

Landlord-tenant law reform to come in spring?

By NEIL DICKIE

N.B. Deputy Justice Minister Gregory said Tuesday that there should be no problem getting Landlord Tenant Law reform legislation together for the formal spring session of the Provincial Legislature.

Gregory said that whether or not the legislation will be aired would be a 'government decision'. The actual substance of the new legislation will be written over the 'next couple of months', he said.

The Sinclair Report on landlord tenant law written by Professor Allan Sinclair of the UNB Law School was started in December of '72, shortly after a formal report by the Fredericton Tenants Association was presented to Premier Hatfield. The report was tabled, and made public last August, new legislation will probably be modelled closely around the report's recommendations.

It makes a number of recommendations re: landlord tenant law reform. They are: 1) That landlords be responsible for repairs on rented premises. If they are not done then tenants must have legal recourse against landlords. Sinclair recommends that tenants have the legal right to withhold rent until reasonable repairs are implemented. 2) That

damage deposits be done away with. Presently the decision whether to withhold or refund damage deposits is entirely in the hands of the landlord. About half of Fredericton landlords ask for these deposits. 3) That postdated cheques in payment of rent be done away with. Postdated cheques are legally held to the landlord assets whether or not the landlord is owner of rented premises at the time the cheque can be cashed. For example — if your landlord goes bankrupt while in possession of your postdated cheque for a future month rent — he can keep it — and your new landlord can collect the same month's rent.

4) That standard government leases be created, and that only they be held to be legal leases. He further recommends that all verbal rent agreements be prohibited in favor of these standardized written leases.

5) That contractual law be held legal over real property law. Presently when you rent a house, for example, you are legally renting the whole property it is on, not just the premises — if these premises were to burn down or be partially destroyed, a landlord could quite legally collect rent on them, or rather the property they are on, for the full term of any rent agreement established prior to the

destruction of the premises.

6) That the tenant have the legal right to sublet when he wishes. Sinclair recommends that if subletting rights are withheld — that landlords have the right to break the lease. At the Fredericton hearing on the Sinclair Report, two weeks ago some students rose and pointed out that this recommendation would be less in tenants' interests than present law. I.E. it could prevent students from subletting in summer and holding rented premises from semester to semester. Sinclair admitted error and promised to change the recommendation.

7) The provisions for tenant's privacy be written into the Landlord-Tenant Act; e.g. landlords not be allowed to change locks or enter rented premises without reasonable notice, and only in specifically prescribed instances. These provisions are presently effective in common law only. It also recommends that free access be granted to all political canvassers. Landlords have been known to allow access to one specific political party, either because he favours them or because some kickback payment is involved. He further recommends that landlords have the right to expect tenants to keep premises clean and tidy.

8) That landlords be entitled to collect rent in advance — not to be used for damaged debts — but only for rent in arrears; and that eviction for nonpayment of rent be allowed only through court action. Presently a tenant can be evicted if rent payments are fifteen days in arrears.

9) He recommends that a landlord's rights to double rent if a tenant "overholds" be abolished. Presently if a tenant occupies premises for as little as one day after his rent contract has expired he may be charged double rent.

10) That it be illegal to increase rents for the first year of any rent agreement, and thereafter only after three months notice. Chairman of the Fredericton Tenants Association Tom Good calls this a

"do nothing recommendation". "It doesn't go far enough". He said that it gives the landlord undue rights to enforce eviction, simply by doubling or tripling the rent. The Tenants Association recommends a formal rent review board that would have the power to exercise "morale suasion" over N.B. landlords in rent increase matters.

11) That a mediation officer be appointed in the role of "troubleshooter" in landlord-tenant disputes. Good says that this is essentially only enabling legislation, enabling a government to appoint such a mediator. "Translated into New Brunswick terms this means that nothing happens at all".

12) "Notice to terminate, judicial proceedings to terminate — should be of no value where the reason for such a move by a landlord stems directly from the tenant's complaint of a landlord's behaviour". (Sinclair Report). Sinclair also recommends that notice to terminate the rent agreement should be served in writing specifying the parties, premises, the times and the reason for such notice.

The above is the only stand Sinclair makes concerning arbitrary eviction of tenants, it, in contrast to Manitoba Reform Law, does not state that tenants be protected from arbitrary unjust eviction and notice to terminate. However many tenants, as well as tenant's associations have expressed desire for such protection, it is possible that protection of this kind will be written into N.B. reform law even if Sinclair is not specifically recommended.

The substance of N.B. Landlord-Tenant law is taken directly from English feudal law. The law has not been amended since 1955. New Brunswick is the second last province (the other is B.C.) in Canada to institute landlord-tenant law reform. Why? Gregory says that until two years ago when the

Law Reform Division of the provincial Justice Department was created — New Brunswick had no substantial law reform capability. He commented that until the law Reform Division was created, laws were passed mainly "from the point of view of those who could afford to influence the government." "Landlords have always had access (in this respect) ... the tenants have not". He noted contemporary "emphasis on consumerism". He said that the government "is trying to achieve a proper balance between those with power to influence legislation and the lone consumer".

Gregory said that tenant pressure has not "been irresistible. there has been some comment from tenants", but not enough to pressure the government to action under "latter day" circumstances. He said reform is now being thought about mainly because of the Law Reform Division. "Just a superficial look at other province's landlord-tenant law indicates how superior they are in comparison to ours".

Tom Good attributes landlord-tenant law reform on a national scale to the increasing numbers of middle class tenants. He noted that Ontario instituted a reform after a mainly middle class tenant association in Toronto started agitating in the mid-sixties. The other provinces, he said, followed in reform shortly after this.

Good cites one case where his association's recommended rent review board is urgently needed. Apparently some Fredericton landlords are raising rents in proportion to newly increased family allowance benefits. He cites the case of a woman with four children renting an apartment in Fredericton; she has been given notice that her rent is increased \$32 more a month. Notice is effective January 1st. Family allowances increases are effective January 1st. Coincidentally (?) her family allowance raise is \$32.

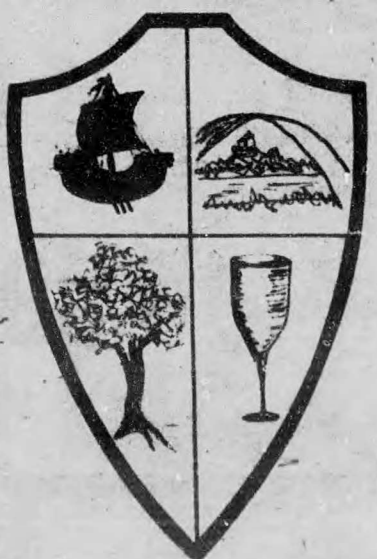


This is Somerville House. It used to belong to UNB but is now in the possession of the provincial government. This is not the typical Fredericton House that gets rented out to tenants — especially students. Students are terribly irresponsible and destructive and therefore are only allowed to live in the many "student slams" that local landlords rent out at exorbitant rates.

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