

RESIDENTIAL TENANCY AMENDMENT ACT, 1999

CHAPTER 45

Assented to July 15, 1999

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

1 Section 1 of the Residential Tenancy Act, R.S.B.C. 1996, c. 406, is amended

(a) by repealing the definition of “registrar” and adding the following definition:

“director” means the director of the Residential Tenancy Office of the ministry or any other official designated by the minister for purposes of the administration of the Act; , and

(b) by repealing the definition of “review panel”.

2 The following section is added before Part 1:

Director

3.1 (1) The director is responsible for the administration and management of all matters and persons appointed under this Act.

(2) The director may delegate any power or duty of the director under the Act.

3 Sections 22 (6) and (7) (a), 25 (1) (a), 49 (1) to (3) and (6), 50 (1), 51 (1), 52 (4) and (5), 53, 55 (1) (a), 57 (5) (b) and 91.1 are amended by striking out “registrar” wherever it appears and substituting “director”.

4 Section 22 (8) is repealed and the following substituted:

(8) On an application by a tenant under subsection (6), the director may, without hearing the landlord, order the landlord to pay the security deposit plus interest to the tenant.

(8.1) The director may vary or cancel an order issued under subsection (8).

5 Section 26 is repealed and the following substituted:

Prescribed statement to justify a proposed rent increase

26 A landlord in preparing a statement referred to in section 25 (2) must use the prescribed formulas

(a) to calculate the rent adjustment based on the change in local government levies attributable to the residential premises for the relevant 12 month period,

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- (b) to calculate the rent adjustment based on the portion of capital expenditure attributable to the residential premises for the relevant 12 month period, and
- (c) to combine the rent adjustments determined under paragraphs (a) and (b) with the prescribed inflation adjustment factor to ascertain the justifiable rent increase for the residential premises.

6 Section 27 is amended

(a) by repealing subsection (1) (b) and substituting the following:

- (b) properly attributable to the residential premises for the relevant 12 month period, and , **and**

(b) by repealing subsection (2) and substituting the following:

- (2) After having determined under subsection (1) what the amount for each item should be, the arbitrator must use the prescribed formula to ascertain and award the justifiable rent increase, if any, for the residential premises.

7 Sections 49 (5) and 50 (2) are amended by striking out “registrar or a person authorized by the registrar” and substituting “director”.**8 Section 50 (1) is amended by adding “and arbitration reviews” after “arbitrations”.****9 Section 53 is amended by striking out “registrar’s” and substituting “director’s”.****10 Section 54 (3) is repealed.****11 Section 55 is amended**

- (a) at the end of subsection (1) (e) by adding “and”,**
- (b) by repealing subsection (1) (g) and (h), and**
- (c) by repealing subsections (9) and (10).**

12 Section 57 is amended

(a) by repealing subsections (1) to (3) and (7) and substituting the following:

- (1) The decision or order of an arbitrator must be given without delay and, in any event, within 30 days after the hearing.
- (2) The failure of an arbitrator to issue a decision within 30 days does not result in any loss of jurisdiction or otherwise affect the validity of the decision or order.
- (3) Except as otherwise provided in this Act, a decision or order of an arbitrator is final and binding on the parties.
- (7) A decision or order of an arbitrator under section 37, 46 or 47 may not be filed in a court until the expiry of the time limit for application for review under section 60. , **and**

(b) in subsection (8) by striking out “while it is suspended under section 62 (6)” and substituting “while the decision or order is suspended under section 61 (3)”.

13 The following section is added:

Error or omission in decision

- 57.1** (1) In a matter before an arbitrator, the arbitrator
- (a) may, with or without a hearing, on the arbitrator's own initiative or on the request of a party to the arbitration, correct a typographical, arithmetical or other similar error in the arbitrator's decision or order, and
 - (b) may, with or without a hearing, on the arbitrator's own initiative or on the request of a party made within 15 days after the decision, order or written reasons are given,
 - (i) clarify the decision, order or reasons, or
 - (ii) deal with an obvious error or inadvertent omission in the decision, order or reasons.
- (2) A request to an arbitrator under subsection (1) (a) or (b) by a party to an arbitration may be made without notice to any other party, but the arbitrator may require that another party be given notice.
- (3) An arbitrator must not exercise a power under subsection (1) (a) or (b) unless the arbitrator considers it just and reasonable to do so in all the circumstances.

14 Sections 59 to 64 are repealed and the following substituted:

Application for review of arbitrator's order or decision

- 59** (1) A party to an arbitration may apply to the director for review of an arbitrator's order or decision.
- (2) The director must designate an arbitrator to review the application.
- (3) The director must designate the original arbitrator to review the application unless the original arbitrator is not available or the director considers it appropriate to designate a different arbitrator.
- (4) An order or decision of an arbitrator may be reviewed on one or more of the following grounds:
- (a) a party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control;
 - (b) a party has new and relevant evidence that was not available at the time of the original hearing;
 - (c) a party has evidence that the arbitrator's decision was obtained by fraud.
- (5) An application under subsection (1)
- (a) must be made in the form and manner approved by the director,

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- (b) may be made without notice to any other party, and
 - (c) must be accompanied by full particulars of the evidence on which the applicant intends to rely.
- (6) A party to an arbitration may make an application under this section only once in respect of that arbitration.

Time limits for application to review

- 60 (1) A party must make an application under section 59 (1) for review of a decision or order of an arbitrator that relates to
- (a) section 17 (4), 37, 46 or 47, within 2 days after a copy of the decision or order is received by the party,
 - (b) section 11 or 44, within 5 days after a copy of the decision or order is received by the party, and
 - (c) any other section, within 15 days after a copy of the decision or order is received by the party.
- (2) An arbitrator may extend the time for making an application under section 59 (1) or for taking any steps in the review of an order or decision.

Decision on application for review

- 61 (1) At any time after an application is made under section 59 (1), the arbitrator designated to conduct the review may dismiss or refuse to consider the application for review for one or more of the following reasons:
- (a) the issues raised by the application can be dealt with sufficiently under section 57.1 (1) (a) or (b);
 - (b) the application does not provide full particulars of the matter submitted for review;
 - (c) the application fails to disclose sufficient grounds for review;
 - (d) the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the arbitrator would be set aside;
 - (e) the application is frivolous, vexatious, trivial or has not been initiated in good faith;
 - (f) the applicant fails to pursue the application diligently or to comply with an order made in the course of the review.
- (2) A decision on whether an application discloses sufficient grounds for review may be based on the written submissions of the applicant alone.
- (3) The arbitrator may order that the decision or order to be reviewed be suspended with or without conditions until the review has been completed and a decision given to the parties.
- (4) The arbitrator must give a decision in writing and with reasons.

- (5) Within 3 days of receiving a decision to proceed with the review or as otherwise ordered by the arbitrator, the applicant must serve a copy of the decision, and any order giving effect to the decision, on the other party.

Review of arbitrator's order or decision

- 62 (1) If the arbitrator decides that there are sufficient grounds to review the order or decision, the arbitrator may deal with the matter on its merits.
- (2) An arbitrator may review the order or decision based solely on the record of the original arbitration and any written submissions of the parties.
- (3) The arbitrator may confirm or vary the original order or decision.
- (4) The arbitrator who conducts the review under this section must give a decision in writing and with reasons.

Powers of arbitrator conducting review

- 63 In the review of an arbitrator's order or decision the arbitrator who conducts the review has all the powers and duties of an arbitrator in an original arbitration.

Reassignment of arbitration or arbitration review

- 64 The director may designate a different arbitrator to conduct an arbitration or arbitration review if the arbitrator originally designated is not available or the director considers it necessary to designate a different arbitrator.

15 Section 71 is amended

- (a) *in subsection (3) by striking out "30 days" and substituting "60 days", and*
- (b) *in subsection (4) by striking out "30 day" and substituting "60 day".*

16 Section 77 is amended by striking out "section 86" and substituting "section 87".

17 Section 85 (6) is repealed.

18 Sections 86 to 88 are repealed and the following substituted:

Service of matters under sections 22 (9), 49 (4) and 61 (5)

- 86 An order for the return of a security deposit referred to in section 22 (9), an application for arbitration under section 49 (4) or a review decision under section 61 (5) must be given to or served on a person by serving it in one of the following ways:
- (a) by leaving a copy of the document with the person;
- (b) if the person is a landlord, by leaving a copy of the document with an agent of the landlord;
- (c) by sending a copy of the document by registered mail to the address at which the person resides, or if the person is a landlord, to the address at which the person carries on business as a landlord.

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How to serve documents generally

- 87** Except as provided in section 86, a document required or permitted to be given to or served on a person under this Act must be served in one of the following ways:
- (a) by leaving a copy of the document with the person;
 - (b) if the person is a landlord, by leaving a copy of the document with an agent of the landlord;
 - (c) by sending a copy of the document by registered mail to the address at which the person resides, or if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) by sending a copy of the document by ordinary mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (e) by leaving a copy of the document at the person's residence with an adult person who apparently resides with the person to be served;
 - (f) by leaving a copy of the document in a mailbox or mail slot at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
 - (g) by attaching a copy of the document to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
 - (h) by transmitting a copy of the document to the fax number provided as an address for service by the person to be served.

Deemed or substitutional service

- 88** (1) A document served under section 86 or 87 is deemed to have been received
- (a) if served by mail, on the fifth day after mailing it,
 - (b) if served by fax, on the third day after faxing it,
 - (c) if served by attaching a copy of the document to a door or other place, on the third day after attaching it, or
 - (d) if served by leaving a copy of the document in a mail box or mail slot, on the third day after leaving it.
- (2) Despite sections 86 and 87, an arbitrator or court may make the following orders:
- (a) that a document must be served in a manner the arbitrator or the court considers necessary;
 - (b) that a document has been sufficiently served for the purposes of this Act on a day the arbitrator or the court determines;
 - (c) that a document not served in accordance with section 86 or 87 has been sufficiently served for purposes of this Act if the person on whom it is to be served receives it and is aware of its nature.

19 *Section 89 (1) is amended by striking out "\$2 000." and substituting "\$5 000."*

20 Section 90 (2) is amended**(a) by repealing paragraph (j) and substituting the following:**

(j) respecting matters related to the review of arbitrations, including fees; ,

(b) in paragraph (p) by striking out “manufactured home park” and substituting “manufactured home pad”, and**(c) in paragraph (r) by striking out “manufactured homes” and substituting “manufactured home pads”.****21 Section 90 (5) is repealed and the following substituted:**

(5) The Lieutenant Governor in Council may make regulations as follows:

(a) prescribing the form of notice for use under section 24 (3);

(b) prescribing the form of statement for use under section 25 (2);

(c) setting the inflation adjustment factor or providing a formula to determine the inflation adjustment factor;

(d) prescribing a formula referred to but not set out in the Act;

(e) respecting the calculation of a justifiable rent increase including different criteria and formulas for that calculation by different classes of landlords.

22 The Supplement to the Act is repealed.**Consequential Amendment****Attorney General Statutes Amendment Act, 1998****23 Section 9 of the Attorney General Statutes Amendment Act, 1998, S.B.C. 1998, c. 23, is repealed.****Transition provisions**

24 If a decision is made by an arbitrator under the *Residential Tenancy Act* before the coming into force of the re-enactment of section 59 of the *Residential Tenancy Act* by this Bill, the review of the arbitrator's decision must proceed

(a) if the application for review is filed before the coming into force of the amendments, under the *Residential Tenancy Act* as it was before the coming into force of the amendments, or

(b) if the application for review is filed after the coming into force of the amendments, under the *Residential Tenancy Act* as amended.

Continuing jurisdiction of Arbitration Review Panel and members for purposes of transition

25 For the purposes of transition, the Arbitration Review Panel as it was constituted immediately before the coming into force of the amendments made by this Act and

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every person who was a member of the panel immediately before the coming into force of those amendments continue to have all the same powers and duties including jurisdiction to hear and decide any review for which an application was filed before the coming into force of those amendments.

Power to make regulations for transition respecting applications for rent increase

26 For the purpose of providing for transition in respect of applications for a rent increase, the Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for meeting or removing any difficulty arising in bringing into force the amendments enacted by this Act and, in particular, to provide

- (a) that the *Residential Tenancy Act* as it read before the coming into force of those amendments continues to govern any application for a rent increase that is to have effect before the coming into force of those amendments, and
- (b) that the *Residential Tenancy Act* as amended by those amendments governs any application for a rent increase that is to have effect after the coming into force of those amendments.

Commencement

27 This Act comes into force by regulation of the Lieutenant Governor in Council.