

Bill 44

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2005

RESIDENTIAL TENANCIES AMENDMENT ACT, 2005 (NO. 2)

(Assented to , 2005)

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

Amends SA 2004 cR-17.1

1 The *Residential Tenancies Act* is amended by this Act.

**2 Section 50 is amended by renumbering it as section 50(1)
and adding the following after subsection (1):**

(2) No application may be accepted by a clerk for filing under
subsection (1) except in accordance with section 54.4.

3 The following is added after section 54:

Part 5.1 Residential Tenancy Dispute Resolution Service

Definitions

54.1 In this Part,

- (a) “Dispute Resolution Service” means the Residential Tenancy Dispute Resolution Service established by the regulations;
- (b) “regulations” means regulations made under section 54.7;
- (c) “remedy” means any order, judgment, damages, compensation or other relief provided for in this Act.

Right to apply to Dispute Resolution Service

54.2(1) Where a landlord has a dispute with a tenant and has a right to apply to a court under Part 3 for a remedy, the landlord may apply to the Dispute Resolution Service instead of the court for the remedy.

(2) Where a tenant has a dispute with a landlord and has a right to apply to a court under Part 3 or to commence an action in a court under Part 4 for a remedy, the tenant may apply to the Dispute Resolution Service instead of the court for the remedy.

(3) No application may be made to the Dispute Resolution Service if an application to a court has been filed with the clerk of that court by either party to the dispute

- (a) for the remedy sought under subsection (1) or (2), or
- (b) for any other remedy that is available under Part 3 or 4 to resolve a related dispute between the parties,

unless the application to the court is first withdrawn.

Effect of application to Dispute Resolution Service

54.3(1) A landlord’s application to the Dispute Resolution Service for a remedy binds the tenant in respect of whom the remedy is sought to the choice of that forum.

(2) A tenant’s application to the Dispute Resolution Service for a remedy binds the landlord in respect of whom the remedy is sought to the choice of that forum.

(3) Where an application has been filed with the Dispute Resolution Service by one party to a dispute, no application may be made to a court by either party to the dispute

- (a) for the remedy sought under section 54.2(1) or (2), or
- (b) for any remedy that is available under Part 3 or 4 to resolve a related dispute between the parties,

unless the application to the Dispute Resolution Service is first withdrawn.

Review before filing with a court

54.4(1) Before any application to a court for a remedy to a dispute under Part 3 or 4 may be filed by a clerk of a court, the clerk shall, in accordance with the process set out in the regulations, determine whether an application has been filed with the Dispute Resolution Service

- (a) for the remedy applied for in the application to the court, or
- (b) for any other remedy that is available under Part 3 or 4 to resolve a related dispute between the parties to the application to the court.

(2) Where the process referred to in subsection (1) discloses that an application, as described in subsection (1), has been filed with the Dispute Resolution Service, the application to the court shall not be filed except as provided in the regulations.

(3) Where, on the same day,

- (a) a clerk of a court files an application made by one of the parties to a dispute for a remedy under Part 3 or 4, and
- (b) the Dispute Resolution Service files an application made by the other party to the dispute for any other remedy that is available under Part 3 or 4 to resolve a related dispute between the parties,

the application filed with the clerk of the court shall be proceeded with and the application to the Dispute Resolution Service shall be discontinued.

Authority of Dispute Resolution Service

54.5 The Dispute Resolution Service has the authority to order remedies in accordance with the regulations.

Application, proceedings and decision to be in accordance with regulations

54.6(1) An application to the Dispute Resolution Service must be made in accordance with the regulations.

(2) The Dispute Resolution Service must conduct all proceedings and decide all applications to it

- (a) in accordance with and subject to any limitations and restrictions set out in the regulations, and
- (b) in accordance with the rules of practice and procedure and the code of conduct established pursuant to the regulations.

(3) The Dispute Resolution Service must refer to a court an application, dispute or issue that is, in accordance with the regulations, required to be referred to a court.

(4) The Dispute Resolution Service may, in any of the circumstances provided for in the regulations,

- (a) refuse to accept an application to the Dispute Resolution Service, and
- (b) refer an application to the Dispute Resolution Service to a court.

Regulations

54.7 The Lieutenant Governor in Council may make regulations respecting the establishment of an alternative dispute resolution mechanism for the purpose of resolving disputes arising in respect of matters under this Act, including, without limitation, regulations

- (a) respecting the establishment of the Residential Tenancy Dispute Resolution Service and the appointment of an administrator, tenancy dispute officers and any other employees required for the administration of the Dispute Resolution Service;
- (b) respecting the process to be followed by a clerk of a court for the purposes of section 54.4;

- (c) respecting applications to the Dispute Resolution Service, including applications that include a claim for damages, compensation or other relief that exceeds the amount prescribed by regulations for the purposes of section 9.6(1) of the *Provincial Court Act*;
- (d) respecting the kinds of applications, disputes and issues that are required to be referred to a court by the Dispute Resolution Service;
- (e) respecting the circumstances in which the Dispute Resolution Service
 - (i) may refuse to accept an application to the Service, or
 - (ii) may refer to a court an application to the Service;
- (f) respecting the proceedings before the Dispute Resolution Service and the establishment of rules of practice and procedure governing those proceedings;
- (g) respecting the establishment of a code of conduct for tenancy dispute officers;
- (h) respecting the powers and duties of tenancy dispute officers;
- (i) respecting the matters that tenancy dispute officers may or must consider when dealing with a dispute;
- (j) respecting the remedies that the Dispute Resolution Service is authorized to order, including orders providing for costs;
- (k) respecting limitations and restrictions on the Dispute Resolution Service's authority to order a remedy;
- (l) respecting terms and conditions that may be included in an order of the Dispute Resolution Service;
- (m) respecting the effect of an order and how it may be enforced, including regulations authorizing the order to be filed in the Court of Queen's Bench and, on filing, to be enforced as an order of that court;

- (n) respecting the appeal of an order to the Court of Queen's Bench on a question of law or jurisdiction;
- (o) respecting the fees that may be charged by the Dispute Resolution Service and providing for the waiver of any fee;
- (p) respecting forms for the purposes of this Part and providing for their use;
- (q) respecting the service of notices, documents or orders;
- (r) defining, for the purposes of this Part and the regulations made under this Part, any word or phrase that is used in this Part but is not defined;
- (s) respecting any matter or thing that the Minister considers necessary or appropriate to carry out the intent and purposes of this Part.

Application of this Part

54.8(1) This Part applies

- (a) only in the judicial district or other geographic region of the Province, and
- (b) only for the period of time

specified by an order of the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council may, by order,

- (a) extend or shorten the period of time specified under subsection (1)(b),
- (b) suspend the operation of the Dispute Resolution Service, and
- (c) end a suspension referred to in clause (b).

(3) If the operation of the Dispute Resolution Service is suspended by an order under subsection (2), the transitional rules necessary to address incompleting hearings, pending applications and all related matters must be set out in the order.

4 Section 70(k) is repealed.

5 This Act comes into force on Proclamation.

Explanatory Notes

1 Amends chapter R-17.1 of the Statutes of Alberta, 2004.

2 Section 50 presently reads:

50 A person wishing to commence an application in the Provincial Court shall file with a clerk of the Provincial Court

- (a) a written notice identifying the residential premises in respect of which the application is being commenced and setting out the remedy being applied for, and*
- (b) an affidavit referred to in section 26(2) or 37(2), as the case may be.*

3 The new Part 5.1 provides for a method of resolving disputes between landlords and tenants that avoids going to Court.

4 Section 70(k) presently reads:

70 The Minister may make regulations

- (k) respecting the establishment of an alternative dispute resolution mechanism for the purpose of resolving disputes in respect of matters under this Act including, without limitation, regulations*
 - (i) providing for the establishment of one or more dispute resolution bodies,*

- (ii) *providing for all matters relating to the appointment of members to a dispute resolution body,*
- (iii) *respecting the kinds of disputes that a dispute resolution body can deal with,*
- (iv) *respecting the proceedings before a dispute resolution body,*
- (v) *respecting the matters that a dispute resolution body may or must consider when dealing with a dispute or class of dispute,*
- (vi) *subject to subclause (iv), authorizing a dispute resolution body to make rules governing its proceedings,*
- (vii) *respecting the kinds of orders a dispute resolution body is authorized to make for the purposes of resolving a dispute including, without limitation, regulations authorizing the body to make an order that a court would be authorized to make in the same circumstances,*
- (viii) *respecting the effect of an order of a dispute resolution body and how it may be enforced including, without limitation, regulations authorizing an order to be filed in a court,*
- (ix) *providing for the appeal of a decision of a dispute resolution body to the Court of Queen's Bench and governing the manner in which the appeal is to be taken, and*
- (x) *governing fees that may be charged in respect of an alternative dispute resolution mechanism;*

5 Coming into force.