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Backgrounder

LRC 13—Report on Landlord and Tenant Relationships: Residential Tenancies

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Historically the body of law in British Columbia that governs the relationship between a landlord and tenant has its roots in the English common law and various English statutes that were inherited in 1858 upon the founding of the colony of British Columbia. In 1897 the more relevant provisions from the English statutes were taken and incorporated in the *Landlord and Tenant Act*. No distinction was drawn either at common law or under the act between the law applicable to residential tenancies and those applicable to commercial tenancies.

It gradually became apparent that the common law and the existing legislation were not adequately addressing problems between landlords and tenants of residential premises. This was in large part due to the fact that at common law the courts were determining the rights of tenants according to rigid land-law principles rather than under contract or tort law. Ontario was the first jurisdiction in Canada to introduce legislation that attempted to resolve these issues, shortly followed by British Columbia, which introduced legislation that more or less mirrored the Ontario statute. The eventual outcome was that in 1970 the act became divided into two distinct parts. Part II was devoted almost entirely to residential tenancies whereas Part I governed commercial tenancies, although still having some limited effect on residential tenancies.

The Law Reform Commission took the view that a statute that had two different parts that are essentially unrelated caused confusion in the mind of the layperson. Any reform of the Act should therefore, as a starting point, involve the separation of Part I and II into two distinct statutes with Part II forming the basis of a new act dealing with residential tenancies. The remainder of chapter one then examines those provisions of Part I that relate to residential tenancies and that would need to be carried forward in some form or other to a new act.

Chapter two looks at the scope of the proposed new act, focussing on certain types of occupiers and premises. Recommendations are made in relation to licensees, the Crown, caretaker's suites, and mobile homes.

Chapter three assesses the issue of which court or body should have jurisdiction for the resolution of residential landlord-and-tenant disputes. At the time of this report, jurisdiction was assigned to judges of the Small Claims Division of the Provincial Court of British Columbia. Municipalities were also required to establish a Landlord and Tenant Advisory Bureaux, which, while not having dispute-resolving powers, gave advice and offered mediation. Two other bodies concerned with solving disputes in landlord and tenant matters existed: the Vancouver Rental Accommodation Grievance Board and the Surrey Landlord-Tenant Grievance Board. The commission favoured the idea of establishing a new body as an alternative to the Small Claims Division, primarily on the grounds of speed and expertise in dealing with disputes. Various options are discussed with the commission settling on having a centralized body similar to that adopted in Manitoba. The relevant provisions from the Manitoba legislation are set out and broadly speaking provide for the division of the jurisdiction between the County Court and an official known as the rentalsman. The balance of this chapter then sets out the proposed functions and powers of the rentalsman and the court.

Chapter four focuses on two issues. The first is tenant security. The chapter sets out the existing law, looks at tenant security law in other jurisdictions, and then explores arguments for and against a change in the law. The second issue to be examined is rent control. The commission concludes that this question is not one that a law-reform body is competent to decide because it involves consideration of a wide variety of factors that are beyond its control. The report does, however, recognize that rent control can have an impact on security of tenure where a landlord increases rent to a level that a tenant can no longer afford. A recommendation is, therefore, made to combat this type of behaviour.

The contentious issue of security deposits is looked at in chapter 5. Traditionally, landlords in British Columbia have taken deposits to protect themselves against three kinds of potential liability: nonpayment of rent, damage to the premises, and uncleaned premises. The report sets out the history of legislation in British Columbia dealing with security deposits and concludes that there are gaps in the legislation, particularly from a tenant's point of view. A comparative study of legislation regulating security deposits in other jurisdictions is provided and a number of recommendations are then made which center around the rentalsman holding all statutory deposits.

The introduction of Part II of the *Landlord and Tenant Act* in British Columbia resulted in a clear policy choice to place the relationship between landlord and tenant on a purely contractual basis, and to move away from the notion that the tenant has a leasehold estate conferring an interest in land. One important implication of this policy choice is that every aspect of the rules of contract apply which may in some cases lead to undesirable results in the specific context of residential tenancies. Chapter 6 examines some of the problems that arise from the contractual nature of a tenancy agreement.

Chapter 7 examines various statutory duties and prohibitions, including the landlord's responsibilities to repair the premises, the tenant's responsibilities for cleanliness, and the tenant's rights to privacy. The report recommends a number of reforms, intended to account for deficiencies in the previous law. Chapter 8 examines rental rates and the frequency of rent increases.

Chapter 9 is concerned with abandonment of the premises by the tenant. Chapter 10 examines discrimination in landlord and tenant relations. Chapter 11 looks at collective action by tenants. Finally, chapter 11 considers a series of miscellaneous issues.

Further Developments

See *Landlord and Tenant Act*, S.B.C. 1974, c. 45 (now *Residential Tenancy Act*, S.B.C. 2002, c. 78).