

2015 Bill 204

First Session, 29th Legislature, 64 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 204

**RESIDENTIAL TENANCIES (SAFER SPACES FOR VICTIMS OF
DOMESTIC VIOLENCE) AMENDMENT ACT, 2015**

MS DREVER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 204

2015

RESIDENTIAL TENANCIES (SAFER SPACES FOR VICTIMS OF DOMESTIC VIOLENCE) AMENDMENT ACT, 2015

(Assented to _____, 2015)

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 1(1) is amended

(a) by renumbering clause (a) as clause (a.1) and by adding the following before clause (a.1):

(a) “child” means a person under 18 years of age;

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

(n.1) “stalking” means repeated conduct by a person, without lawful excuse or authority, that the person knows or reasonably ought to know constitutes harassment of another person and causes that other person to fear for his or her personal safety;

3 Section 41 is amended by striking out “36 or 37” and substituting “36, 37 or 47.3(7)”.

EXPLANATORY NOTES

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

2 Definitions added.

3 Section 41 presently reads:

Application for a remedy to court.

41 If a landlord or tenant applies to a court to obtain a remedy under section 26, 30, 33, 36 or 37, the landlord or tenant shall serve on the other party to the application a notice of the application and a

4 The following is added after Part 4:

**Part 4.1
Victims of Domestic Violence**

Definition

47.1 In this Part, except in section 47.3, “court” includes any court of competent jurisdiction.

Domestic violence

47.2(1) For the purposes of this Part, domestic violence occurs when a person or that person’s dependent child is subjected to any of the acts or omissions listed in subsection (2) by another person who

- (a) is or has been married to that person, is or has been an adult interdependent partner of that person or is residing or has resided together with that person in an intimate relationship,
- (b) is or has been in a dating relationship with that person, regardless of whether they have lived together at any time,
- (c) is the biological or adoptive parent of one or more children with that person, regardless of their marital status or whether they have lived together at any time,
- (d) is related to that person by blood, marriage or adoption or by virtue of an adult interdependent relationship, regardless of whether they have lived together at any time, or
- (e) resides with that person and has care and custody over that person pursuant to an order of a court.

(2) The following acts and omissions constitute domestic violence for the purposes of this Part:

- (a) any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a person;

supporting affidavit at least 3 days, exclusive of holidays and Saturdays, or any shorter period of time that the court may approve, before the day named in the notice for the hearing.

4 Adds Part 4.1, Victims of Domestic Violence.

- (b) any act or threatened act that intimidates a person by creating a reasonable fear of property damage or injury to a person;
- (c) conduct that reasonably, in all circumstances, constitutes psychological or emotional abuse;
- (d) forced confinement;
- (e) sexual contact of any kind that is coerced by force or threat of force;
- (f) stalking.

Termination of tenancy for domestic violence

47.3(1) A tenant may terminate a tenancy by giving notice in accordance with subsection (2) if, because of domestic violence, the tenant believes that his or her own safety or that of a dependent child of the tenant is at risk if the tenancy continues.

(2) To terminate a tenancy under subsection (1), the tenant shall serve the landlord with

- (a) a notice at least 28 days before the day that the tenancy is to terminate, and
- (b) a certificate in the prescribed form signed by the designated authority confirming that there are grounds for terminating the tenancy.

(3) A notice to terminate under this section must

- (a) be in writing,
- (b) be signed by the tenant,
- (c) set out the termination date, and
- (d) be given no later than 90 days after the date on which the certificate under subsection (2)(b) is issued.

(4) If notice to terminate a tenancy is given under this section,

- (a) the tenant shall be responsible for payment of rent only for the period of notice provided under subsection (2)(a) and any rent payable during the relevant rent payment period or periods shall be prorated if necessary,

- (b) the tenant shall not be subject to any penalty under the residential tenancy agreement that would be due only because of early termination of the agreement, and
- (c) on the request of the tenant, the landlord shall apply a security deposit paid in respect of the residential premises in payment of the rent during the notice period provided under subsection (2)(a).

(5) Where a tenancy is terminated under this section, the tenancy is terminated for all the tenants in the same residential premises but, for greater certainty, the other tenants and the landlord may agree to enter into a new landlord and tenant relationship.

(6) In a case where a tenancy is held by more than one tenant, the designated authority may require a tenant to advise the designated authority when notice under this section is served so that the designated authority may, in coordination with the landlord, take steps to notify the other tenants that the tenancy will terminate.

(7) A landlord may apply to a court to set aside a notice given under this section only on the ground that the notice to terminate and the certificate were not properly served on the landlord.

(8) An application under subsection (7) must be made prior to the expiry of the period of notice under subsection (2)(a) and must be supported by an affidavit setting out a copy of the notice to terminate and certificate received by the landlord, if any, and the time, date and manner in which they were received.

Application for a certificate

47.4(1) Where a tenant in a residential tenancy agreement is a victim of domestic violence, the tenant or person on behalf of the tenant and with the tenant's consent may apply to the designated authority, in the form and manner and including the information required by the designated authority, for a certificate confirming that one of the grounds to issue a certificate under subsection (2) has been established.

(2) The designated authority may issue a certificate to a tenant for the purposes of section 47.3 if

- (a) the designated authority has received from the tenant

- (i) a copy of an emergency protection order or Queen's Bench protection order granted under the *Protection Against Family Violence Act*, a restraining order, a peace bond or other court order that is in place to prevent a person described in section 47.2(1) from contacting or communicating with that tenant, or
- (ii) a statement from a person described in subsection (3) acting in his or her professional capacity indicating that person's opinion that the tenant has been the subject of domestic violence,

and

- (b) after having completed an assessment, the designated authority is satisfied that there is a risk to the safety of the tenant or the tenant's dependent child if the tenancy continues.

(3) The following persons may provide a statement in accordance with subsection 2(a)(ii):

- (a) a regulated member of the
 - (i) College of Physicians and Surgeons of Alberta,
 - (ii) College and Association of Registered Nurses of Alberta,
 - (iii) Alberta College of Social Workers,
 - (iv) College of Alberta Psychologists, or
 - (v) College of Registered Psychiatric Nurses of Alberta;
- (b) a police officer or a member of the Royal Canadian Mounted Police;
- (c) an individual employed
 - (i) by an agency or organization to assist individuals for whom the agency or organization provides accommodation in an emergency or transitional shelter because of homelessness or abuse, or
 - (ii) to provide support initiatives for victims of crimeif that individual is authorized by his or her employer to provide statements under this section;

(d) any other person or member of a class of persons prescribed by the regulations.

(4) No action or proceeding may be brought against a person in respect of a statement made under subsection (2)(a)(ii) if that statement was made in good faith.

Designated authority

47.5(1) The Minister may, in accordance with the regulations, appoint a person to act as the designated authority under this Act.

(2) The designated authority may delegate to any person any power, duty or function of the designated authority under this Part except the power to delegate under this section.

(3) A delegation under subsection (2) must be in writing and may contain any conditions or restrictions the designated authority considers appropriate.

(4) The designated authority may, in accordance with the regulations, make inquiries, collect information and take any other action necessary to carry out the designated authority's powers, duties and functions under this Part.

(5) Subject to subsection (6), a decision by the designated authority to issue or refuse to issue a certificate under section 47.4 is final and not subject to review or appeal.

(6) A tenant who is refused a certificate under section 47.4 may reapply for a certificate if there is a change in circumstances.

Designated authority not compellable

47.6 The designated authority and any person who provides a statement in accordance with section 47.4(2)(a)(ii) cannot be compelled in a court or other proceeding, including a proceeding before the Residential Tenancy Dispute Resolution Service established by regulations made under section 54.7, to

- (a) give evidence about information obtained for the purpose of this Part, or
- (b) produce any document or thing obtained for the purpose of this Part.

Requirement for confidentiality

47.7 A landlord shall ensure that any information received under this Part from or about a tenant who is a victim of domestic violence is kept confidential unless the landlord is authorized by the regulations to disclose that information.

5 Section 54.2(1) is amended by striking out “Part 3” and substituting “Part 3 or Part 4.1”.

6 The following sections are amended by striking out “Part 3 or Part 4” wherever it occurs and substituting “Part 3, Part 4 or Part 4.1”:

section 54.2(3);
section 54.3(3);
section 54.4(1) and (3).

7 Section 60(1)(a) is amended by striking out “or 46(2) or (6)” and substituting “, 46(2) or (6), or 47.7”.

8 Section 68 is amended by adding the following after clause (e):

- (f) respecting statements confirming domestic violence under section 47.4(2)(a)(ii), including any requirements concerning their form and content;
- (g) prescribing persons who can make statements confirming domestic violence under section 47.4(3)(d);

5 Section 54.2(1) presently reads:

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

6 Consequential changes.

7 Section 60(1) presently reads:

Offences and Penalties

60(1) A person who contravenes

(a) section 18, 19(6), 23, 24, 25, 31(13) or (14), 43, 44(1), (3), (5) or (6), 45 or 46(2) or (6) or this Act as described in section 6(2), or

(b) a provision of the regulations referred to in section 69(1)(b) of 70(1)(l),

is guilty of an offence and liable to a fine of not more than \$5000.

8 Lieutenant Governor in Council regulations.

- (h) respecting the appointment of the designated authority under section 47.5(1);
- (i) respecting the powers, duties and functions of the designated authority appointed under section 47.5(1);
- (j) prescribing circumstances under section 47.7 in which a landlord may disclose information about a tenant.

9 Section 70(1) is amended by adding the following after clause (i):

- (i.1) establishing the form of certificate for the purposes of section 47.3(2)(b);

10 This Act comes into force on January 1, 2016.

9 Ministerial regulations.

10 Coming into force.

