

1989 BILL 218

First Session, 22nd Legislature, 38 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 218

**AN ACT TO AMEND THE
LANDLORD AND TENANT ACT**

MR. HAWKESWORTH

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 218
Mr. Hawkesworth

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AN ACT TO AMEND THE LANDLORD AND TENANT ACT

(Assented to , 1989)

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

1 The Landlord and Tenant Act is amended by this Act.

2 Section 1 is amended

(a) by adding the following after clause (d):

(d.1) "fixed term tenancy" means a residential tenancy agreement in respect of which there is an agreed commencement date and expiration date as of the date upon which the agreement is entered into;

(d.2) "landlord" means a person who grants to a person the exclusive right of tenancy of residential premises and includes:

(i) an agent or a personal or legal representative of, or any other person acting on behalf of, a landlord,

(ii) a person to whom a landlord assigns a tenancy agreement,

(iii) a trustee in bankruptcy, liquidator, receiver or committee appointed by any court or by law in respect of the property of a landlord,

Explanatory Notes

1 This Bill will amend chapter L-6 of the Revised Statutes of Alberta 1980.

2 Adds new definitions: Clause (h) presently reads:

(h) *"substantial breach" means*

(i) *a breach of a covenant specified in section 16, or*

(ii) *a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial.*

(iv) the purchaser at a judicial sale of the residential premises of a landlord,

(v) a mortgagee of the residential premises of a landlord who acquires title by foreclosure or judicial sale or who enters into possession of the residential premises, and the assigns of such mortgagee,

(vi) any person who becomes the owner of property on which residential premises are situated, or that consists of residential premises, with respect to which, at the time the person becomes the owner, there is a subsisting tenancy agreement.

(d.3) "periodic tenancy" means a residential tenancy agreement in respect of which the term will continue indefinitely until notice of termination is served pursuant to Part 1;

(b) *by repealing clause (h) and substituting:*

(h) "substantial breach" means

(i) in the case of a landlord, a breach of a covenant specified in section 14, and

(ii) in the case of a tenant, a breach of a covenant specified in section 16, or

(iii) a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial.

3 *Sections 4 to 8 are repealed and the following is substituted:*

4 A tenancy may not be terminated except in accordance with this Act.

5 Where a landlord and tenant agree in writing, after a tenancy agreement has been made, to terminate the tenancy on a specified date, the tenancy is terminated on the date specified.

6 Where a tenancy agreement does not specify a date for the tenancy to end and neither party to the tenancy agreement has

3 Sections 4 to 8 presently read:

4(1) A weekly, monthly or yearly tenancy may be terminated by either the landlord or the tenant on notice to the other and the notice

(a) shall be served in sufficient time to give the period of notice required by section 5, 6 or 7, as the case may be, and

(b) shall meet the requirements of section 8.

(2) A tenancy not referred to in subsection (1) that is terminable on notice shall, unless otherwise agreed on, be terminated as provided by

reasonable grounds to believe that the other party is guilty of a substantial breach of the agreement,

- (a) the tenant may terminate the tenancy, or
- (b) the landlord may, in respect of one or more of the conditions in section 8, terminate the tenancy,

on or before the first day of a period of the tenancy by giving the other party to the tenancy agreement a notice of termination,

- (c) in the case of a weekly tenancy, at least 7 days before the termination date, or
- (d) in the case of a monthly tenancy, at least 30 days before the termination date, or
- (e) in the case of a yearly tenancy, at least 60 days before the termination date.

7(1) A notice to terminate shall

- (a) be in writing;
- (b) be signed by the person giving the notice or his agent;
- (c) identify the premises in respect of which the notice is being served;
- (d) state the date on which the tenancy is to terminate;
- (e) if served by the landlord pursuant to section 8, state the reasons and particulars for the termination.

(2) A notice need not be in any particular form, but

- (a) a notice by a landlord of premises that are not residential premises to his tenant may be in Form A of the Schedule,
- (b) a notice by the tenant to his landlord may be in Form B of the Schedule, and

section 8 and the notice shall be served on the landlord or tenant, as the case may be.

(3) If a periodic tenancy of residential premises is for a period of more than one week but less than one year, that tenancy is for the purposes of terminating the tenancy deemed to be a monthly tenancy.

5(1) A notice to terminate a weekly tenancy must be served before the commencement of the tenancy week to be effective on the last day of that tenancy week.

(2) In this section and section 8(3)(a), "tenancy week" means the weekly period on which the tenancy is based whether or not it is a calendar week and, unless otherwise specifically agreed on by the landlord and the tenant, the week shall be deemed to begin on the day on which rent is payable.

6(1) A notice to terminate a monthly tenancy must be served

(a) by a tenant on his landlord or by a landlord of premises that are not residential premises on his tenant, prior to the commencement of a tenancy month to be effective on the last day of that tenancy month, or

(b) by a landlord of residential premises on his tenant, prior to the commencement of a notice period to be effective on the last day of the notice period.

(2) In this section and section 8(3)(b),

(a) "notice period" means a period of 3 consecutive tenancy months;

(b) "tenancy month" means the monthly period on which the tenancy is based whether or not it is a calendar month and, unless otherwise specifically agreed on by the landlord and the tenant, the month shall be deemed to begin on the day on which rent is payable.

7(1) A notice to terminate a yearly tenancy must be served

(a) by a tenant on his landlord or by a landlord of premises that are not residential premises on his tenant, on or before the 60th day before the last day of any tenancy year, or

(b) by a landlord of residential premises on his tenant, on or before the 90th day before the last day of any tenancy year,

to be effective on the last day of the tenancy year.

(c) a notice by a landlord of residential premises to his tenant may be in Form C of the Schedule.

8 Subject to section 6, a tenancy may be terminated by a landlord in respect of the following conditions:

(a) a landlord requires the residential premises for the purpose of occupation by himself, his spouse, or a child or parent of his, or of his spouse;

(b) the landlord has entered into an agreement of sale of a residential complex and is required by the agreement of sale to deliver vacant possession of a rental unit to the purchaser, and the unit comprises the premises;

(c) the landlord requires possession of a rental unit for the purpose of demolition;

(d) the landlord requires possession of a rental unit for the purpose of making repairs or renovations so extensive as to require vacant possession of the rental unit;

(e) the tenant fails to give, within 30 days from the date he enters into a tenancy agreement, a security deposit required to be made under the tenancy agreement;

(f) the number of persons permanently occupying the residential premises is unreasonable.

(2) *In this section and section 8(3)(c), "tenancy year" means the yearly period on which the tenancy is based whether or not it is a calendar year and, unless otherwise specifically agreed on by the landlord and the tenant, 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.*

8(1) *A notice to terminate a tenancy shall*

- (a) be in writing,*
- (b) be signed by the person giving the notice or his agent,*
- (c) identify the premises in respect of which the notice is served, and*
- (d) state the date on which the tenancy is to terminate.*

(2) *A notice need not be in any particular form, but*

- (a) a notice by a landlord of premises that are not residential premises to his tenant may be in Form A of the Schedule,*
- (b) a notice by a tenant to his landlord may be in Form B of the Schedule, and*
- (c) a notice by a landlord of residential premises to his tenant may be in Form C of the Schedule.*

(3) *if a notice to terminate a weekly, monthly or yearly tenancy is not served in sufficient time to give the period of notice required by section 5, 6 or 7, as the case may be, the notice is still effective to terminate*

(a) the weekly tenancy on the last day of the first complete tenancy week following the date on which the notice is served,

(b) the monthly tenancy

(i) if the notice is served by a tenant on his landlord or by a landlord of premises that are not residential premises on his tenant, on the last day of the first complete tenancy month following the date on which the notice is served, or

(ii) if the notice is served by a landlord of residential premises on his tenant, on the last day of the first complete notice period following the date on which the notice is served,

4 *Section 13 is amended in subsections (1) and (2) by striking out "90 days" and substituting "3 consecutive tenancy months".*

5 *Section 14 is amended*

(a) in clause (b) by adding "enter the premises or" after "under the landlord will";

(b) by adding the following after clause (c):

(d) that throughout the tenancy the landlord shall take all reasonable steps:

(i) to maintain the premises sound and fit for occupation,

(ii) to maintain the common areas habitable and in good repair,

or

(c) *the yearly tenancy*

(i) *if the notice is served before the end of the tenancy year by a tenant on his landlord or by a landlord of premises that are not residential premises on his tenant, 60 days from the date on which the notice is served, or*

(ii) *if the notice is served before the end of the tenancy year by a landlord of residential premises on his tenant, 90 days from the date on which the notice is served.*

4 Section 13(1) and (2) presently reads:

13(1) A landlord shall not increase the rent payable under a residential tenancy agreement or recover any additional rent resulting from the increase unless he gives to the tenant a written notice of the increase in rent at least 90 days before the date on which the increase is to be effective.

(2) Notwithstanding subsection (1), if the residential tenancy agreement provides for a period of notice longer than 90 days, the landlord must give at least that longer period of notice before increasing the rent payable or recovering any additional rent resulting from the increase.

5 Section 14 presently reads:

14 The following covenants of the landlord form part of every residential tenancy agreement:

(a) that the premises will be available for occupation by the tenant at the beginning of the tenancy;

(b) that, subject to section 17, neither the landlord nor a person having a claim to the premises under the landlord will be in any significant manner disturb the tenant's possession or peaceful enjoyment of the premises;

(c) that the premises will be habitable by the tenant at the beginning of the tenancy.

(ii) to maintain all appliances and all electrical, plumbing, sanitary, heating, and other facilities supplied by him sound and fit for the purposes for which they are intended.

6 *The following is added after section 14:*

14.1(1) Prior to a person entering into a tenancy agreement with a landlord, the landlord shall disclose in writing to that person all rules concerning the tenancy that exist at the time that the tenancy agreement is entered into.

(2) Subsequent to a tenant entering into a tenancy agreement, a landlord may from time to time make, amend or replace the rules if the rules or the amendments or replacement of the rules is reasonable in the circumstances and intended to

(a) promote the convenience, safety or welfare of the tenants;

(b) preserve the landlord's property from abuse;

(c) make a fair distribution of services and facilities held out for the general use of the tenants.

(3) Rules made, amended or replaced pursuant to subsection (2) are enforceable against the tenant only if:

(a) the rules apply and are applied to all tenants in a fair manner,

(b) the rules are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct so as to fairly inform the tenant of what he must or must not do in order to comply with the rules,

(c) reasonable notice in writing of the rules are given to the tenant, and

(d) the rules do not substantially modify the tenancy agreement of the tenant.

6 New sections deal with the enforceability of rules and disclosure of additional charges.

(4) Notwithstanding subsection (3)(c), a rule pertaining to the

(a) safety of tenants, or

(b) use of common areas,

may be made, amended or replaced by the landlord without notice.

14.2(1) Prior to a person entering into a tenancy agreement with a landlord, the landlord shall disclose in writing to that person all fees, charges and assessments payable by that person to the landlord in respect of the tenancy that are in addition to the rent payable.

(2) Subsequent to a tenant entering into a tenancy agreement, no fees, charges or assessments disclosed under subsection (1) may be increased or additional fees, charges or assessments may be imposed, without written notice being given to the tenant.

(3) Written notice under subsection (2) shall be given to the tenant at least 3 consecutive tenancy months before the date the increase or addition is to be effective.

7 *Section 18 is amended by adding the following after subsection (2):*

(2.1) The landlord shall ensure that the residential premises is equipped with a security device that is capable of being put into effect only by a person inside the residential premises.

8 *The following is added after section 19:*

19.1 Any person who

(a) acquires the interest of a landlord, or

(b) subject to the *Land Titles Act* and the *Law of Property Act*, acquires the reversionary interest of a landlord, or

7 New section to provide for security device operable from within the premises.

8 New section provides that the successors of a landlord's interest has the landlord's responsibility regarding the security deposit.

(c) is a landlord as a result of acting in relation to a landlord as

(i) a receiver or receiver-manager, or

(ii) a trustee in bankruptcy, or

(iii) a mortgagee foreclosing on a landlord's residential premises

has the rights and is subject to the obligations of the previous landlord with respect to a security deposit paid to the previous landlord in respect of the residential premises.

9 *Section 21 is repealed and the following is substituted:*

21(1) If a tenant by abandonment of the residential premises or otherwise gives the landlord reasonable grounds to believe that the tenant has repudiated the residential tenancy agreement, the landlord shall make all reasonable efforts to re-rent the premises on such terms and conditions as are reasonable in the circumstances.

(2) A landlord may recover from the tenant damages for the loss of benefit of the tenancy agreement for the period from the day the tenant abandoned the premises or otherwise gave the landlord reasonable grounds to believe that the tenant had repudiated the residential tenancy agreement to

(a) the day the tenancy agreement would have expired had it not been repudiated by the tenant, or

(b) the day the landlord has re-rented the premises,

whichever is earlier.

9 Section 21 presently reads:

21(1) If a tenant by abandonment of the residential premises or otherwise gives the landlord reasonable grounds to believe that the tenant has repudiated the residential tenancy agreement, the landlord may either

- (a) accept the repudiation as a termination of the tenancy, or*
- (b) refuse to accept the repudiation and continue the tenancy.*

(2) In the case of a periodic residential tenancy, for the purposes of subsections (3) and (7), the tenant's acts of repudiation constitute a proper notice effective to terminate the tenancy on the earliest date that the tenant could have terminated the tenancy under this Act.

(3) A landlord who accepts the repudiation as a termination of the residential tenancy may recover

- (a) damages resulting from a breach of the tenancy agreement prior to the repudiation, and*
- (b) damages for the loss of the benefit of the tenancy agreement*
 - (i) in the case of fixed term tenancy, until it would have expired had the landlord not accepted the repudiation, or*
 - (ii) in the case of a periodic tenancy, until the termination date.*

(4) Notwithstanding subsection (3)(b), a landlord shall make reasonable efforts to mitigate the damages for the loss of the benefits of the residential tenancy agreement.

10 Section 23 is amended

(a) in subsection (3) by striking out "14" and substituting "7";

(b) by adding the following after subsection (4):

(5) If a landlord commits a substantial breach under the residential tenancy agreement, the tenant may terminate the tenancy by serving the landlord with at least 7 days' notice in writing stating the details of the alleged substantial breach and the effective termination date.

(6) A notice served under subsection (5) is ineffective if, before the termination date given in the notice, the landlord serves the tenant with a notice in writing objecting to the termination and stating his reasons for objecting.

(5) A landlord who refuses to accept the repudiation and elects to continue the tenancy shall make reasonable efforts to mitigate the tenant's liability for rent under the residential tenancy agreement.

(6) A landlord who rents the premises to a new tenant in order to mitigate a tenant's liability for rent under a residential tenancy agreement

(a) is deemed to have accepted the repudiation of his previous tenant as terminating that tenancy at the time the new tenancy commences, and

(b) may recover damages in the same manner as if the landlord had accepted the tenant's repudiation of the residential tenancy agreement.

(7) Subject to subsection (5), a landlord who refuses to accept the repudiation and elects to continue the residential tenancy may, so long as he has not rented the premises to a new tenant, recover rent accruing under the residential tenancy agreement

(a) in the case of a fixed term tenancy, until it expires, or

(b) in the case of a periodic tenancy, until the termination date.

10 New subsections deal with breach by landlord and notice to terminate. Section 23(3) presently reads:

(3) A notice served under subsection (2) is ineffective if, before the termination date given in the notice, the tenant either

(a) serves the landlord with a notice in writing objecting to the termination and stating his reasons for objecting, or

(b) if the alleged breach is a failure to pay rent, pays all arrears of rent.

(7) If the landlord serves the tenant with a notice under subsection (6) objecting to the termination, the tenant may apply to a court for termination of the tenancy.

(8) The notice period in subsections (2) and (5) shall not include the date of service of the notice or the date of termination.

11 Section 24 is amended

(a) *by repealing clause (9)(b) and substituting the following:*

(b) to any debt owed to him by the tenant in respect of the tenancy,

(b) *by adding the following after subsection (9):*

(9.1) The landlord shall submit to the Provincial Court a statement setting forth the amount owned to the landlord by the tenant and the amount the landlord received from the sale of the abandoned goods.

12 The following is added after section 37:

37.1 A landlord shall not require a tenant to provide him with a security deposit prior to providing the tenant with a written report on the physical state of the premises and the facilities and appliances the landlord has furnished therein.

13 Section 40 is repealed.

14 Section 41(2) is repealed and the following is substituted:

(2) The Provincial Court shall not give an order for possession of premises under this Act.

11 New subsection deals with amounts owned by tenant to be offset against sale of abandoned goods. Section 24(9)(b) presently reads:

(9) *A landlord may apply the proceeds of any sale of abandoned goods*

(b) *to any judgment obtained by him against the tenant in respect of the tenancy,*

12 Report on condition of premises prior to payment of deposit.

13 Section 40 presently reads:

40 *A person who acquires the interest of a landlord in residential premises has the rights and is subject to the obligations of the previous landlord with respect to a security deposit paid to the previous landlord in respect of the residential premises.*

14 Section 41(2) presently reads:

(2) *The Provincial Court may only give an order for possession of premises under this Act if*

(a) *the premises are residential premises,*

15 Section 51 is amended by adding the following at the end of it:

(c) describing the forms to be used by a landlord pursuant to section 24(9.1).

(b) *the rent is not more than \$500 per month, and*

(c) *the term under the tenancy is for not more than 3 years.*

15 Facilitates administrative regulations.