

Discussion Paper

on the

**Prince Edward Island
*Rental of Residential Property Act***

November 2005

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INTRODUCTION

The PEI government has commissioned the Island Regulatory and Appeals Commission (IRAC) to conduct a review of the *Rental of Residential Property Act* (Act) to determine, what the issues of concern are under the current rental system and what kinds of legislative changes should be considered to address those issues.

An independent legal researcher has been hired to conduct the review and a two-step consultation process adopted. In the first step, 80 interviews were conducted with lessors, property managers, lessees, representatives from community organizations and agencies that have an interest in rental housing and the staff of the Office of the Director of Rental of Residential Property (ODRRP) for the purpose of preparing this discussion paper.

The second step in the process, is for the discussion paper to be used to obtain input from the community to provide greater clarity to the issues that have been documented and any others that have yet to be articulated. The discussion paper is posted on IRAC's website at www.irac.pe.ca/publicnotices for public comment until November 30, 2005.

In considering the issues and suggestions presented, it is helpful to note that they can be classified into three separate categories:

- i) issues to be addressed by legislation;
- ii) issues to be addressed by regulation; and
- iii) issues to be addressed by policy.

While this review is concerned primarily with legislative changes, there is some consideration given towards regulation and policy.

The discussion paper is longer than originally anticipated, the length being an indication of the quality of the consultations. It was felt that restricting the material would compromise the integrity of the subject matter. The paper has been structured so that the reader has the option of reviewing a particular area of concern by referring to the Table of Contents.

Your comments of the discussion paper are welcomed and appreciated.

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A. DEFINITIONS

There are defined terms in the *Act* and regulations that have been identified as being unfamiliar terms or terms that require more precision.

“court”:
There are potentially three levels of court a lessee/lessor could come into contact with as a result of a rental dispute: Small Claims Court, the Supreme Court of PEI- Trial Division and the Supreme Court of PEI – Appeal Division. Court for the purposes of this *Act* has been defined as the Supreme Court - Trial Division.

“exempted premise”:

- i) s.1(b) of the *Act’s* regulations excludes premises licensed under the *Community Care Facilities and Nursing Home Act*. This does not take into consideration that certain community care facilities have as part of the facility self contained rental premises.
- ii) s. 1(c) exempts premises under the *Tourism Industry Act* except when such a premises are rented to the same guest(s) for a period of one month or more. Precision is required as to:
 - (a) when does a guest become a lessee;
 - (b) whether the *Rental of Residential Property Act (Act)* should apply; and
 - (c) whether all tourist establishments defined under the *Tourism Industry Act* are to be considered as a residential rental premises, i.e., example travel trailers and campgrounds?
- iii) s.1(d) exempts facilities which provide therapeutic or rehabilitative services or other such premises which have supervisory services as defined in the *Community Care Facilities and Nursing Home Act*. This statute has been amended and no longer provides a definition of supervisory services.
- iv) s. 1(f) exempts premises provided to children under *Child and Family Services Act*. This *Act* has been repealed.
- v) Clarification is required as to whether and to what extent boarding houses are subject to the *Rental of Residential Property Act*.
- vi) Seeking clarification regarding non-profit housing and what distinguishes a member of cooperative housing from a lessee.

“Lessor/lessee”:
These terms are legal terms which avoid the connotations of the power associated with the traditional terms landlord/tenant. There are those, however, who suggest

returning to the more familiar language, as those are terms that people know and understand.

“Security Deposit”: Substitute the existing clause, “means money or any property paid or given” to “means the amount of consideration.” This is consistent with the wording used to define rent.

B. TERMS OF THE RENTAL AGREEMENT

The majority of the issues raised relate to the statutory conditions as outlined in the *Act* and therefore the structure of the *Act* lends itself as a logical framework for the discussion paper.

The statutory conditions are found in section 6 of the *Act* and represent the legal rights and obligations of the lessor and the lessee and are the basis of every rental agreement in Prince Edward Island. Other terms, such as no smoking, pets allowed, parking privileges or the number of people living in the premises etc., are supplementary conditions that are governed by the law of contract as per section 5 of the *Act*.

The statutory conditions are as follows:

Condition of Premises	Entry of Premises
Services	Entry Doors
Good Behaviour	Late Payment Penalty
Obligation of the Lessee	Quiet Enjoyment
Subletting Premises	Delivery of Possession

Section 7 provides additional statutory conditions for mobile home sites.

i) Condition of Premises

The condition of the premises is a primary concern for both the lessor and the lessee. However, this provision expresses the obligation of the lessor to ensure that the rental unit is “fit for habitation” and “in a state of good repair.” Neither of these terms are defined by the *Act* and therefore they are subject to interpretation.

Responsibility for regulating the condition of residential rental premises comes under various authorities including the ODRRP, the Provincial Fire Marshall and the Department of the Health and Social Services. There are no cross references in the *Act* to ensure that these authorities work in tandem or avoid duplication and gaps.

There are a considerable number of rental premises in the province that are in poor condition. Some of the conditions that have been documented include lack of proper heat and hot water, floor boards missing, no handrails on stairways, doors that do not lock, no smoke detectors or mould problems which cause environmental illnesses.

Some lessors and property management companies have policies as to when a premises should be painted and when other routine maintenance is to be done, usually prior to re-renting. This practice is hampered to some degree by a lack of transitional time from when one lessee vacates and another lessee moves in. If extensive cleaning or repairs are required, this may inconvenience a new lessee by delaying their move into the premises and/or cause a loss of rent to the lessor.

Lessors, who make it part of their practice to conduct joint inspections with the lessee at the beginning of the rental agreement, report fewer conflicts about the condition of the premises when the lessee vacates.

Suggestions:

1. *That the Act:*
 - i) *define standards such as “fit for habitation”, “in a good state of repair” and “normal wear and tear”;*
 - ii) *differentiate between “cleanliness” and “repairs;” and*
 - iii) *make reference to the relevant sections of the Public Health Act and the Fire Safety Code.*
2. *That the regulations provide for a classification system of repairs under the following headings: safety, general maintenance and cosmetic with timeframes as to whether the repairs are to done immediately, within 30 days or yearly etc.*
3. *That any lessor who fails to comply with an order of the ODRRP, to maintain a rental premises in accordance with the standards, be subject to a fine as determined by the Director.*
4. *That consideration be given to making provisions that facilitate the transitional time including:*
 - i) *abatements in rent (reduction in rent) for lessees who are delayed from moving into a rental premises;*
 - ii) *the ability of the lessor to recover the abatement through the security deposit or award of damages if the delay is a result of the lessee’s failure to leave the premises in good condition;*
 - iii) *alternatively, that a legislated delay of 12 to 24 hours be implemented to provide an opportunity for the*

lessor to prepare the premises for the incoming lessee.

iv) alternatively, that as part of the rental agreement the lessor commits to do whatever maintenance or repairs that are needed within a reasonable (fixed?) time frame.

- 5. That lessors conduct joint inspections of the premises with the lessee using a condition report. A lessor who seeks to withhold the security deposit or seek damages above and beyond the security deposit must provide proof of a joint inspection.*
- 6. Have officers conduct inspections to verify complaints regarding the condition of the premises and order repairs be done as an alternative to hearings.*
- 7. Allow the lessee to withhold rent or to deposit rent with the ODRRP when lessors fail to do repairs or maintenance.*

ii) Services - Issues & Suggestions

- 1. The Act lacks enforcement provisions when essential services are not provided as per the rental agreement. Current provisions provide that essential services such as heat and electricity cannot be discontinued without making an application to the ODRRP. Suggestion is that the lessor would be subject to a fine as determined by the Director for failing to comply with rental agreement.*
- 2. Conversely, a lessor should not be obligated to provide services such as electricity and heat to lessees who remain in the premises after the rental agreement has terminated.*
- 3. Public Health Regulation s.8(3) requires that a minimum temperature of 65 degrees F (18 degrees C) to be maintained at all times. Should each rental premises have access to a thermostat which controls the temperature in the unit?*

a) Waste Watch

Waste Watch is a significant issue particularly in multi-unit buildings. Lessors with larger holdings claim they or their employees spend between 12 and 40 hours a week sorting waste.

Under Waste Watch, lessors have experienced increases of 100 to 200% for waste management services. A lessor must pay \$175.00 a year per

unit regardless of whether that premises is lived in or not. The fee structure does not make any distinction between premises in regards to their size. The rate charged for a bachelor unit and a four bedroom duplex is the same.

Lessors say the cost would be more appropriately paid by the lessee who is the user of the service and who has a responsibility to do source separation. Lessors say they have little control over what lessees do and report the following problems:

- i) lessors are fined when lessees do not sort waste;
- ii) lessees that will not sort their waste;
- iii) lessees that because of age, cultural backgrounds or mental capacity experience difficulty sorting;
- iv) lessees that stockpile waste in the basement;
- v) non-lessees use the containers to dump waste;
- vi) some lessees move out leaving truckloads of waste;
- vii) lack of space for the bins.

Suggestions

That provisions be made in the appropriate legislation and regulations that:

- i) require lessees to pay for the service;*
- ii) more public education and monitoring be provided;*
- iii) there are enforcement provisions such as penalties or additional fees for lessees who do not comply with the sorting requirements;*
- iv) yearly fees be calculated so that they reflect the size of the premises;*
- v) failure to comply with the sorting requirements can result in a termination of the rental agreement.*

iii) Good Behavior and Quiet Enjoyment

These two provisions, “good behaviour” and “quiet enjoyment”, represent the duty a lessee has in respect to other lessees and so are considered here jointly. The *Act* does not provide any mechanism for mediating or resolving disputes between lessees. The implication is that it is the lessor who has a duty to ensure **all** lessees have quiet enjoyment, occupancy and possession of their premises. Although a rental agreement can be terminated by a lessor if there is a lessee who does not respect the rights of other lessees, there must be knowledge of the circumstances and a willingness on the part of the lessor to initiate such action. Lessors report lessees who have been disturbed are reluctant to come forward with such complaints for fear of repercussions.

Other concerns and considerations include:

- i) safety, particularly that of women, families with young children, seniors and persons with disabilities:
 - if a convicted sex or violent offender moves into the building;
 - if there is a violent and abusive person living in the building;
 - if there is harassment from the lessor; or
 - if there is fear of harassment from an abusive former partner;
- ii) inconsistency in police response;
- iii) the lack of provisions that allow lessors to terminate a rental agreement in extreme and emergency situations (24 - 48 hours); and
- iv) lessees who smoke or use illegal drugs in the rental premises or use it for production and sale of illegal drugs.

Suggestions:

1. *That the Act:*
 - i) *provide for a definition of “good behaviour and “quiet enjoyment”;* and
 - ii) *outline the duty of a lessor to the non-offending lessees.*
2. *That an agreement in principle between police agencies and the ODRRP be negotiated which provides access to information to the ODRRP, upon request, regarding police calls and responses to rental premises where an application has been made to the ODRRP for termination of the rental agreement for misconduct, disrupting the quiet enjoyment of other lessees or illegal activity.*
3. *Alternatively, that policing agencies be mandated to provide relevant information to the ODRRP in circumstances that require such evidence.*
4. *Lessors are requesting the establishment of a registry for “bad lessees”, i.e. lessees who don’t pay their rent or cause intentional damage to rental premises. Such a registry could be created and maintained through the private sector (along the lines of a credit bureau) but the authority and the criteria of what information, how it is to be retained, and its application to be determined by legislation or regulation.*
5. *That there is a dispute resolution process (mediation) available to resolve conflicts as they arise between lessees whether they live in*

separate units or are co-lessees and that this process be a resource available to lessee/members of housing cooperatives.

6. *That the ODRRP enhance its public education mandate and provide seminars on conflict resolution and other relevant topics for lessors.*

iv) Obligation of the Lessee - Suggestions

1. *That the Act be amended so that:*
 - i) *a lessee's obligation to pay rent is a statutory condition of the rental agreement;*
 - ii) *the lessee's obligation extends to the exterior of the premises if the rental unit includes a yard or is a mobile home site.*
 - iii) *a definition of "ordinary cleanliness" is included; and*
 - iv) *it is explicit in regards to a lessee's duty to comply with Waste Watch.*

v) Subletting the Premises

The current provisions require that a lessor be "reasonable" when the lessee who has a fixed term lease wishes to sublet the rental premises.

The concerns expressed regarding sublets are as follows:

- i) *not enough precision as to what is reasonable;*
- ii) *new people (co-lessees) move in without advising the lessor;*
- iii) *Public Health regulations require that a lessor maintain a registry with the names of all persons who occupy the premises; and*
- iv) *who is responsible for damages and rent owing when the premises have been sublet?*

Suggestions

That the Act provide:

- i) *direction as to what is reasonable;*
- ii) *that in the event where there are co-lessees and one has moved out and another moving in, a lessor has a right to be consulted and have the opportunity to screen the prospective lessee; and*
- iii) *a cross referencing of the requirements under the Public Health Act regarding the lessor's obligation to maintain a registry; and*
- iv) *make explicit who is responsible for damages or rent owing.*

vi) **Entry of Premises**

Lessees claim that they have or have had lessors who do not respect the 24 hour notice provision and enter the premises without notice or consent. This appears to be more prevalent in situations where the lessor also lives in the building or nearby.

Lessors complain that they cannot gain flexible access to rental units once notice to terminate the rental agreement has been issued either by the lessor or the lessee, in order to show the apartment to prospective lessees. The need for flexibility also applies when making repairs to the unit.

Suggestions

1. *That the 24 hour notice requirement be retained but include a clause regarding the need for flexibility between the parties in certain circumstances i.e. in the showing of a rental premises for re-renting or for repairs.*
2. *That the lessor be subject to a fine, to be determined by the Director, for persistent violation of a lessee's privacy and security.*

vii) **Entry Doors – Security & Safety**

Security and safety is one of the major concerns expressed by lessees and, in particular, lessees who because of their gender, age or disability feel vulnerable. The *Act*, however, is silent on this issue. The existing provision acts only to prohibit both the lessor and the lessee from changing the locks except by mutual consent.

Lessees concerns include the following:

- i) there are no specifications as to what kind of locking devices or doors are required;
- ii) some lessors will not consent to installing deadbolts even if the lessee is willing to undertake the cost of having this done;
- iii) the security features of some buildings do not work, i.e. security doors that don't lock or are not locked or intercom systems that don't function; and
- iv) there are no provisions in regards to the lighting of common areas including hallways, entrances and parking areas.

Suggestions:

1. *That statutory conditions are amended to include a provision for safety and security.*
2. *That specifications are provided on:*
 - i) *the locking devices required for doors and windows;*
 - ii) *type of door to be used at the entrance to the rental premises; and*
 - iii) *lighting in the common areas including the entrance to the building, hallways, stairways, storage areas, laundry facilities and fire escapes.*
3. *That the fire prevention and safety requirements as per the national fire standards, as adopted by the Fire Prevention Act, is made explicit.*
4. *A definition of a “secured rental premises” to be included in the Act giving the standard to be met if the premises is advertised as a “secured premises.”*

viii) Late Payment Penalty

A late payment penalty applies only to written agreements and is not to exceed 1% of the rent. Concern expressed by lessors is that this is not enough of a deterrent. It was reported that some lessors impose an administrative fee when rent is late. There is no provision in the Act for this.

Suggestion

A late penalty for rent, as a statutory condition, is a right of the lessor and should not require a special clause in the rental agreement in order for it to be applied.

ix) Delivery of Possession

There is a general consensus on the part of lessors that the time frames for delivery of possession are too long. Lessors say that many lessees know how to use the system to prolong delivery of possession and continue to stay in the premises without paying rent. For some lessors it means that in addition to losing rent they are obliged to keep the hydro and heat on. If the lessee applies to appeal an order for delivery of possession, this further prolongs delivery of the premises to the lessor. Lessors complain that the Sheriff's Office, particularly the Summerside office, will not enforce delivery of possession orders until the 21 day appeal period has expired.

Suggestions

1. *If a lessee has been served a Form 4 and does not pay the rent owing or make an application to set aside the termination of agreement within the required time frame, then no hearing is required once the lessee becomes an over holding lessee. A lessor can apply for an order for delivery of possession. If no hearing is held then there is no right of appeal.*
2. *If hearing is held, the Director's order should be final and the only appeal available is to the Supreme Court – Trial Division on a question of law.*
3. *A lessor can make an application for rent owing but it is not required for delivery of possession.*
4. *If application for delivery of possession is ordered and a hearing has been held the right to appeal is (7 -10 days). The party appealing must identify the reasons for appealing.*

C. MOBLIE HOME SITES

Mobile home sites fall into a different class of residential property from apartments and duplexes as the rental premises is a site on which to locate a mobile home. The following differences are indicators of the need to expand the specific provisions for mobile homes:

- i) the rental premises is the site and therefore the obligations of the lessor and the lessee pertain only to the site;
- ii) in the event of a termination of the rental agreement, 30 days may not be enough time to find and move the mobile home to another location; and
- iii) the type of repairs and maintenance required to be done by the lessor, i.e., roads, and water and sewer lines, are costly.

Suggestions

1. *That the differences noted above be reflected in the Act.*
2. *That a lessee's obligation defined under the statutory conditions be expanded to include the exterior of the premises.*

D. ENFORCEMENT

Both lessors and lessees expressed concerns regarding the enforcement provisions. Many commented that the *Act* lacks teeth. Concerns include:

- i) that there is general lack of deterrents for those who fail to comply with the *Act*; and
- ii) an ambiguity as to the extent of the Director's powers under this section of the *Act*.

Suggestions

1. *The Director may order repairs to the rental premises based on the inspection of the premises by a rental Officer.*
2. *The Director has the authority to levy penalties against lessors who:*
 - i) *fail to return security deposits to ODRRP when an application has been made by a lessee for a return of the security deposit; or*
 - ii) *fail to comply with the statutory conditions in regards to the condition of the premises and the provision of services as per the rental agreement.*
3. *Director has the capacity to levy penalties against lessees who:*
 - i) *break a fixed term lease without giving proper notice;*
 - ii) *become over holding lessees;*
 - iii) *move out and leave garbage to be sorted and hauled;*
or
 - iv) *fail to comply with Waste Watch requirements.*
4. *The Director has authority to issue a 24 hour notice of termination of the rental agreement in emergency situations where the interests of the lessor and other lessees are compromised. This would require that an "emergency" be defined.*

E. STANDARD FORM AGREEMENT

The efficacy and use of the standard form rental agreement has met with mixed reviews. Many lessors and lessees prefer informal verbal agreements and renting on a month to month basis. The general practice in Prince Edward Island for a fixed term agreement is that after it expires (usually after one year), it reverts to a month to month agreement. The conditions and terms remain the same with the exception as to the amount of rent to be paid and the notice provisions for terminating the agreement.

Lessors who use the fixed term agreement say that it gives them some stability with their investment. However, they say if a lessee decides to break the agreement there are few or no repercussions. Complaints about the Standard Form Agreement (Form 1) include:

- i) it creates too much paper work;
- ii) does not protect the lessee or the lessor from early termination of the lease;
- iii) is too complicated; and
- iv) lessor has no control over who is living in the unit as a result of the requirement to allow a lessee to sublet.

The Act, is silent on rent to own agreements and as such they are not dealt with by the ODRRP. What do these parties do when there is a dispute?

Suggestions:

1. *Written agreements should be mandatory so that the parties are clear about their rights and obligations.*
2. *The rental agreement should be modified to accommodate varying levels of literacy.*
3. *Lessors should have an obligation to provide lessees with information about the ODRRP at the beginning of the rental agreement.*
4. *That Form 1, the Standard Form Rental Agreement, should provide contact information for the ODRRP.*
5. *All the names of the people living in the premises are to be kept in a registry as per s. 13 of the Rental Accommodation Regulations under the Public Health Act. Need to cross reference with the Rental of Residential Property Act.*
6. *A unit is to be designated a smoking or non-smoking unit as part of the statutory conditions of the rental agreement.*
7. *Lessor should be able to collect future rent, up to the expiry date of the rental agreement, when a lessee breaches a fixed term lease.*
8. *As part of the conditions of the agreement, a lessee is obliged to provide the lessor with a forwarding address. If the lessee fails to provide this and there is a claim for rent owing or damages then it results in a default judgment for the lessor.*

9. *Give consideration as to whether rent to own agreements should be included under the Act.*

F. SECURITY DEPOSITS

Security deposits represent the most disputed issue that comes before the ODRRP. The problems range from understanding the intent of the security deposit, to lessors who retain the security deposit without issuing the necessary documentation, to disputes regarding the condition of the premises. The Act requires that security deposits be held in trust but only half of the lessors interviewed actually comply with this requirement.

A recent decision of the Supreme Court of PEI – Trial Division emphasizes that the security deposit is to cover **any** liabilities for which the lessee is responsible. This expands the Director’s interpretation that security deposits can be retained for rent owing or damages. This expanded interpretation means that monies owed for services such as oil, electricity can also be claimed against the security deposit.

Lessees support a security deposit regime whereby the security deposit is held by an independent party (the ODRRP) to be returned to the lessee, 10 days after the termination of the rental agreement if the lessor has not made a claim against it. This puts the onus on the lessor to prove that s/he has a legitimate claim to the security deposit rather than on the lessee who under the current regime must apply to the ODRRP for a hearing if they do not agree with the lessor.

As previously noted, lessors who use a condition report to document the condition of the unit when a lessee moves in, indicate that they have fewer disputes over security deposits.

Suggestions

1. *That the Act provide:*
 - i) *a clearer definition of a security deposit;*
 - ii) *that in order to make a claim for the security deposit, the lessor must produce a condition report that has been signed by both the lessor and the lessee at the beginning of the rental agreement;*
 - iii) *that a lessee has an obligation to clean up when vacating the premises and that failure to do so will result in partial or full retention of the security deposit; and*
 - iv) *for lessees who have pets, an additional deposit, the amount to be determined, as a damage deposit for repairs and cleaning related to the pet.*

2. *An alternative to the current system is for the ODRRP to hold the security deposit. This is the practice in New Brunswick. Under that system, the onus would be on the landlord to make an application to the ODRRP in order to retain any portion of the security deposit.*

This system avoids the misconception that the security deposit can be considered last month's rent. If such a system were adopted in PEI it would require administration support. However, adopting this system has the potential to reduce the number of hearings on security deposits.

G. TERMINATION OF RENTAL AGREEMENTS

Under this heading, timeframes and process are the two issues identified by lessors. There are two types of terminations which are particularly problematic for the lessor:

- i) rent owing; and
- ii) the lessee who is disruptive and/or destructive to the rental premises.

i) *Rent Owing*

Under the current provisions, a notice of rent owing and termination of the rental agreement can be issued the day after rent is due. The majority of lessors claim that they try to be flexible recognizing that people have difficult months and may need a couple of extra days or weeks to pay. The consultations revealed that it is only when a lessor suspects that the lessee has no intention of paying the rent that a Form 4 is issued. This negates the dual purpose of the notice which is first, to provide notice of rent owing, and second, to terminate the rental agreement if rent is not paid within the 10 day period.

If the rental agreement terminates and the lessee has failed to move out, the lessor must apply to the ODRRP for an order for delivery of possession, a process which requires both notice and a hearing. If the lessor is already owed two months rent at the time that the notice is issued, then the potential is there for the rent to become even further in arrears.

Lessors object to this process saying that it gives the lessee more time to stay in the premises rent free. They support a process whereby, if the lessee owes rent and the lessor can show proof of rent owing and no application has been made by the lessee to the ODRRP to set aside the notice of termination, then a lessor should be able to obtain an order,

without a hearing, giving delivery of possession to the lessor. This would eliminate the right of appeal.

Pursuing lessees for rent owing requires that the lessor make a separate application to the ODRRP. Once that application has been made, a notice of hearing is sent out by the ODRRP. If in the meantime, the lessee moves out and does not receive the notice of hearing, due process requirements would prevent a hearing from being held. This leads to the problem of the forwarding address. Lessees who owe rent and have no intention of paying do not leave forwarding addresses. ODRRP policy further prevents a lessee from being served at their place of employment. It begs the question: how is the lessor to get a forwarding address so notice can be served?

This is particularly frustrating when the lessee is a recipient of social assistance and Social Services will not undertake to ensure that the former lessee receives the notice of hearing.

Suggestions

1. *That the Act provide for:*
 - i) *an order from the Director for delivery of possession for rent owing without a hearing if the lessor can provide the evidence of rent owing and the lessee has not applied to have the termination set aside;*
 - ii) *that evidence for this purpose is defined;*
 - iii) *that there is no appeal in these circumstances.*
 - iv) *in the event that an order for rent owing is issued, the lessee would also be responsible for the lessor's costs in obtaining the order.*

2. *That the time frames for notice of termination and termination be reduced to:*
 - i) *seven days to pay or 14 days to vacate; or*
 - ii) *five days to pay and 10 days to vacate; or*
 - iii) *introduce a graduated process whereby the notice period and period to vacate decreases each time a notice for rent owing is issued.*

3. *In the event that the lessee being pursued for rent owing, damages or other liabilities is a recipient of social assistance, that a co-operation agreement between the ODRRP and the Department of Social Services and Seniors be struck so that these lessees can be served with the notice of hearing.*

4. *An alternative to the termination of rental agreements for rent owing is that the ODRRP provide assistance to the parties to help them mediate a solution, i.e., put in place a payment plan that is registered with the ODRRP.*

ii) Disruptive/Destructive Lessees.

Although there is a process for earlier termination of the rental agreement, lessors claim it only reduces the time frame marginally. Lessors want to be able to get someone who is a threat to the safety and security of other lessees or who will cause extensive damage to a unit out within a 24-48 hour period.

The 30 day notice for termination of the rental agreement is too long if the lessee is being evicted because s/he are damaging property or interfering with the quiet enjoyment of other lessees. This issue has been discussed in some detail under the statutory conditions of quiet enjoyment and good behaviour.

Suggestions:

In addition to the suggestions that have been made under the heading of quiet enjoyment and good behaviour it is further suggested:

1. *That if the disruption is not one that poses serious threat to other lessees or the lessor or the rental property that the notice of termination be reduced from 30 days to 10 or 15 days.*
2. *That the Act provide clarification as to what kinds of acts or omissions would constitute grounds for termination of the rental agreement.*

Other Grounds for Termination - Suggestions

1. *If a lessor terminates the agreement for the purpose of doing renovations there should be some way of verifying this. One suggestion offered is that the lessee who has vacated the premises should have the right of first refusal when the renovations are finished.*
2. *It is suggested that, under the provision which allows the lessor to terminate the rental agreement for the purpose of allowing a family member to move in, the list of eligible family members should be expanded so that it includes sisters and brothers.*

3. *It is suggested that the notice period, in the event of termination of the rental agreement because of renovations, or family occupation or conversion of the premises to something other than a residential rental property, is reduced from 60 days to 30 days.*
4. *A landlord may terminate a rental agreement for an illegal act or illegal trades, businesses or occupation occurring or being carried on in the rental premises or on the residential property.*

H. RENT CONTROLS

It is somewhat predictable that lessors and lessees have opposing views on the subject of rent controls. Lessees are clearly in favour of rent controls whereas lessors fall into three categories, those who want rent controls eliminated, those who want more flexibility and a few who support the current regime. The call for flexibility coincides with recent increases in oil costs.

Lessors express the following concerns:

- i) in recent years the annual increases have not reflected the increase in property taxes and Waste Watch fees;
- ii) as a result of increased costs, there is no money for repairs;
- iii) the 90 day notice requirement for a rent increase is too long;
- iv) if the premises are vacant, why is it necessary to post a notice of the rent increase;
- v) the procedure for obtaining a rent increase above the annual rate is too onerous and is an invasion of privacy;
- vi) there is no authority in the *Act* that requires that applications for increases above the annual rate are quantified based on a fixed allowable rate of return on an investment;
- vii) Social Service rent ceilings do not correspond with market rents and are not adjusted to the yearly rent increases;
- viii) there are many lessors who ignore rent controls and implement increases when a new lessee moves in; and
- ix) the practice of introducing rental increases in mid-September means that fixed term leases that are signed to coincide with the school year or commence in June cannot take advantage of the rent increase until the following year.

Lessees express the following concerns:

- i) lessors implement rent increases for work done in the building but not necessarily in their premises;
- ii) rent receipts should be mandatory;
- iii) rent increases are implemented each year but nothing is done towards the upkeep and maintenance of the mobile home park;
- iv) there is not enough good affordable housing on the market; and

- v) the allowable rate set by Social Services does not correspond with the real cost of housing.

Suggestions

1. *Maintain the current rent controls.*
2. *Annual rent increase be maintained but with the option of allowing lessors the flexibility to charge lessees a heating surcharge in the winter.*
3. *Eliminate rent controls and allow the rent to be market driven.*
4. *Allow for rent increases twice a year to provide some flexibility to correspond with market trends.*
5. *Notice for rent increase should be reduced from 90 days to 60 or 30 days.*
6. *If no rent increase is implemented for five years, then the lessor has an option of increasing the rent to the amount equal to the sum of the annual increases for that period.*
7. *Implementation of a one year limitation in which a lessee can apply for the return of an illegal rent increase.*
8. *Implement a rental premises registry in which the rental history including the rent is recorded and available to a prospective lessee.*
9. *That the process for obtaining a rent increase above the yearly rate be streamlined so that lessors are not required to divulge personal financial information, including income tax returns, which lessees then have access to.*
10. *That there is congruity between the annual rent increases and Social Services rent ceilings.*
11. *If a premises is taken off the market for a substantial period of time (1 year) when it comes back on the market it does so at fair market value as opposed to the rent that was last paid on the premises when it was on the market.*

I. ABANDONED PERSONAL PROPERTY

The current provisions provide that a lessee is not entitled to leave personal property in the rental premises after the rental agreement has terminated. However, in the event that a lessee does leave personal property behind, the lessor is required to take an inventory of the property and store it and apply to the ODRRP for an order to dispose of the property.

Lessors argue that these provisions put an undue burden on them and that in most instances any property that is left behind is garbage that the lessee does not want.

Suggestions:

Any personal items left behind by a lessee becomes the property of the lessor to do as they determine is appropriate including selling, keeping or disposing of the abandoned personal property.

K. PROCESS, ADMINISTRATION AND THE AUTHORITY OF THE RRPO

Many concerns and suggestions about time frames and process have been covered under previous subject headings.

The following issues are in addition to those already discussed:

1. There is a need to simplify and consolidate the application forms so parties are not required to complete multiple applications in a dispute(s) with a particular party.
2. That the application fees charged be printed on the forms.
3. That there be no discrepancy in the fee charged to lessees and lessors.
4. That there is a need for a simplified procedure that eliminates the need for lessors to go to court to get an order for damages that exceeds the amount of the security deposit.
5. That there is consideration given to implementing a mediation component to the ODRRP with the purpose of reducing the number of cases that go to a hearing and provides a process that lessees can access to resolve disputes with other lessees.

Suggestions

1. *There are a couple of options as to how a mediation component could be integrated into the existing system:*
 - i) *certain types of applications could be targeted for mediation; or*
 - ii) *all applications are subject to the mediation process first unless safety and security concerns are present.*
2. *Suggestions that relate to timeliness include:*
 - i) *writing shorter orders and decisions;*
 - ii) *streamline the processes so that multiple applications are not required for one case.*
3. *Expand the authority of the ODRRP so it eliminates the need of the lessor to go to court with a claim damages that are above the amount of the security deposit.*
4. *Suggestions regarding application fees are as follows:*
 - i) *fees are recoverable by the successful party in a hearing;*
 - ii) *fees are waived for non-profit organizations;*
 - iii) *there should be no discrepancies in the application fees paid by lessor and those paid for by the lessee; and*
 - iv) *that a fee be required for those who wish to appeal a decision of the ODRRP to avoid frivolous appeals.*
5. *The Director may award costs of the hearing to the successful party.*
6. *There needs to be a mechanism in the event that a default judgment needs to be re-opened, i.e. one of the parties did not receive a notice of the hearing.*
7. *There needs to be a time frame established in regards to how long the ODRRP must retain files.*

i) Perception of Fairness and the Unbiased Decision-maker

The ODRRP's power and authority is granted by the *Rental of Residential Property Act*. This type of legal authority is called administrative law. Administrative law, like judicial law, is governed by the principles of natural justice which include a right to fairness and an un-biased decision maker.

Lessors have expressed concern that the *Act* is slanted in favour of the lessee and that changes are required in order to achieve a fairer balancing of interests. In addition, they claim that there is a lack of consistency in the interpretation of the *Act* at the intake level and at the hearing.

Lessees, for the most part have less experience with the *Act*. Their knowledge of the *Act* is often specific to a particular problem they are having. The majority of lessees consulted expressed some level of satisfaction in regards to their interaction with the ODRRP. Some of the concerns expressed, however, are as follows:

- i) a general lack of awareness of lessee rights and obligations or the existence of the ODRRP;
- ii) confusion arising out of the Rental Officer's dual role as information officer and decision maker; and
- iii) no statutory right to legal representation or access to legal aid.

A Rental Officer has two roles to play. As an information officer, the Officer's duty is to inform the parties on their rights and obligations. At this stage of the process, there is the potential for the parties, having an understanding of their rights and obligations, to come to an agreement without having to go through a hearing. If the parties are unable to resolve the dispute on their own, then an application can be made to the ODRRP to have it resolved.

Once a matter comes before a hearing, it is the Officer's duty to be impartial, fair, ensure that the parties are heard and that civility is maintained, to accept the evidence provided and to make a decision. However, if the hearing Officer has also acted as the information Officer for one of the parties it has the potential to create a misconception in the mind of one or both parties regarding the Officer's impartiality.

Most of those consulted do not make a distinction between IRAC and the ODRRP. This is of some concern given that IRAC is the appeal body for the ODRRP and it raises questions in regards to the "appearance of fairness." This lack of distinction results from:

- i) the mutual sharing of offices and administrative resources;
- ii) the physical proximity of rental officers and IRAC commissioners;
- iii) the role of the Commission as a regulator and appeal body in rental matters; and
- iv) the perception of the Commission as a "super regulator" that controls the price of petroleum, electricity, residential rents and Waste Watch.

The issue of fairness and objectivity, as expressed by a couple of participants, is one that reaches beyond the scope of the *Rental of*

Residential Property Act to the powers, and composition of the Island Regulatory and Appeals Commission. In particular, the criticisms question:

- i) the expertise of the commissioners to hear appeals;
- ii) how Commissioner appointments are made; and
- iii) the increasing powers of the Commission as a regulator.

Suggestions:

1. *That a clear distinction be made between the information and adjudication functions within the ODRRP structure.*
2. *That the lessor be required to provide the lessee basic information about the ODRRP and their rights and obligations upon entering into a rental agreement.*
3. *That the ODRRP move its operations into a storefront location increasing its visibility in the community.*
4. *That IRAC commissioners, hearing rental appeals, be comprised of at least one lessee (possibly from a tenant's association), one lessor and one independent person to ensure that there is expertise on the panel. (This suggestion is included with the understanding that this review is limited to the Rental of Residential Property Act.)*

L. SOCIAL HOUSING

The *Rental of Residential Property Act* is silent on social housing but many of the existing provisions of the *Act* apply to housing that is administered under *the Housing Corporation Act*. Under that *Act*, social housing is narrowly defined as “low income housing.” This definition fails to recognize social housing as it pertains to particular groups such as seniors, persons with disabilities, and families.

Currently, social housing is the domain of the public/non-profit sector. While there is private sector interest in social housing it is limited by:

- i) discrimination provisions in the *PEI Human Rights Act*;
- ii) an unwillingness on the part of the provincial government to subsidize accessible rental units in the private sector; and
- iii) rent ceilings as established under the social assistance program are below the market values.

Some lessors have attempted to cater to a seniors' market by offering “senior friendly” units. This is permissible but does not protect the lessor from a discrimination claim if they refuse to rent to someone other than a senior.

Suggestions

1. *That consideration be given to re-defining social housing.*
2. *That the subject of social housing be put to a public discussion with the various stakeholders, interest groups and provincial, federal and municipal governments represented.*

Thank you for taking the time to review the discussion paper.