of the respondent.

(4) If the respondent wishes to dispute the claim he may appear on the return of the motion or, at any time prior to the day for the return of the motion, file with the clerk of the court a statement in writing setting out briefly the grounds on which he disputes the claim.

(5) Where the claim is not disputed, the clerk of the court may sign an order directing that a writ of possession issue and/or may give judgment for the amount claimed or terminating the tenancy agreement.

(6) Where the claim is disputed, the matter may be set down for hearing forthwith or at such time and place as the judge may appoint.

(7) After a hearing, the judge shall determine the question of whether the tenancy agreement is terminated in whole or in part and may make an order for a writ of possession or such other relief as may be equitable in the circumstances.

(8) An order terminating a tenancy or to issue a writ of possession may in cases of hardship be deferred one week.

(9) Proceedings by either the landlord or tenant 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.

33. (1) Unless a tenant has vacated or abandoned rented premises, the landlord shall not regain possession

of the premises on the grounds he is entitled to possession except under the authority of a writ of possession under section 33.

(2) For greater certainty, but not so as to restrict the generality of subsection (1), it is an offence to withhold essential services or to remove doors or windows.

34. This Act applies to land rented for the locationing of mobile homes which are in turn used as residential premises.

35. (1) 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,
- (b) prescribe a tariff of court fees and solicitors' costs in connection with proceedings under this Act, and
- (c) prescribe a standard lease to be used by all landlords throughout the province.

36. *The Small Claims Act* is amended as to section 3, subsection (1)

- (a) as to clause (a), by striking out the word "and" at the end of subclause (i), by adding the word "and" at the end of subclause (ii) and by adding the following subclause:
 - (iii) arising out of sections 7 to 10 or 13 to 23 of *The Landlord and Tenant Act, 1972* where the amount claimed does not exceed \$500,
- (b) as to clause (b), by striking out the word "and" at the end of subclause (i), by adding the word "and" at the end of subclause (ii) and by adding the following subclause:
 - (iii) arising out of sections 7 to 10 or 13 to 23 of *The Landlord and Tenant Act, 1972* where the amount counterclaimed does not exceed \$500.

37. *The Landlord and Tenant Act*, being chapter 200 of the Revised Statutes of Alberta 1970, is hereby repealed

38. This Act comes into force on the day upon which it is assented to.

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