TENANT ALLIANCE OF NOVA SCOTIA

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Law Amendments Committee
Nova Scotia House of Assembly

To the Members of the Law Amendments Committee:

Re: Bill 119 – *Residential Tenancies Act*
Submissions of the Tenant Alliance of Nova Scotia (TALONS)

TALONS fully supports the Legislature in granting immediate security of tenure to Nova Scotia renters. Immediate security of tenure means tenants will not be evicted from their homes without valid reasons. This is a progressive step forward that will bring the *Nova Scotia's Residential Tenancies Act* ("the Act") in line with tenancy legislation across Canada.

We are concerned that some aspects of Bill 119 ("the Bill") are unfair to tenants in Nova Scotia, particularly those which amend the Notice to Quit provisions. We also think the Legislature can do more to protect tenants with regard to security deposits and repair enforcement.

This Brief addresses the following issues:

1. **Notice to Quit - Rental Arrears**
2. **Notice to Quit - Breach of Statutory Conditions**
3. **Security Deposits**
4. **Repairs Enforcement**

1. Notice to Quit - Rental Arrears

Section 5 (6A) of the Bill proposes to amend section 10 of the *Act* to allow landlords to give Notice to Quit to a tenant fifteen days in arrears of their rent. Once Notice to Quit is provided by the landlord using the prescribed form, the tenant has fifteen days to take one of two actions to have the Notice to Quit set aside. The tenant may:

- pay the arrears in full, or;
- file an Application to the Director disputing the Notice to Quit.

If the tenant doesn't make application, the landlord may apply to the Director for an Order of Vacant Possession, and the Director may "without investigating and endeavouring to mediate a settlement and without holding a hearing, order the tenant to vacate the residential premises."[1]

Under the current legislation, landlords must apply to the Director for an Order of Vacant Possession, and a Hearing is held to which the landlord must provide notice to the tenant.

Our concern is that this amendment to the legislation will result in Vacant Possession Orders being rubber stamped by Residential Tenancies Division without providing tenants adequate

[1] Bill No. 119, s. 5 (9) (7B)

opportunity to contest the Notice to Quit. The landlord may apply for an Order, and if the tenant doesn't respond, automatically get what he seeks.

TALONS position is that there should be a Residential Tenancies Hearing held before the Director makes any Order so that the tenant has an opportunity to respond to the claim.

It should be noted that British Colombia is the only Canadian jurisdiction which follows the procedure proposed by the Bill.

2. Notice to Quit - Breach of Statutory Conditions

Section 5(9) of the Bill proposes providing the landlord with powers to provide Notice to Quit to a tenant immediately, if the tenant breaches statutory conditions (3), (4) or (5), under section 9 of the *Act*. We are mostly concerned about the wordings of subsection 3 and 4. These sections are vague, and do not give either the tenants or landlord a clear idea of what constitutes a violation.

These conditions are as follows:

> 3. **Good Behaviour** - A landlord or tenant shall conduct himself in such a manner as not to interfere with the possession or occupancy of the tenant or of the landlord and the other tenants, respectively.
>
> 4. **Obligation of the Tenant** - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by willful or negligent acts of the tenant or of any person whom the tenant permits on the premises.

Good Behaviour

With regards to good behaviour under s. 9(3), other jurisdictions have employed the following terms:

Ontario

Termination for cause, reasonable enjoyment

64. (1) A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

Manitoba

Duty not to disturb others

73 A tenant shall not unreasonably disturb, or allow another person the tenant permits in the residential complex to unreasonably disturb,

(a) the enjoyment for all usual purposes of the residential complex or any other rental unit by the landlord, another tenant or occupant of the residential complex, or a person permitted in the residential complex by any of those persons;

(b) the enjoyment of adjacent property for all usual purposes by occupants of that property.

British Columbia

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
(d) the tenant or a person permitted on the residential property by the tenant has
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
(iii) put the landlord's property at significant risk;

All three *RTA*s above qualify the terms interfere/disturb. The *RTA* of Ontario uses the word 'substantially', the *RTA* of Manitoba uses the term 'unreasonably', and the *RTA* of British Columbia employs the terms 'significantly' and 'unreasonably'.

Nova Scotia's *RTA* does not specify the degree of interference necessary before a landlord can evict a tenant. As the Bill proposes to allow landlords to evict tenants immediately if they fail to comply with s. 9(3), this section should be modified to include a term which quantifies the level of interference. This will ensure that landlords do not have the ability to evict tenants for minor levels of interference.

Obligation of the Tenant

With regards to the s. 9(4), obligations of the tenant with regards to cleanliness and damage, other jurisdictions have used the following wording:

Ontario

Termination for cause, damage

62. (1) A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit, or a person whom the tenant permits in the residential complex willfully or negligently causes undue damage to the rental unit or the residential complex.

Manitoba

Obligation to take care and repair damage

72(1) A tenant shall take reasonable care, and ensure that any person he or she permits in the residential complex takes reasonable care, not to damage willfully, negligently or by omission the rental unit or residential complex, including services and facilities, and shall, subject to subsection (2), repair any damage in a good and workmanlike manner, or pay

compensation to the landlord, within a reasonable time after receiving a written notice to do so by the landlord.

Exception for reasonable wear and tear

72(2) A tenant is not liable for reasonable wear and tear to the rental unit or residential complex, including services and facilities provided by the landlord.

British Columbia

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(f) the tenant, or a person permitted on the residential property by the tenant, has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

The *RTA*s of Manitoba and British Columbia only allow the landlord to evict a tenant if they have failed to repair damages within a reasonable time. The *RTA* of Manitoba also provides an exception to the section by stating that a tenant is not liable for damage due to normal wear and tear. The *RTA* of Ontario qualifies the terms of the section by using the words 'undue damage' while the *RTA* of British Columbia uses the term 'extraordinary damage'.

If the landlords in Nova Scotia are to be given the power to evict the tenant immediately for damage, the *Act* should characterize the damage as undue or extraordinary damage, and specify that it does not apply to normal wear and tear. Moreover, the clause should provide a reasonable amount of time for the tenants to make repairs to any such damages.

It should be noted that s. 10 (7A) of the Act already provides that;

(7A) Notwithstanding subsections (1), (6) and (7), where a tenant poses a risk to the safety or security of the landlord or other tenants in the same building on account of the contravention or breach by that tenant of any enactment, Notice of Termination may be given to the tenant effective not earlier than five days, or such shorter period as the Director may direct, after the Notice is given.

In addition to these concerns, we would request that the Legislature include a provision that would allow the tenant to provide Notice to Quit where the landlord is in violation of the statutory conditions under s. 9. In the case of *MacDougall v MacDonald*, the Supreme Court of Nova Scotia ruled that when the landlord breaches a statutory condition, the tenant is entitled to end the lease and move out immediately.[2]

3. Security Deposits

The Bill does not amend s. 12 of the *Act* respecting security deposits.

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[2] *MacDougall v MacDonald,* 109 NSR 2d 188

Most tenants in Nova Scotia are required to pay a security deposit at the beginning of their tenancy agreements. Most landlords require that tenants pay a security deposit in the amount of half the cost of one month's rent, a significant sum. Landlords are required to return tenants' security deposit at the end of the tenancy when the tenant moves out. Unfortunately, at the expense of tenants, many landlords do return security deposits to their tenants.

Security deposits are intended to cover a landlord's costs at the end of a tenancy agreement for any damage caused by a tenant to their property, outside of the regular "wear and tear" of day-to-day living. As it is named in the *RTA*, a Security Deposit is meant as a *deposit*, and not as an application fee. Under the *RTA*, landlords are prohibited from charging application fees to tenants. The current *RTA* requires that when landlords wish to retain a portion, or the entire sum of a tenant's security deposit, the landlord must make an application to the Director of Residential Tenancies, and justify the amount retained to a Residential Tenancies Officer.

The reality is that some landlords fail to return tenants' security deposits, and do not apply to the Director, putting the onus on their tenants to apply to the Director in order to have their deposit returned. Residential Tenancies has provided us with the statistic that between January 2005 and January 2009, there were 607 Applications to Director in Nova Scotia regarding retention or return of security deposits[3]. Unfortunately, Residential Tenancies' reporting system does not distinguish between applications made by landlords, and applications by tenants. In our experience, many tenants, unfamiliar with the Residential Tenancies process and without time or resources to pursue a claim, do not apply to the Director, and simply lose their deposit.

The purpose of the security deposit provision of the *RTA* is to ensure that landlords' costs are covered when tenants damage their property. Saddling tenants with the unfair burden of initiating an administrative process in order to get back what is their money was not the intent of the Legislature.

In New Brunswick, security deposits must be paid in trust by tenants to the Office of the Rentalsman. Where landlords wish to retain any portion of a tenants' security deposit, the landlord must file the prescribed forms with the Rentalsman, who acts as an adjudicator on the issue. This system ensures that tenants are not burdened by having to initiate an administrative process to have their security deposits returned[4].

We recommend that the Legislature amend the *RTA* to require that when landlords wish to charge their tenants' security deposits, the deposits be paid in trust to Residential Tenancies. The deposits would then be returned to the tenant at the end of their tenancy agreement. The interest on deposits could pay for any added administration costs.

Landlords who wish to retain a portion, or the entire sum of their tenant's security deposit should be required to apply to the Director, and to justify retaining the deposit at a Hearing before a Residential Tenancies Officer.

It should be noted that our recommendation regarding security deposits is consistent with the recommendation of the Commission of Inquiry on Rents in 1983[5].

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3 Report on Nova Scotia Residential Tenancies Statistics January 1, 2005 to January 1, 2009

4 New Brunswick Residential Tenancies Act, s. 8, "Security Deposit Fund"

5 Commission of Inquiry on Rents, p.98.

4. Repairs Enforcement

The Bill does not amend the *Act* with respect to the enforcement of repairs for tenants. It should.

Across Nova Scotia, many tenants live in housing that fails to meet basic health, safety, and general habitability standards. More than one thousand Applications to Director were made by tenants from 2005 to 2009, seeking repairs by their landlords[6]. The Statutory Conditions in the *RTA* provide only minimal guidelines for reasonable housing standards. A much larger problem, however, is that the *Residential Tenancies Act* does not provide for adequate enforcement of the standards that it does set.

The United Nations International Convention on Economic, Social, and Cultural Rights (ICESCR), of which Canada is a signatory, states that everyone has the right to adequate and affordable housing.

The current enforcement mechanisms and remedies for breaches of the *RTA* place an undue burden on tenants. The only remedy currently allowed a tenant is to file a complaint with the Residential Tenancies Division. This involves paying a fee, as well as having the confidence and ability to navigate the bureaucratic process. This process tends to disadvantage low-income tenants. If a tenant makes a successful application, and a Residential Tenancies Officer issues an Order requiring that their landlord make needed repairs, there is the additional problem that there is currently no follow-up on Orders made by Residential Tenancies Officers.

Thus, if a landlord fails to comply with an Order, the tenant must file a second complaint, again with no guarantee that their problem will be resolved. This complaint-driven enforcement model is ineffective for those tenants who need the most protection, and, in combination with other weaknesses of the *RTA* such as the absence of rent control, leaves tenants vulnerable to retaliation for attempting to enforce their rights.

In Manitoba, the Residential Tenancies division has a field of Residential Tenancies Officers who will inspect units where tenants have complained of needing repairs, and their landlords failing to make those repairs. The Officers can then issue an Order to the landlord to make repairs. If the landlord does not comply within the given time-frame, the Officer can then order that the tenant's rent be redirected to the Residential Tenancies Division. The Division has the discretion to use the redirected money to pay contractors to make the repairs[7].

We propose a similar enforcement process. We recommend that the *RTA* be amended to include a mechanism to ensure that Orders made by Residential Tenancies Officers are followed. As well, other remedies need to be made available that put power in the hands of tenants, thus providing more balance between rights of tenants and of landlords. Specifically, the framework of Implied Warranty of Habitability provides for the tenant remedies of repair and deduct (where minor repairs are needed to bring a dwelling up to the habitability standard) and rent withholding (where major repairs are needed).

While requiring a follow-up inspection, or Hearing, to ensure that an Order made by a Residential Tenancies Officer has been followed will increase the time required to resolve each individual complaint brought before the Residential Tenancies Division, our experience has been that many instances where a tenant cannot resolve a maintenance problem with a landlord without recourse to the Residential Tenancies Division involve landlords who are repeat

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[6] Report on Nova Scotia Residential Tenancies Statistics January 1, 2005 to January 1, 2009

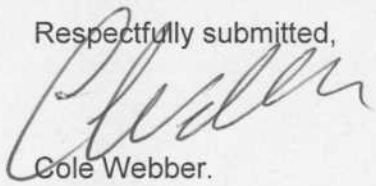
[7] Manitoba Residential Tenancies Act, s.154 "Re-direction and set-off of rent"

offenders. We expect that following up on Orders made will thus decrease the number of complaints filed by tenants, as these landlords face stronger consequences for their failure to comply with Orders, and as a result, inadequate housing is finally brought up to habitable standards. Allowing the tenant remedies of repair and deduct, and rent withholding, will also promote settlement of disputes over repairs between tenants and landlords without recourse to the Residential Tenancies Division.

Along with having the option of rent withholding when major repairs are needed to bring a dwelling up to habitable standards, we propose that, as in Manitoba, Residential Tenancies Officers be given greater power to disburse rent paid in trust to the Residential Tenancies Division to local municipalities, and to work together with municipal offices responsible for enforcing local housing by-laws. This would provide greater flexibility to accommodate the different needs of rural and urban communities.

It should be noted that the Commission of Inquiry on Rents recommended that where a landlord has failed to make promised or ordered repairs, that they be disallowed or limited in raising a tenant's rent.[8] Also, in the case of *MacDougall v MacDonald*, the Supreme Court of Nova Scotia ruled that when the landlord breaches a statutory condition, the tenant is entitled to end the lease and move out immediately, and receive a refund for the balance of that month's rent[9].

Respectfully submitted,



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8 Commission of Inquiry on Rents, p. 100

9 *MacDougall v MacDonald, Supra* note 2