Investment Property Owners Association of Nova Scotia
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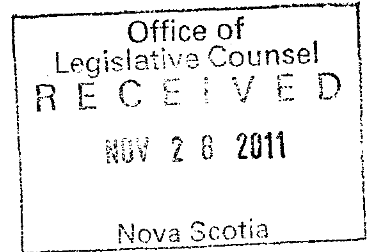

November 27, 2011

Gordon Hebb, Q.C.
Legislative Counsel
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Joseph Howe Building
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Re : **Bill 110 – An Act to Amend Chapter 401 of the Revised Statutes, 1989, the Residential Tenancies Act**

Dear Mr. Hebb :

I am writing to make an important submission to the Law Amendments Committee to correct what we believe to be a drafting error in a piece of legislation that is before the Committee. I make the comment about this in earnest, as we believe that there is no other logical explanation for a small nuance in the wording of the bill as presented in the bill's first and second readings.

The Investment Property Owners Association of Nova Scotia ("IPOANS") is the industry association that represents the residential rental industry in Nova Scotia. Over the past several years, IPOANS has worked tirelessly with the Director of Residential Tenancies – Department of Service Nova Scotia and Municipal Relations ("SNSMR") to identify issues that should be addressed in the Residential Tenancies Act to ensure that the residential rental housing market operates efficiently and continues to provide affordable, high quality housing solutions for Nova Scotians, while maintaining a reasonable balance between the interests of residential rental property owners ("Landlords" under the Act) and their customers or residents ("Tenants" under the Act).

SNSMR has conducted extensive consultations with IPOANS involvement over the last several years, and IPOANS has presented a large number of problematic areas to SNSMR for consideration with an overall interest in improving the operation of the residential rental market. During this consultation, SNSMR has identified and agreed that there is a problematic area in Nova Scotia's former Residential Tenancies Act ("RTA") in the requirement for a prolonged amount of time between a Tenant failing to pay rent when due and a Landlord being able to provide a formal "Notice to Quit" to the Tenant. In addition, the former Act created a system that required SNSMR to hold hearings to deal with straight-forward undisputed rental arrears situations. SNSMR has become taxed to the point where – in many cases - it takes six to eight weeks to hold hearings on these undisputed rental arrears situations – which causes the system to start to break down with an overload of hearings.

In late 2010, amendments were made to the RTA to deal with a number of shortcomings in the Act, including the introduction of a new process to efficiently and effectively deal with uncontested rental arrears situations.

The process which was agreed between IPOANS and SNSMR as a reasonable, balanced approach to reduce the system's problems and overload in trying to deal with these simple rental arrears situations was :

a) The Landlord would be able to provide a Notice to Quit to the Tenant after the rental payment is 15 days late;

   and equally important :

b) Simple (i.e. uncontested) rental arrears would be dealt with in an application process that would not require a formal hearing.

There was clear agreement during consultations between IPOANS and SNSMR that this uncontested rental arrears application process would deal with current month arrears ("the month in which the Notice to Quit is given", and previous period rental arrears.

Our understanding from consultations with SNSMR during 2011 is that SNSMR was compelled to fine-tune the exact wording that was introduced in the 2010 RTA changes in order to ensure that the process was defined in the legislation in an unambiguous manner. During the 2011 consultations between IPOANS and SNSMR, the requirement for the "previous period rental arrears" to be included in the simplified application process was dissected and discussed in detail, and it was agreed without dispute or hesitation by IPOANS and the Director of Residential Tenancies as an important component of the new process.

We have reviewed the proposed Bill 110 and are horrified to see that the proposed wording does not clarify the process as required – and it actually makes the situation worse than that that exists today.

The proposed new RTA as modified by Bill 110 would envision a procedure that is simple and straight-forward to deal with the rental amounts outstanding "for the month in which the notice is given", but it is silent in how prior period rental arrears may be dealt with. The default understanding would be that uncontested rental arrears from prior periods could not be dealt with in the simple application process. This will effectively double the number of applications for uncontested rental arrears that SNSMR will have to deal with. This will crush the department – which is overloaded in its major offices already ...

Landlords often do not provide a Notice to Quit to Tenants at the earliest opportunity that they are permitted to under legislation. Landlords very often give Tenants extra time to make payment arrangements, or take a "wait and see" approach with Tenants. Requiring Tenants to vacate rental premises is not something that Landlords typically desire and Landlords often try to avoid these situations by working with Tenants during times of financial hardship. However, unfortunately, in many of these situations the Tenant is not able to get back on track and caught up on their rental arrears and the Landlord is forced to act to mitigate their damages.

The ability for Landlords to be able to deal with rental arrears "for the month in which the notice is given" and prior rental arrears provides landlords with the flexibility to use discretion and judgment in dealing with situations based on the details that exist for the particular circumstance. To require Landlords and SNSMR to participate in two different proceedings –

1B. The consent of the landlord required by Statutory Condition 1A. will not arbitrarily or unreasonably be withheld.

1C. The landlord shall not charge a commission or fee for granting consent required by Statutory Condition 1A., other than the landlord's reasonable expenses actually incurred in respect to the grant of consent.

1D. The landlord shall in writing, within ten days of receipt of the request made pursuant to Statutory Condition 1A., consent to the request or set out the reasons why consent is being withheld, failing which the landlord is deemed to have given consent to the request.

2 (1) Subsection 10(6D) of Chapter 401 is repealed and the following subsection substituted:

(6D) Where a notice to quit has been given by the landlord under subsection (6) and

(a) the notice to quit has not been voided under clause (6A)(a) by the tenant paying to the landlord the rent that is in arrears within fifteen days after receiving the notice to quit; and any prior period rental arrears

(b) the tenant has not disputed the notice by making an application to the Director under clause (6A)(b); and

(c) the fifteen day time period for making the application under subsection (6A) has expired,

the landlord may apply to the Director under Section 13 for any one or more of the following:

(d) an order to vacate the residential premises;

(e) an order requiring the tenant to pay to the landlord any rent owing for the month in which the notice to quit is given to the tenant; and any prior period rental arrears

(f) an order permitting the landlord to retain the tenant's security deposit to be applied against any rent found to be owing for the month in which notice to quit is given to the tenant. and any prior period rental arrears

(2) Subsection 10(6E) of Chapter 401 is repealed and the following subsection substituted:

(6E) Notwithstanding Sections 16 and 17, in the circumstances described in subsection (6D), the Director may, without investigating and endeavouring to mediate a settlement and without holding a hearing, order any one or more of the following:

(a) that the tenant vacate the premises;

(b) that the tenant pay to the landlord the rent owing for the month in which the notice to quit was given; and any prior period rental arrears

(c) that the landlord retain the tenant's security deposit to be applied against any rent found to be owing for the month in which notice to quit is given to the tenant. and any prior period rental arrears

3 Clause 11(2)(d) of Chapter 401, as enacted by Chapter 40 of the Acts of 1993 and amended by Chapter 72 of the Acts of 2010, is further amended by adding "space" immediately after "home" in the first line.

4 Subsection 26(1) of Chapter 401, as amended by Chapter 31 of the Acts of 1992, Chapter 40 of the Acts of 1993, Chapter 7 of the Acts of 1997, Chapter 10 of the Acts of 2002 and Chapter 72 of the Acts of 2010, is further amended by adding immediately after clause (ce) the following clauses:

(cea) requiring the tenant to provide information concerning the tenancy of the manufactured home space upon which the manufactured home is located to the person who wishes to acquire title or possession of the manufactured home for the purpose of Statutory Condition 1A. in subsection 9(2);

the simplified application PLUS a traditional hearing (with a six to eight ~~month~~ WEEK wait time) is hugely problematic and appears to be the result of a simple drafting error by the writer of the current legislation. There is no other logical, rationale explanation for the outcome that will ensue if Bill 110 is passed in its current form.

We have discussed the exact specifics of the implications of the current wording with the Director of Residential Tenancies and there is clear agreement between IPOANS and the Director on three things :

1. The proposed wording is not as agreed between IPOANS and the Director;

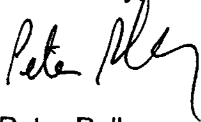
2. The proposed wording will severely restrict a Landlord's ability and willingness to attempt to give Tenants extra time to "work out" rental arrears situations; and

3. The proposed wording will crush the existing system with a deluge of duplicate applications – one "for the month in which the notice is given"; and a separate formal hearing for prior period rental arrears.

The solution to this major problem is very simple – to add the phrase "and any prior period rental arrears" to the end of Subsections 10 [6D(a), 6D(e), 6D(f)] , and Subsection 10 [6E(b) and 6E(c)]. As I find the clause numbering to be confusing, and to remove any ambiguity, I have attached a marked up copy of the proposed Bill 110 with the additions noted.

We look forward to making formal presentations to the Law Amendments Committee on this matter and look forward to seeing this apparent error being corrected before the bill moves forward so that the bill properly and fully reflects the intent and agreement between IPOANS and the Director of SNSMR which was formed and finalized during years of consultations.

Yours truly,



Peter Polley

IPOANS Legislative Chair

cc: Law Amendments Committee
Dean Johnson, Director Residential Tenancies, SNSMR via email.