

RESIDENTIAL TENANCY AMENDMENT ACT, 1980**CHAPTER 48**

[Assented to June 27, 1980.]

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. 1979, c. 365, is amended
 - (a) by repealing the definition of "commission",
 - (b) by adding the following definitions:

"family corporation" means a corporation in which
 - (a) all the voting shares are owned by one person, or
 - (b) all the voting shares are owned by one person plus one or any number of his mother, father, brother, sister, child, spouse or his spouse's mother, father or child;

"inn" means
 - (a) an inn as defined in the *Hotel Keepers Act*, or
 - (b) a boarding house, rooming house or apartment hotel containing premises that are occupied under conditions that, at common law, would be considered a licence to occupy the premises; .

(c) in the definition of "residential premises" by striking out "and" at the end of paragraph (c), by adding "and" after paragraph (d) and by adding the following:
 - (e) premises in an inn that are occupied under a deemed tenancy agreement under section 2 (3), . and

(d) in the definition of "security deposit" by repealing paragraph (e) and substituting the following:
 - (e) a prepayment of rent for other than the first month of a tenancy agreement; .
2. Section 2 is amended
 - (a) in subsection (2) (a) by adding "and subject to subsection (3)" after "subsection (1) (d)", and
 - (b) by adding the following:

(3) Where premises in an inn are occupied by a person as his permanent residence and he has occupied, or agrees with the innkeeper or operator to occupy one or more premises in the inn, for not less than 2 consecutive months, the agreement for occupancy shall be deemed a tenancy agreement and this Act applies to the premises and the deemed tenancy agreement until the premises are vacated by the person.

(4) Subsection (3) does not apply to premises in an inn for which the innkeeper or operator charges more than a prescribed amount.

(5) Where premises in an inn are occupied under a deemed tenancy agreement, the innkeeper or operator may request a security deposit in accordance with this Act and, if the occupant fails to comply with the request within 30 days after the day the request is made, the agreement for occupancy ceases to be deemed a tenancy agreement and this Act no longer applies.

(6) Where there is a dispute between an innkeeper or operator and an occupant, the rentalsman may, on application, determine whether or not premises in an inn are or were occupied under a deemed tenancy agreement under subsection (3).

(7) Where this Act conflicts with the *Hotel Keepers Act* in respect of premises occupied under a deemed tenancy agreement, this Act prevails

(8) Subsection (3) does not apply to

(a) premises in an inn occupied by a person in the course of receiving medical care or educational instruction where the premises are supplied by the person who also supplies the care or instruction, or

(b) other prescribed premises.

(9) Sections 27 (3) (b) and 28 do not apply to premises occupied under a deemed tenancy agreement, but the rentalsman may order that those sections do apply to particular premises.

(10) Premises designated as "residential premises" under subsection (1) (d) shall, where occupied, be treated for purposes of this Act as occupied under a deemed tenancy agreement.

3. Section 5 is amended

(a) in subsection (1)

(i) in paragraph (a) by striking out "sending it by ordinary mail, addressed to the name and address posted up under section 6:" and substituting "mailing it to him or his agent:", and

(ii) in paragraph (b) by adding "or by sending it by registered mail to him at the address where he resides" after "him",

(b) by repealing subsection (2) (a),

(c) by repealing subsection (3) and substituting the following:

(3) A notice, process or document shall be deemed to have been received, where given by

(a) ordinary mail, on the seventh day after mailing,

(b) registered mail, on the earlier of the seventh day after mailing or the day its receipt was acknowledged in writing by the landlord or tenant or by a person accepting it on his behalf, and

(c) posting it, on the third day after posting.

(d) in subsection (4) by striking out "or the commission",

(e) in subsection (5) by striking out "or the commission" and "the commission", and

(f) by adding the following:

(6) Notwithstanding that a notice, process or document is not given in accordance with this section, it is sufficiently given for the purposes of this section if the person to whom it is to be given receives it and becomes aware of its nature.

4. Section 6 (1) and (2) is repealed.

5. Section 7 is amended by adding the following:

(6) The rentalsman may, on application by a party to a deemed tenancy agreement, order that a covenant included in the tenancy agreement under subsection (1) does not apply to the tenancy agreement where he considers the covenant is inappropriate in the circumstances.

6. Section 8 (1) is repealed and the following substituted:

(1) Notwithstanding any other Act, the common law or an agreement to the contrary, a landlord shall not distrain for default in the payment of rent.

(1.1) Notwithstanding the common law or an agreement to the contrary, a landlord shall not seize a chattel of a tenant in satisfaction of a claim or demand, unless the seizure is made under an order of the rentalsman under Part 5, an order of a court or the authority of an enactment.

7. Section 9 (3) is amended by adding at the end “, but the agreement is not terminated until the tenant advises the landlord that he has so elected”.
8. Section 10 (1) is amended by striking out “written”.
9. Section 13 is amended
 - (a) by repealing subsection (1) (e) and (f) and substituting the following:
 - (e) the landlord and tenant agree in writing at the time notice of termination is given by the tenant to waive the application of section 14, 15, 15.1, 16, 16.1, 17, 20 or 22;
 - (f) the rentalsman so orders under section 20 or 21; or
 - (g) the agreement for occupancy ceases to be deemed a tenancy agreement under section 2 (5).
 - (b) in subsection (3) by repealing paragraphs (a) to (c) and substituting the following:
 - (a) this Act, or
 - (b) a tenancy agreement .
 - (c) by repealing subsection (4) and substituting the following:
 - (4) Notwithstanding any other enactment, no order of a court in a proceeding involving a foreclosure, estate, matrimonial dispute or other proceeding that affects the possession of residential premises is enforceable against a tenant of the residential premises unless the tenant was made party to the proceeding. , and
 - (d) by repealing subsection (5).
10. Section 14 is amended
 - (a) in subsection (1) (e) by adding “, or within a period ordered under section 20 (3),” after “5 days” wherever it appears,
 - (b) in subsection (2) by adding at the beginning, “Subject to subsection (3),”, and
 - (c) by adding the following:
 - (3) Where a landlord or tenant is given a notice of termination that fails to comply with subsection (1) (b) to (e) or (2), the rentalsman may, where he considers that
 - (a) the person receiving the notice knew or ought to have known the information that should have been included in it, and
 - (b) it is just in the circumstances,order the defective notice amended in a manner and subject to conditions he may determine and, on the order being made, the notice shall be deemed to have complied with this section at the time it was given.
11. Section 15 is amended
 - (a) in subsection (1)
 - (i) by adding “and section 15.1” after “section”, and
 - (ii) by striking out “, in a tenancy agreement that has no predetermined expiry date,”,
 - (b) by repealing subsection (2) and substituting the following:
 - (2) A notice of termination shall be given by the landlord or the tenant on or before the last day of a rental payment period to be effective on the last day of an ensuing rental payment period, but, subject to sections 18 and 20, the period of notice shall be not less than 27 days. ,

(c) by adding the following:

(2.1) Notwithstanding subsection (2), where a rental payment period exceeds one month, a notice of termination is sufficiently given if it is given on or before the last day of a month to take effect on the last day of an ensuing month.

(2.2) Notwithstanding subsections (2) and (2.1), a notice of termination with respect to a tenancy agreement with a predetermined expiry date shall not be effective on a date prior to the predetermined expiry date unless given under subsection (4), section 18 or 20.

(d) by repealing subsection (3) (a) and substituting the following:

(a) except for a rental payment period of less than one month; or, and

(e) by repealing subsection (4) and substituting the following:

(4) Subject to section 20, a notice of termination of a tenancy agreement that has a predetermined expiry date may, where the landlord alleges that the conduct of the tenant justifies termination under section 23 (2) (a) to (d), (g), (h), (j), (k) or (n) to (r), be specified to be effective on a date prior to the predetermined expiry date, but the specified date shall not be earlier than one rental payment period after the giving of the notice

12. The following is added after section 15:

Incorrect notice of termination

15.1 Notwithstanding section 15, where a landlord or tenant gives a notice of termination that is otherwise in accordance with this Act except that the notice

- (a) specifies an effective date that is earlier than permitted by this Act, the notice shall be deemed effective on the earliest date permitted under this Act,
- (b) specifies an effective date, other than the last or first day of a rental payment period, that is a date later than the earliest date permitted under this Act, the notice shall be deemed effective on the last day of the rental payment period in which the notice was specified to be effective, or
- (c) specifies the effective date as the day after the last day of a rental payment period, the notice shall be deemed effective on the last day of the rental payment period preceding the effective date specified in the notice.

13. Section 16 is repealed and the following substituted:

**Notice requirements where
landlord intends to occupy premises**

16. (1) For the purposes of this section, "landlord" means a landlord

- (a) who is a natural person who
 - (i) at the time of the giving of the notice of termination, has a reversionary interest in the residential premises exceeding 3 years, and
 - (ii) where his interest is held as one of 2 joint tenants or a tenant in common, holds not less than 1/2 of the full reversionary interest, or
- (b) that is a family corporation which
 - (i) at the time of the giving of the notice of termination, has a reversionary interest in the residential premises exceeding 3 years, and
 - (ii) where its interest is held as one of 2 joint tenants or a tenant in common, holds not less than 1/2 of the full reversionary interest.

(2) Notwithstanding section 15, where a landlord or, in the case of a landlord that is a family corporation, a person owning voting shares in the family corporation, bona fide intends that he or his spouse or a child or parent of his or his spouse will occupy residential premises, the period of notice of termination required to be given to a tenant of those residential premises is not less than 58 days, to be effective on the last day of a rental payment period or, where the tenancy agreement has a predetermined expiry date, on that predetermined date.

(3) For the purposes of

(a) subsection (2) and sections 19 (1) (a) and 23 (2) (e), a landlord or, in the case of a landlord that is a family corporation, a person owning voting shares in the family corporation, and

(b) section 16.1 (2) (b) and sections 19 (1) (b) and 23 (2) (e.1), a purchaser or, in the case of a purchaser that is a family corporation, a person owning voting shares in the family corporation,

shall be deemed to not intend that he or his spouse or a child or parent of his or his spouse will occupy the residential premises unless the premises are to be occupied as a residence for a period commencing within a reasonable time after the effective date specified in the notice of termination, of not less than 12 months, or a shorter period ordered by the rentalsman.

14. The following is inserted after section 16:

Notice of termination where sale of premises

16.1 (1) For the purposes of this section

"landlord" is as defined in section 16 (1);

"purchaser" means a

(a) natural person who, or

(b) family corporation which

has agreed to purchase at least 1/2 the full reversionary interest in residential premises

(2) Where

(a) a landlord enters into a bona fide agreement with a purchaser for the sale of residential premises occupied under a tenancy agreement and any conditions precedent in the sale agreement have been satisfied,

(b) the purchaser or, in the case of a purchaser that is a family corporation, a person owning voting shares in the family corporation, has certified in writing to the landlord that he bona fide intends that he, his spouse or a child or parent of his or his spouse will occupy the residential premises in accordance with section 16 (3), and

(c) the purchaser requests in writing that the landlord give the tenant a notice of termination,

the landlord may give a notice of termination to the tenant in accordance with section 16 (2).

15. Section 17 is amended

(a) in subsection (1)

(i) by striking out "requires" and substituting "intends to occupy or use",

(ii) by adding "occupied under a tenancy agreement" at the end of paragraph (e), and

(iii) by striking out "120 days" and substituting "119 days".

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

(2) Where the approval of a municipality, regional district or the Minister of Municipal Affairs is required before doing one of the things referred to in subsection (1), the approval must be obtained before a notice may be given under subsection (1) unless the rentalsman, before or after the notice is given, and on conditions he considers appropriate, orders otherwise.

(2.1) A notice given under subsection (1) is void unless subsection (2) is complied with.

(c) in subsection (3)

(i) by striking out "sections 15 and 16," and substituting "sections 15, 16 and 16.1," and

(ii) by striking out "120 days" in both places and substituting "119 days", and

(d) in subsection (4) by striking out "the amount of those expenses or \$300," and substituting "the amount of those expenses or a prescribed amount,".

- 16.** Section 18 (1) is amended by striking out "Where a tenant is given a notice of termination under section 16 (1), 17 (1) or 17 (3), he may," and substituting "Where a landlord gives or purports to give a notice of termination to a tenant under section 16, 16.1 or 17, the tenant may,".

- 17.** Section 19 is repealed and the following substituted:

Compensation where lack of bona fides

19. (1) On the application of a tenant who has vacated residential premises after being given a notice or purported notice of termination under section 16, 16.1 or 17, the rentalsman shall determine whether or not, where the landlord gave the notice under

(a) section 16,

(i) the landlord was a landlord as defined in section 16 (1),

(ii) the landlord or, in the case of a landlord that is a family corporation, a person owning voting shares in the family corporation, did bona fide intend that he or his spouse, or a child or parent of his or his spouse would occupy the residential premises, and

(iii) the landlord or, in the case of a landlord that is a family corporation, a person owning voting shares in the family corporation, his spouse or a child or parent of his or his spouse did actually occupy the residential premises as a residence for the period required in section 16 (3),

(b) sections 16 and 16.1,

(i) the landlord was a landlord as defined in section 16 (1),

(ii) the purchaser was a purchaser as defined in section 16.1 (1),

(iii) the requirements of section 16.1 (2) (a) to (c) have been satisfied,

(iv) the purchaser or, in the case of a purchaser that is a family corporation, a person owning voting shares in the family corporation, did bona fide intend that he or his spouse or a child or parent of his or his spouse would occupy the residential premises, and

(v) the purchaser or, in the case of a purchaser that is a family corporation, a person owning voting shares in the family corporation, his spouse or a child or parent of his or his spouse did actually occupy the residential premises as a residence for the period required in section 16 (3), and

(c) section 17,

(i) the landlord did bona fide intend to occupy or use the residential premises for a permitted purpose, and

(ii) the landlord did actually occupy or use the residential premises for a permitted purpose.

(2) Where the rentalsman makes a negative determination under subsection (1) and he considers the circumstances require an order to achieve a just and equitable result, the rentalsman may order that, where the landlord gave a notice under

(a) section 16 or 16.1, the landlord pay the tenant's reasonable moving expenses as determined by the rentalsman, to his new accommodation, and

(b) section 16, 16.1 or 17, the landlord compensate the tenant for additional reasonable expense incurred by the tenant, as determined by the rentalsman, including, for a period up to 12 months, any increased rent or a portion of it that the tenant was obliged to pay.

(3) Where the rentalsman makes a negative determination under subsection (1) (b) (iv) or (v) and he considers the circumstances require an order to achieve a just and equitable result, the rentalsman may order that, where the landlord gave a notice under sections 16 and 16.1, the purchaser under section 16.1 pay the tenant's reasonable moving expenses, as determined by the rentalsman, to his new accommodation and compensate the tenant for additional reasonable expense incurred by the tenant, as determined by the rentalsman, including, for a period up to 12 months, any increased rent or a portion of it that the tenant was obliged to pay.

(4) Where the rentalsman makes orders under both subsections (2) and (3) in respect of a tenant, he shall not make orders which result in a financial benefit to the tenant in excess of that permitted in either subsection (2) or (3).

18. Section 20 is amended

(a) in subsection (1)

(i) by striking out "Notwithstanding sections 15 and 22," and substituting "Notwithstanding sections 15, 15.1 (b) and (c) and 22," and

(ii) by striking out "not less than 12 days after the day the notice is given." and substituting "not earlier than the eighth day after the date the notice is given or the fourteenth day after the date the rent became due whichever is later.", and

(b) by adding the following:

(3) Notwithstanding subsection (2), where a notice of termination is given under subsection (1) and the tenant applies before or after the 5 days have expired, the rentalsman may, where he considers it just and equitable, extend the time for the tenant to exercise his rights under subsection (2).

(4) On the application of a landlord under a deemed tenancy agreement, the rentalsman may, whether or not a notice of termination has been given to the tenant under subsection (1), make an order where he determines that the tenant has failed to pay rent in accordance with the tenancy agreement

(a) requiring the tenant to

(i) pay the rent owing, and

(ii) pay the rent in accordance with the tenancy agreement in future, or

(b) terminating the tenancy agreement and specifying the date the landlord is entitled to possession of the premises.

(5) If a tenant under a deemed tenancy agreement pays the rent due under the tenancy agreement before the rentalsman makes an order under subsection (4), the rentalsman shall not make an order under subsection (4) (b) but may make an order under subsection (4) (a) (ii).

19. Section 21 is amended by renumbering the section as subsection (1) and by adding the following:

(2) Where a tenant is employed as a caretaker and the employment is terminated, the rentalsman may, if he is satisfied that the landlord bona fide intends to use the residential premises occupied by the tenant for occupancy by a new caretaker, order the termination of the tenancy agreement and specify the date the landlord is entitled to possession of the residential premises.

20. Section 22 (2) (b) is repealed and the following substituted:

(b) the landlord or tenant gives the other person a notice of termination that complies with section 15, 16, 16.1 or 17 and the notice of termination is not set aside.

21. Section 23 is amended

(a) in subsection (1) by striking out "or 21".

(b) in subsection (2)

(i) in paragraph (d) by adding at the end "and the tenant has failed within a reasonable time after the damage occurred to take the necessary steps to repair the damage".

(ii) by repealing paragraph (e) and substituting the following:

(e) the landlord or, in the case of a landlord that is a family corporation, a person owning voting shares in the family corporation, bona fide intends that he or his spouse or a child or parent of his or his spouse will occupy the residential premises and the notice of termination was given in accordance with section 16;

(e.1) the purchaser or, in the case of a purchaser that is a family corporation, a person owning voting shares in a family corporation, under section 16.1 bona fide intends that he or his spouse or a child or parent of his or his spouse will occupy the residential premises and the notice of termination was given in accordance with sections 16 and 16.1; .

(iii) by repealing paragraph (f) and substituting the following:

(f) the landlord bona fide intends to occupy or use the residential premises for a purpose permitted in section 17 and has complied with section 17; .

(iv) by repealing paragraph (i) (i) and substituting the following:

(i) is in respect of residential premises occupied primarily for recreational purposes; and ,

(v) in paragraph (o) by adding at the end "and has failed to rectify the breach within a reasonable time after notice to do so from the landlord".

(vi) in paragraph (q) by striking out "or" at the end and inserting "zoning." after "respecting".

(vii) in paragraph (r) by striking out "setting aside." and substituting "setting aside; or" and by adding the following:

(s) the tenancy agreement

(i) is in respect of residential premises that were rented by the tenant in a non-tourist season but which are to be rented at an increased

rental charge in the tourist season to persons occupying the premises on a transient basis, and

(ii) specifies the term of the tenancy agreement and the date it expires, and

(c) by repealing subsection (4) and substituting the following:

(4) Where a tenant fails to give a notice of dispute in accordance with subsection (1) or section 20, he shall be deemed to have accepted the termination on the effective termination date of the notice of termination.

22. Section 24 is amended by striking out "the termination date specified in the notice." and substituting "the effective termination date of the notice of termination."

23. Section 26 is amended

(a) in subsection (1) by repealing all the words after the end of paragraph (c) and substituting "the rentalsman may order that a tenant affected

(d) pay to the rentalsman, or

(e) retain, as full or partial satisfaction of any claim the tenant has or may have as a result,

all or part of a rent payment that would otherwise be paid to the landlord." , and

(b) in subsection (2) (a)

(i) by inserting "or retains" after "a tenant who pays", and

(ii) by inserting "or retained" after "amount so paid".

24. Section 28 is amended

(a) in subsection (1) by striking out "or" at the end of paragraph (d), by adding "or" at the end of paragraph (e) and adding the following:

(f) the rentalsman orders that the landlord or persons acting on his behalf may enter the residential premises at a specified time for a specified purpose and entry is made in accordance with the terms of the order, and

(b) by repealing subsection (3).

25. Section 29 is amended by adding the following:

(5) A landlord who arbitrarily or unreasonably withholds consent in contravention of subsection (2) commits an offence

26. Section 31 is amended

(a) by adding the following after subsection (1):

(1.1) Subsection (1) (a) does not apply in respect of premises in an inn occupied under a deemed tenancy agreement, and

(b) by repealing subsection (3) and substituting the following:

(3) Unless the landlord consents or the rentalsman so orders, a tenant shall not set off a security deposit or a portion of it or the accrued interest on it against all or part of the rent due from him to the landlord or the person entitled to receive rent in respect of the residential premises.

27. Section 32 is amended

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

(1) Where a landlord receives a security deposit from a tenant, the landlord shall, within 30 days after the termination of the tenancy, unless

(a) the tenant and landlord otherwise agree at the time of termination, or

- (b) the landlord believes he is entitled to retain all or part of the security deposit to satisfy a claim he has against the tenant arising under this Act or the tenancy agreement,

pay to the tenant the security deposit and interest on it at a prescribed rate compounded annually.

(1.1) The interest under subsection (1) shall be calculated

- (a) from the date the security deposit is paid by the tenant,
(b) if the security deposit was paid before December 1, 1974, from December 1, 1974, or
(c) from the date the tenant last received payment of interest on the security deposit in accordance with this Act, or a preceding Act then in force,

whichever is the latest, to the day before the day the security deposit is paid to the tenant under this Part.

(1.2) For the purposes of subsection (1.1) the interest may be rounded off to the nearest dollar. . and

- (b) by repealing subsection (3).

28. Sections 33 to 36 are repealed and the following substituted:

Claim for security deposit

33. (1) Where a landlord and tenant are unable to agree on the disposition of a security deposit or the interest on it after a tenancy agreement has terminated, the landlord or tenant may, subject to section 34 (4), file a claim under section 34.

(2) A tenant or landlord shall not commence a proceeding under the *Small Claim Act* for disposition of all or part of a security deposit or the interest on it prior to 6 months after the date the tenancy agreement terminated, and a proceeding so commenced is void.

(3) Notwithstanding subsection (2) and subject to section 34 (3), a tenant or landlord may, in a proceeding in respect of a terminated tenancy agreement in which he is a defendant, bring a counterclaim for disposition of all or part of the security deposit or the interest on it arising out of the same tenancy agreement.

Concurrent jurisdiction of rentalsman

34. (1) Where a landlord or tenant believes he has a cause of action in debt or claiming damages against the other party, in a matter within the jurisdiction of the Provincial Court under the *Small Claim Act*, arising out of

- (a) a tenancy agreement,
(b) a breach of this Act, or
(c) in the case of a tenant, the refusal of a landlord to return to the tenant all or part of a security deposit or the interest from it,

he may file a claim with the rentalsman against the other party.

(2) A claim shall be filed with the rentalsman in a form determined by him and shall be accompanied by the fee prescribed under the *Small Claim Act* for commencing an action in Provincial Court.

(3) Where a person files a claim under this section he shall not commence a proceeding or bring a counterclaim under the *Small Claim Act* in respect of the same cause of action, and a proceeding so commenced is void.

(4) Where a person commences a proceeding under the *Small Claim Act* he shall not file a claim under this section in respect of the same cause of action, and a claim so filed is void.

(5) A claim shall not be filed with the rentalsman under this section more than 6 months after the date the tenancy agreement terminated, but nothing in this subsection shall be construed as limiting the right of a person to institute a proceeding under the *Small Claim Act* in respect of a claim under subsection (1) after the 6 months have elapsed.

(6) Where the rentalsman considers that the claim is frivolous, vexatious, trivial or has not been initiated in good faith he may refuse to consider the claim, but in that case he shall return the fee paid pursuant to subsection (2).

Adjudication and enforcement of claim

35. (1) On the filing of a claim under section 34, the rentalsman shall attempt to effect an agreement between the landlord and tenant as to the disposition of the claim and, where he cannot do so, he shall adjudicate the claim and make an order subject to conditions he considers necessary.

(2) The rentalsman may make an order under subsection (1) for the payment of money.

(3) An order under this section may require that the party against whom the claim was filed pay all or part of the fee referred to in section 34 (2).

(4) Where the rentalsman makes an order under this section for a person to pay money to another person and the former refuses or neglects to do so, the person in whose favour the order is made may file a certificate issued by the rentalsman with the registrar of the Provincial Court hearing matters under the *Small Claim Act*, in the county in which the residential premises are located, stating

- (a) the person against whom the order was made,
- (b) the amount of the order which remains unpaid, and
- (c) the person in whose favour the order was made

and, on being filed, the certificate is enforceable by the person in whose favour the order was made in the same manner as a judgment or order of that court.

29. Section 37 is amended by striking out "and" at the end of paragraph (a), by adding "and" at the end of paragraph (b), and by adding the following:

- (c) a covenant in a tenancy agreement allowing a landlord to claim an amount from a security deposit as liquidated damages, where the tenant vacates the premises before the time provided for in the tenancy agreement, is enforceable if the rentalsman considers it reasonable in the circumstances.

30. Section 38 is repealed.

31. Section 39 (2) is amended by striking out "or the rentalsman, as the case may be".

32. Section 41 is amended

- (a) in subsection (1) by striking out "shall store and dispose of them in accordance with this section and sections 42 and 43." and substituting "shall deal with them in accordance with the common law or this section and sections 42 and 43." ,

(b) by adding the following:

(1.1) For the purposes of this section, "residential premises" includes an area on the residential property where a tenant has stored chattels. .

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

(2) Where the landlord chooses to deal with the tenant's chattels in accordance with this section and sections 42 and 43, he shall give the rentalsman an inventory of the chattels promptly after their removal under subsection (1). .

- (d) in subsection (3),
 - (i) by striking out "\$50" and substituting "a prescribed amount", and
 - (ii) in paragraph (a) by adding at the end "and, in the case of a mobile home, the office of the Registrar of Mobile Homes", and
- (e) by adding the following:
 - (7) A landlord, where dealing with a tenant's chattel under this section and sections 42 and 43, shall exercise reasonable care and caution required by the nature of the chattel and the circumstances to ensure that the chattel does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.
- 33. Section 43 (1) (b) is repealed and the following substituted:
 - (b) a person notified under section 41 (3) (c) does not seize the chattel within 30 days after the date of notification; or
 - (c) a person establishes that he has a right or title to or interest in the chattel but does not seize it within 30 days after the date he has established that right, title or interest, .
- 34. Section 46 (5) is amended by striking out "or deputy rentalsman" and substituting "deputy rentalsman or a person to whom the powers, duties or functions of the rentalsman have been delegated under section 44 (8)".
- 35. Section 47 (1) is amended by striking out "and" at the end of paragraph (d), by adding "and" at the end of paragraph (e) and by adding the following:
 - (f) may inspect and examine all financial records of the landlord that in any way relate to the administration or operation of residential premises.
- 36. Section 48 is amended by striking out "The rentalsman and the commission have" and substituting "The rentalsman has".
- 37. Section 49 is amended
 - (a) in subsection (1) by striking out "or the commission" and "or commission",
 - (b) in subsection (2) by striking out "or commission",
 - (c) in subsection (3) by striking out "the commission", "or the commission" and "or commission" and
 - (d) in subsection (4) by striking out "the commission" and "or the commission".
- 38. Section 50 (2) is repealed and the following substituted:
 - (2) For the purposes of subsection (1), the rentalsman is specifically given jurisdiction under this Act to make an order
 - (a) designating premises as residential premises under section 2 (1) (d),
 - (b) determining whether premises in an inn are or were occupied under a deemed tenancy agreement under section 2 (6),
 - (c) under section 2 (9),
 - (d) respecting procedure under section 5 (4) and (5) for a matter that is before him or that is required under this Act to be before him,
 - (e) excluding a covenant under section 7 (6),
 - (f) declaring a covenant unreasonable under section 10 (3),
 - (g) permitting the discontinuance of a service or facility under section 12,
 - (h) respecting a right, under this Act or a tenancy agreement, to possess or occupy residential premises under section 13,

- (i) amending a defective notice of termination under section 14 (3),
- (j) determining a period of occupation under section 16 (3),
- (k) determining that vacant possession is reasonably necessary under section 17 (1) (g) and determining that the approval need not first be obtained under section 17 (2),
- (l) respecting a tenant's expenses under section 19,
- (m) allowing a longer period under section 20 (3), and requiring a rent payment in or terminating a deemed tenancy agreement under section 20 (4) and (5),
- (n) terminating a tenancy under section 21,
- (o) making fact determinations and setting aside a notice of termination under section 23,
- (p) permitting the tenant to give a notice of dispute under section 24,
- (q) permitting a tenant to pay rent to the rentalsman or retain rent under section 26 (1), making a payment under section 26 (2) and 26 (5) or requiring payment under section 26 (6),
- (r) authorizing alteration of a means of entry or access under section 27 (1),
- (s) authorizing an entry under section 28 (1) (f),
- (t) authorizing a larger security deposit under section 31 (1) (b), authorizing a set off under section 31 (3) or requiring repayment under section 31 (5),
- (u) under section 34 (6),
- (v) adjudicating a claim under section 35 and issuing a certificate under section 35 (4),
- (w) permitting a claim for cleaning under section 37 (a),
- (x) determining the reasonableness of a covenant under section 37 (c),
- (y) determining the value of a chattel under section 41 (4),
- (z) directing disposal of a chattel under section 41 (5),
- (z.1) authorizing an encumbrancer to treat a security agreement as being in default under section 42 (1),
- (z.2) authorizing a landlord to sell or dispose of a chattel under section 43,
- (z.3) approving an appearance under section 46 (4),
- (z.4) respecting a matter under section 47,
- (z.5) directing records to be kept under section 49,
- (z.6) varying or cancelling an order under subsection (3) and making an interim ex parte order under subsection (4),
- (z.7) arbitrating a dispute under section 52,
- (z.8) respecting a matter under sections 64 and 65,
- (z.9) permitting a landlord to retain excess rent and establishing a rent increase under section 67,
- (z.91) respecting a matter under sections 69 and 69.1,
- (z.92) demanding the landlord return excess rent paid or reducing the rent payable under section 70, and
- (z.93) regarding a service or facility under section 72.

39. Section 51 is amended

- (a) by striking out "shall" and by inserting "shall" at the beginning of paragraphs (a) to (d), and
- (b) by striking out "and" at the end of paragraph (c) and by adding the following:

- (e) may conduct research or inquire into any aspect of the rental of residential premises and examine any factor affecting the determination or payment of rent whether before or after the date this Act came into force; and
- (f) shall exercise other powers, carry out other duties and perform other functions respecting the rental of residential premises in the Province that the Lieutenant Governor in Council orders.

40. Section 54 is amended

- (a) in subsection (1) by striking out "or the commission",
- (b) in subsection (2) by striking out "or the commission" and "or commission", and
- (c) in subsection (3) by striking out "or the commission" and "or the commission, as the case may be."

41. Section 55 is amended by striking out "or commission" wherever it appears.

42. Section 57 is amended by striking out "or the commission".

43. Sections 58 to 63 are repealed.

44. Section 64 is amended

- (a) by repealing subsection (2) and substituting the following:

(2) Except as provided in subsections (2.1) and (8) and sections 65, 66 and 67, and notwithstanding a tenancy agreement to the contrary, a landlord shall not demand, collect or attempt to collect, in respect of a rental payment period, an amount of rent for residential premises that is more than a prescribed amount or rate for that class of residential premises greater than the higher of

- (a) the rent charged for the immediately preceding rental payment period of the residential premises, or
- (b) the highest lawful rent previously charged for an equivalent rental payment period of the residential premises.

(2.1) Where the present tenant is not the person who paid the highest lawful rent previously charged in subsection (2) (b), subsection (2) (a) shall be used to calculate the allowable rent increase unless the landlord has informed the tenant in writing before the tenancy agreement was entered into

- (a) that the residential premises were previously rented at a higher rent,
- (b) the amount of the higher rent, and
- (c) that the higher rent may be used for calculating a future rent increase.

- (b) in subsection (3) (c) by striking out "commission" and substituting "rentalsman",
- (c) by adding the following:

(3.1) Notwithstanding subsections (1), (2), (2.1) and (3), unless the rentalsman otherwise orders, where a landlord agrees to supply a service or facility with respect to residential premises that was not previously supplied and the landlord and tenant agree that the rent be increased to a certain amount in return, the rent may be increased to the agreed amount, without notice under subsection (3) being given, as soon as the landlord commences supplying the service or facility.

(3.2) An increase in rent under subsection (3.1) shall be deemed effective on the date of the last lawful rent increase for the purpose of calculating a future allowable rent increase under subsections (1), (2) and (2.1).

(3.3) Subsection (1) does not apply to the first increase in rent demanded by a landlord after this section comes into force in respect of premises which are or have been occupied under a deemed tenancy agreement.

(3.4) Where a landlord advises a prospective tenant in accordance with subsection (3) (a) (ii) that notice of a rent increase has been given in respect of the residential premises and the prospective tenant enters into a tenancy agreement, the landlord shall not subsequently withdraw the notice and serve a new notice for a higher rent until 9 months after the tenancy agreement has commenced.

(3.5) Where a tenant enters into a tenancy agreement after an application has been made to the rentalsman under section 67 (3) but before an authorized rent increase under that section takes effect, a rent increase authorized as a result of that application that is greater than that permitted under sections 64 and 65 is not effective against that tenant unless the landlord advises the tenant prior to entering the tenancy agreement of the nature and effect of the application. .

(d) by repealing subsection (4) and substituting the following:

(4) Notwithstanding subsection (3) (b) and (c) or the requirements for notice of rent increase in a former Act, the rentalsman may order that a notice of rent increase, purportedly effective on a date subsequent to January 1, 1974, but made in an improper form or manner or improperly or insufficiently given to a required person, was validly and sufficiently made and given and effective on a date on or after January 1, 1974 that he specifies. .

(e) in subsection (5) by striking out "the commission" and substituting "the rentalsman",

(f) in subsection (6) by striking out "subsection 2" wherever it appears and substituting "subsections (2) and (2.1)",

(g) in subsection (8)

(i) by striking out "Subsection (2) does not" and substituting "Subsections (2) and (2.1) and, at the time a tenancy agreement is entered into, subsections (1) and (3) do not",

(ii) in paragraph (a) by striking out "by the landlord for his residential purposes" and substituting "as a residence by a landlord, as defined in section 16 (1) (a)",

(iii) by repealing paragraph (i) and substituting the following:

(i) residential premises that were occupied as a residence by a landlord, as defined in section 16 (1) (a),

(i) in the period commencing January 1, 1972 and ending June 30, 1980, for not less than 24 consecutive months, or

(ii) on or after July 1, 1980, for not less than 12 consecutive months prior to entering into a tenancy agreement; .

(iv) by repealing paragraph (j) and substituting the following:

(j) residential premises rented for more than a prescribed amount; or" . and

(v) by adding the following after paragraph (j):

(k) premises in an inn occupied under a deemed tenancy agreement. .

(h) in subsection (9)

(i) by striking out "commission" wherever it appears and substituting "rentalsman", and

(ii) by repealing paragraph (f) and substituting the following:

(f) whether or not residential premises were occupied as a residence by a landlord as defined in section 16 (1) (a) and when the premises were so occupied; .

(i) in subsection (10) by striking out "that is subject to subsection (2)", and

(j) by repealing subsection (11) and substituting the following:

- (11) This section does not apply to residential premises operated by
(a) the British Columbia Housing Management Commission, or
(b) a person exempted by regulation,

where the rent of the premises is related to the tenant's income.

45. Section 65 is amended

- (a) by striking out "commission" wherever it appears and substituting "rentalsman",
(b) by repealing subsection (4) and substituting the following:

(4) Where a tenant gives notice to a landlord under subsection (3), the notice of rent increase given to the tenant is void to the extent it relates to an increase purported to be made under this section unless the landlord, not more than one month after the date he receives the notice from the tenant under subsection (3), or within a longer period allowed by the rentalsman, applies to the rentalsman for approval of the increase. .

- (c) in subsection (5)

(i) by striking out "may" and substituting "shall by order", and

(ii) in paragraph (b) by striking out "order" and substituting "require", and

- (d) by repealing subsection (8) and substituting the following:

(8) For the purposes of this Part, an eligible expenditure means the sum of the expenditures, as allowed in the regulations, incurred after May 3, 1974 by the landlord

(a) for an alteration ordered to be made under an enactment, or

(b) to maintain or improve residential premises or mobile home pads during a 12 month period or the period the rentalsman allows, if the sum is

(i) more than 25%, or

(ii) where an amount is prescribed, more than that prescribed amount, of the rental income received from the residential premises or mobile home pad for the preceding calendar year

46. Section 67 is amended

- (a) in subsection (1) by striking out "sections 64 (2)" and substituting "sections 64",
and

- (b) by repealing subsections (2) and (3) and substituting:

(2) The rentalsman may make an order permitting a landlord to retain all or part of the rent collected in contravention of this or a previous enactment.

(3) The rentalsman may, on the application of the landlord, on conditions he considers appropriate, order that the landlord may increase the rent by an amount greater and at times other than that permitted under sections 64 and 65.

47. Section 68 (2) is amended by striking out "commission" and substituting "rentalsman".

48. Section 69 is amended

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

(1) Where a tenant receives a notice of rent increase with respect to residential premises described in

(a) section 64 (8) (k), or

(b) section 64 (8) (b), (c), (g) or other prescribed paragraphs of section 64 (8), where the existing rent is not more than a prescribed amount,

which would, but for those provisions, be subject to section 64 (2), and he believes that the amount of the rent increase is excessive, he may, within 30 days after receiving the notice or within a longer period allowed by the rentalsman, apply to the rentalsman for a review under this section. .

- (b) in subsection (3) by striking out "The person designated by the minister" and substituting "The rentalsman", and
- (c) by adding the following:

(3.1) An order made under this section is binding on the landlord and tenant and an order made under subsection (3) (a) or (b) is in force for a 12 month period commencing on a date ordered by the rentalsman or until the tenancy agreement terminates, whichever is earlier.

49. The following section is added:

Transition reviews

69.1 (1) In this section "amendment Act" means the *Residential Tenancy Amendment Act, 1980*.

(2) This section does not apply to a tenant who had a right to apply for a review under section 69 as it was before this section and section 48 of the amendment Act came into force.

(3) Notwithstanding the date section 48 of the amendment Act comes into force, a tenant may make application for a review under section 69, as amended by the amendment Act, if

- (a) he received a notice of rent increase before the date section 48 of the amendment Act comes into force, and
- (b) the rent increase in the notice was to be effective on or after January 1, 1980.

(4) Where a tenant makes application for a review referred to in subsection (3), the rentalsman may, in addition to the powers he has in section 69 (3), make an order substituting a rent increase he considers reasonable.

- (5) An order made by the rentalsman in a review referred to in subsection (3) is
 - (a) binding on the landlord and tenant,
 - (b) if made under subsection (4) or section 69 (3) (a) or (b), in force for a 12 month period commencing on the date ordered in paragraph (c) or until the tenancy agreement terminates, whichever is earlier, and
 - (c) effective on a date not earlier than January 1, 1980 that the rentalsman orders.

50. Section 70 is repealed and the following substituted:

Adjustment where excess rent paid

70. The rentalsman may where

- (a) he makes an order under section 69 (3) (b) to (d) and 69.1 (4) which results in the tenant having paid rent to the landlord, under a notice of rent increase no longer in effect, in excess of that so ordered, or
- (b) he determines that a landlord has collected rent in excess of that permitted under this Part,

order the landlord to

- (c) pay the excess amount to the person entitled to it, on the terms and conditions he considers appropriate, or
- (d) reduce the rent payable by the tenant to the amount and for the period of time he determines.

51. Section 72 is amended
- (a) in subsection (1)
 - (i) by striking out "commission" wherever it appears and substituting "rentalsman",
 - (ii) by repealing paragraph (b) and substituting the following:
 - (b) failed to provide or reduced a service or facility required to be provided under a tenancy agreement and the rentalsman considers that the failure or reduction has resulted in a substantial reduction of the use and enjoyment of residential premises or of the service or facility; , and
 - (iii) by striking out "or the value of the discontinued or reduced service or facility" and substituting "or the value of the service or facility or its reduction in value, as the case may be,"
 - (b) in subsection (2)
 - (i) by striking out "commission" wherever it appears and substituting "rentalsman", and
 - (ii) by striking out "or the discontinuance" and substituting "or the failure to provide", and
 - (c) in subsection (3) by striking out "commission" and substituting "rentalsman".
52. Section 74 is repealed.
53. Section 77 is amended
- (a) by repealing subsection (1) and substituting the following.
 - (1) A person who contravenes section 6, 8 (1), (1.1) or (11), 9 (2), 12, 13 (2), 17 (4), 18 (2), 27, 28 (1), 29 (1), (3) or (4), 31 (1) or (2), 41 (2) or (6), 43 (3), 49 (1) or 75 or fails to comply with an order or summons of the rentalsman commits an offence , and
 - (b) in subsection (2) by striking out "under subsection (1)" and substituting "under this Act".
54. Section 78 is amended by striking out "or commission".

Appropriation of funds

55. Money required for the administration of the *Residential Tenancy Act* shall, until March 31, 1981
- (a) in the absence of an appropriation, or
 - (b) where money appropriated is insufficient,
- be paid out of the consolidated revenue fund to a maximum of \$250 000.

Commencement

56. (1) This Act comes into force on proclamation.
- (2) Section 44 (g) (iii) is retroactive to the extent necessary to give it effect on and after July 1, 1980.
- (3) Section 48 shall be deemed to have come into force on January 1, 1980 and is retroactive to the extent necessary to give it effect on and after January 1, 1980 but for the purpose only of giving section 49 full force and effect.

(4) A regulation made under section 69 (1) (b) of the *Residential Tenancy Act*, as amended by section 48 of this Act, may be made retroactive to the extent necessary to give it effect on and after January 1, 1980 but for the purpose only of giving section 49 full force and effect.

(5) Subsection (4) is repealed 6 months after the date section 48 comes into force

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