

THE LAW — THE LANDLORD — AND HOW THE BUILDING CODE

We are reprinting here selections from two articles that originally appeared in *The Mysterious East*, one of the few magazines to do any basic groundwork in tenant's rights.

The Law of Landlord and Tenant.

With the possible exception of the Criminal Law, perhaps no other branch of law has been so much in need of reform as the law of Landlord and Tenant. From a selfish point of view alone, the legal profession would do well to take a long look - and soon - at this highly visible relic of feudal times.

While discussions of law reform go on, an interim remedy is needed. One remedy is group action by tenants, or some group representing tenants. In university communities, the university itself wields enough influence to bargain on behalf of its students and faculty, if it were so inclined.

The formation of a successful Tenants' Association could lead to a more nearly equitable relationship between landlord and tenant. The main barrier to success would be landlords' opposition to any undermining of their secure and privileged position. They must come to realize that good-faith bargaining is not always against their best interests. To overcome landlords' recalcitrance, publicity and organization are necessary.

Basically, the goal of the Tenant's Association is a stable organization dealing directly with the landlord on a continuing basis. The success of the Association will ultimately depend upon judicial tolerance of its activities and upon its bargaining power with the landlord.

While landlords will resist vigorously if their profits are threatened, the landlord should have no objection if better housing can be provided for his tenants without changing total expenditure.

Vandalism, children's wear and tear, harassment by Building Code and other inspectors, rent skips, high turnover, frequent collections - all of these are costs that the landlord must cover by charging rent for less housing. The tenants themselves, acting through a Tenant's Association, can help reduce operating costs. A Tenant's Association may be in a position to reduce the high rates of turnover and rent skips. The Association might, for example, arrange for reduced rent if the tenants do certain repairs themselves.

The Association must be realistic - a landlord must make a profit to justify his investment. The landlord's required rate of return takes account of:

- (1) the return presently available on safe investments (e.g. Government Bonds);
- (2) the probability that the property will continue to generate income;
- (3) the property's equity (how easily it can be sold and the collateral value of the property)

If the Association can reduce some of these risks and uncertainties by stabilizing landlord-tenant relations, it can exert a downward pressure on the landlord's required rate of return.

The landlord must be convinced that good faith bargaining is not always against his interest. The Association derives its strength from the only source available to it - collective action; i.e., it must control all the buildings the landlord owns, or, at least, the Association must represent all the tenants in one particular building.

Wide spread picketing and rent withholdings are the most potent voices that the Association has. The landlord has three weapons:

- (1) Eviction. The Association may be legally unable to prevent this, although delaying action, if properly undertaken, can be very effective. Besides, turnover is expensive and eviction will also be costly, especially where a whole building is involved.
- (2) Refusal of Service. The landlord may refuse to provide any service or any repairs. Of course, neither the landlord or the tenant will be en-

thusiastic about this continuing for any length of time.

- (3) Abandonment. The threat of abandonment as a rental structure. Profit loss and capital loss would discourage this approach.

The landlord's need for a steady flow of rent money to meet mortgage payments will make him feel the pinch quite rapidly and painfully when his rent is cut off, and while rent is withheld the landlord confronts a steadily increasing enticement to settle from the growing escrow account of tenant rent payments.

Small, highly mortgaged landlords often acquiesce to Association demands in fairly short order. Housing market conditions will naturally be an important determinant of the landlord's willingness to settle.

Ordinary labour law would appear to be applicable to this sort of situation. It is conceivable that help might be obtained in this regard from the New Brunswick Federation of Labour if proper approaches were made. The landlord will attack withholding rent on the same grounds that are traditionally used in management-labour disputes. These attacks are generally based on:

- (1) an intentional tort
- (2) conspiracy in restraint of trade
- (3) interference with contractual relations.

But these problems face any fledgling unionization attempts. It should be noted that the validity of the Tenant's Association contract itself has been upheld in court.

The union collects rental payments and puts them in an escrow account. Therefore, the economic harm inflicted on the landlord is temporary and conditioned solely on his own refusal to bargain. The tenants stay on so there is no business loss.

The landlord has a right of action - he can sue for the rent. The Association must agree not to interfere with the right of the landlord to evict a tenant who pays no rent to either the Association or the landlord - the tenants are not seeking free apartments; they simply want their money's worth in better housing. The landlord cannot show the "irreparable harm" which is a prerequisite to the issue of an interlocutory injunction order.

A most important element in the collective bargaining agreement is the landlord's acceptance of binding arbitration and rent withholding by the union for a landlord's breach of contract. The landlord receives in return a union commitment to encourage responsible tenant maintenance. The union is not engaged in a holdup, unless every pressure for contractual advantages is designated to be such, for every bargaining situation entails some degrees of compulsion.

A Tenant's Association might reasonably be expected to achieve an agreement with a landlord containing the following principles.

- (1) an Association commitment to oversee and encourage tenant efforts towards responsible maintenance.
- (2) a landlord commitment to bring his buildings or building up to the standards of appropriate Building Code requirements.
- (3) machinery for the regular transmission of tenant complaints and demands to the landlord.
- (4) the creation of a Fact-Finding Panel to resolve disputes over grievances.
- (5) a procedure for rent withholding for breach of the agreement.
- (6) recognition of the Association as exclusive bargaining agent for the tenants.
- (7) an agreement by the landlord not to discriminate against Association members.

Landlords get away with many violations of Code

We present a short summary of some of the key sections of the BUILDING CODE OF CANADA indicating standards of safety and of liveability, telling the renter what to look for, what to do when something is found lacking, and where to put the pressure on.

The features of the CODE used here are intended for small apartment buildings—three or more separate dwelling units or houses - one or two dwelling units, of not more than three stories in height. While large apartment buildings must satisfy the code, too, small converted houses and new houses generally threaten or inconvenience the tenant most and it is for assessing these smaller units that this summary is intended.

Construction:

- Any residential building must be capable of containing the source of fire until you have time to get out safely. It must be capable of containing, too, the source of smoke and poisonous gases which will kill you and your family more quickly than any fire.

All ceilings and walls between you and your neighbours and the public areas, such as stairways and halls, must have a fire resistance of 3/4 hour - only heavy insulation with solid plaster or thick plasterboard will do. All floors must be of heavy wood construction - two layer of 3/4 inch boards are adequate but inside the floor would show that your landlord appreciates the value of truly safe construction. Remember that each floor needs a ceiling too. Sources of real danger - furnace rooms and communal storage areas must be more adequately fireproofed.

How does New Brunswick compare to other provinces of provincial legislation? The following survey was adapted from *Tenant Rights* by Michael Au and published by the Canadian Council on Social Development.

Legal provision made for:	B.C.	Alta.	Sask.	Ont.	Que.
1) Rent regulation	yes	no	no	no	yes
2) Regulation of security deposits	yes	yes	no	yes	?
3) Abolishment of distress (right of a landlord to seize a tenant's goods)	yes	no	no	yes	yes
4) Regulation of giving of notice by landlord	yes	yes	some	yes	some
5) Regulation of notice of rent increase	yes	yes	no	no	?
6) Tenant's right to sublet	yes	no	yes	yes	some
7) Landlords to provide locks	yes	no	no	yes	no
8) Protecting tenant's Privacy from landlord	yes	yes	no	yes	yes
9) Obligation of landlord to do repairs	yes	no	no	yes	yes
10) Tenant to receive copy of lease	yes	yes	no	yes	no
11) Landlord to inform tenant of occupancy conditions	some	no	no	some	no
12) Protection of tenant from retaliatory eviction	yes	no	some	yes	yes
13) discrimination against children	no	no	no	no	no
14) a standardized lease	no	no	no	no	no
15) Discrimination against prospective tenants	yes	yes	yes	yes	no
16) Legal aid coverage for tenants	no	yes	no	yes	no
17) Establishment of landlord-tenant enquiry boards	yes	yes	some	yes	yes
18) empowering ombudsmen to deal with tenant's rights	no	yes	no	no	yes
19) government publicity of landlord-tenant laws	?	no	no	no	no

How do you think New Brunswick compares to other provinces? We haven't altered our antiquated land or legislation since