

SᑭÁUTW (TSAWOUT) FIRST NATION

DRAFT RESIDENTIAL TENANCY LAW

LMC SUB-COMMITTEE SUMMARY

FEBRUARY 22, 2016 MEETING

PREAMBLE

The preamble of the Residential Tenancy Law [the “Law”] is based on other SᑭÁUTW law preambles. It identifies SᑭÁUTW’s inherent jurisdiction to enact laws and the authority for Council under the Land Code to enact a law on residential tenancy.

PART 1: INTRODUCTORY PROVISIONS

DEFINITIONS

The definition section defines terms used in the law. Key terms include: “landlord”, “rental unit”, “residential premises”, “residential property”, and “tenancy agreement”. These key terms establish the “four corners of law” (i.e. what the law applies to).

APPLICATION

The law applies to residential tenancies, whether or not they began before the law is enacted. Landlords and tenants cannot contract out of the application of the law. The law will not apply in long-term lease situations or in cases where a tenant shares bathroom or kitchen facilities with the owner of that accommodation.

ENFORCEMENT

Tenants and Landlords may enforce the rights, obligations and prohibitions established in the law against one another. Terms in tenancy agreements that are inconsistent with the law are not enforceable.

PART 2: ADMINISTRATION OF THE LAW

Allows Council to appoint individuals by resolution to administer the law. The duties of administrators include providing tenants and landlords information about the law and their rights and duties under the law, receiving applications for arbitration of disputes, assisting in the resolution of disputes, and reporting to and advising council on the administration of the law.

PART 3: RESIDENTIAL TENANCIES RIGHTS AND OBLIGATIONS

Division 1 - Creating a Tenancy Agreement

This Part of the law establishes a default rule that only the approved standard Tenancy Agreement is valid (with an exception for pre-existing agreements). In addition, Council can establish different standard agreements for different circumstances (e.g. for Manufactured Homes or for STÁUTW-owned homes (Band-owned homes)).

This Division of the Law also includes:

- that pre-existing non-conforming tenancy agreements should be interpreted so as to conform to the requirements of the law and that such non-conforming Tenancy Agreements, upon their renewal, must use the standard terms required under the law;
- rules that limit what persons can and cannot add to the terms of a standard Tenancy Agreement (to ensure fairness) and the requirement that any changes be agreed upon in writing;
- the requirement that a landlord to provide the tenant with a copy of a Tenancy Agreement, Tenants are not required to pay rent until a copy of the Tenancy Agreement has been provided;
- the provision that a Tenancy Agreement may either establish obligations for keeping a pet or ban the keeping of a pet altogether; and
- a prohibition on landlords from charging application (or related) fees.

Division 2 – Security Deposits

- Security deposits may only be collected at the start of a Tenancy Agreement and cannot exceed ½ a month rent unless the tenant has a pet.
- If a tenant has a pet, the deposit may not be more than 1 month rent.
- Security deposits cannot be forfeited when tenants end a month-to-month tenancy.
- Security deposits accrue interest (calculated according to a rate set in the law).
- The law also provides rules on the return of a security deposit.

Division 3 – At the Start of a Tenancy

Condition Inspections

- Tenants and landlords must do a condition inspection at the beginning and end of the tenancy and fill out a “Condition Inspection Report.”
- The law provides rules surrounding how condition inspections take place.
- In the event the condition inspection report requirements are not met, tenants may lose their right to their damage deposit.

- In the event the condition inspection report requirements are not met by a landlord, the landlord may no longer have the right to withhold part or all of a security deposit.
- The condition inspection rules do not apply to manufactured homes

Rekeying Locks

- Tenants may request that a landlord rekey the locks at the start of a tenancy.

Division 4 – During a Tenancy

Rent

- Sets out that tenants must pay rent unless they have a right under the law to deduct rent from a cost owed to them.
- Landlords may not seize tenant property for a failure to pay rent unless they have a court or arbitration order to do so.

Services

- Landlords may not terminate essential services and may only terminate non-essential services with 30 days written notice and the appropriate reduction in rent.

Peaceful Occupancy Rule

- Tenants have the right to privacy and freedom from unreasonable disturbance.

Landlords Entering the Rental Unit

- Unless there is an emergency, or unless tenants agree, landlords must give tenants written notice each time they want to enter a rental unit.
- Notices or permission are also necessary if landlords want to do repair work or show a unit to a prospective tenant or purchaser.
- The minimum notice period is 24 hours and the maximum is 72 hours before entry
- Landlords can enter without notice if:
 - There is an emergency,
 - tenants have abandoned the unit or,
 - an arbitrator orders the Landlord may enter.

- Tenants may bring a complaint to an arbitrator if landlords enter illegally and landlords may be ordered to pay compensation if they violate a tenant's right to reasonable privacy and freedom from unreasonable disturbance.

Access, Guests, and Removal of Guests

- A landlord may not unreasonably restrict access to a rental unit for a tenant or a guest invited by a tenant.
- An exception to the above rule is made for S~~T~~AUTW Housing Units. Council may issue a notice to vacate to any person residing in a S~~T~~AUTW Housing Unit who is not a tenant where Council has reason to believe that this person is permanently residing in the Housing Unit without permission of Council, is residing in the Housing Unit without the permission of the tenant, is using threats or intimidation to obtain permission from the Tenant to reside in the Housing Unit, or is otherwise threatening the safety of Housing Unit residents or damaging First nation property.
- An individual who is issued a notice to vacate for grounds of being a threat to the security of other persons in a S~~T~~AUTW Housing Unit, causing damage to the Housing Unit, or for engaging in criminal activities can be banned by Council from residing in all other S~~T~~AUTW Housing Units.
- An individual who is issued a notice to vacate may dispute the notice by making an application for dispute resolution.

Locks and Access

- Landlords and tenants must not alter locks or access to a rental unit (or the property generally), unless there is a threat to security.
- Tenants who believe a landlord may illegally change locks or alter access can apply for an order to change the lock (and keep the only key).

Duties to Repair and Keep Clean

- Tenants have a duty to keep rental units in a clean state. Tenants are not liable for reasonable wear and tear.
- Landlords have a duty to keep rental units in reasonable shape. This includes a responsibility to replace appliances and other things as they wear out or age.
- Landlords must also comply with health, safety and housing standards.
- Landlords must post contacts for emergency repairs. Tenants must use those contacts unless they cannot be reached, in which case tenants may make alternate arrangements to have emergency repairs made.

- Tenants may apply for a repair and service order if a landlord is not complying with the law. Reasonable costs for repairs can be deducted from rent.

Right to Assign or Sublet

- Tenants may assign or sublet with the consent of a landlord in writing and a landlord must not unreasonably without consent.

Division 5 – Manufactured Home Site Tenancies

- The landlord may request security from the Tenant against damage caused by a move.
- At the end of a tenancy a Tenant must leave the manufactured home site reasonably clean and undamaged and return all access keys to the landlord

Division 6 – At the End of a Tenancy

- Unless otherwise agreed, tenants vacate a rental unit by 1 pm when a tenancy ends.
- Tenant's remove all personal property , leave the rental unit reasonably clean, and return all keys

Move out Condition Inspection and Return of Security Deposit

- The landlord and tenant must do a move-out inspection report.
- The landlord must offer the tenant two opportunities to do the move-out inspection report.
- If either the tenant or the landlord fail to meet the requirements of the condition inspection that person loses the ability to claim the security or pet deposit.
- Except for in the case of STÁUTW Housing Units a landlord must return the security and pet damage deposit to a tenant 15 days after the tenancy ends and upon receiving a tenant's forwarding address unless:
 1. The tenant agrees in writing to give some or all of the deposit amount to the landlord to cover damage;
 2. An arbitrator allows the landlord to retain an amount; or
 3. An arbitrator ordered the tenant to pay a sum to the landlord and that amount remains unpaid.

PART 4 – RENT INCREASES

- A rent increase must be given in accordance with the Law.

- A rent increase can only be given once every 12-month period, whether or not the landlord changes.
- Council sets the formula for an allowable rent increase by Resolution.
- Landlords must give three (3) full months of notice in advance, using a “Notice of Rent Increase” form, with an exception for Manufactured Home Pad rentals (trailer pad only).
- Landlords must give six (6) full months notice for a trailer pad only tenancy.
- The law also prohibits “hidden rent increases” – e.g. withholding a service that used to be included in rent.
- STÁUTW Housing Units are not subject to these rules

PART 5 – HOW TO END A TENANCY

Tenants are entitled to stay in a rental unit until landlords have a legal reason for ending the tenancy. The legal reasons for ending a tenancy are set out in Part III of the Law. There are different types of situations that might cause a tenancy to end:

- 1) **By mutual agreement.**
 - Landlord and tenant sign a “Mutual Agreement to End Tenancy” form
- 2) **If a tenant gives notice**
 - Does not apply to fixed term tenancies
 - Minimum one month notice (a full payment period)
- 3) **A tenant vacates or abandons the Unit**
 - Landlord must deal with any personal property left behind in a Unit in accordance with the law (Schedule F).
- 4) **A fixed-term tenancy agreement provides that the tenancy will end on a specific date**
 - In this situation the tenancy agreement specifically sets out an end date.
- 5) **By eviction:**
 - In this situation, a landlord must have a legal reason to support the eviction and provide a “Notice to End Tenancy”.
 - If a tenant remains after he or she is no longer permitted to stay, an Arbitrator may issue an order for possession the landlord.

Circumstances that permit eviction vary depending on circumstances. These are summarized next.

Failure to Pay Rent

- Landlords can give notice if a tenant fails to pay rent the day after rent was due.
- If tenants pay the rent within 5 days, the Notice to End Tenancy is void.

- Tenants can apply to have the Notice to End Tenancy extended.

Landlord Use of Property

A landlord may also give notice if the landlord plans to:

- sell the premises
 - occupy the premises
 - have a “close family member” occupy the premises
 - demolish the premises
 - enter into a long-term lease
 - convert the premises to another use
 - renovate or repair (to extent that place must be vacant)
- However, in the event that a tenant vacates and the landlord does not carry through with such plans, the tenant may seek compensation.
- **“Close family member”** means a parent, grandparent, spouse, child or sibling (including a parent, grandparent, child or sibling of a spouse).
- Notice periods for landlord use of property will vary from 2 – 12 months.
- For trailer pad rental units only, landlords must also pay tenants the equivalent of 12 months’ rent.

For Cause

Landlords can give notice “for cause” if tenants:

- unreasonably disturb other residents
- cause extraordinary damage or fail to take steps to repair damage
- fail to give a security deposit within 30 days of being require to do so
- misrepresent the rental unit/property to a prospective buyer
- breach a reasonable material term of the tenancy agreement
- are repeatedly late paying rent
- seriously jeopardize the landlord or others’ health and property
- engage in illegal activity (specified in the law)
- have an unreasonable number of occupants in the unit

Evictions for cause may terminate the tenancy of only one tenant while preserving the tenancy of a co-tenant so long as that tenant and the landlord agree to do so. Where a tenant is evicted in this manner that tenant may not continue to live in or occupy as a guest the residential property from which they were evicted. Where the eviction is from

a STÁUTW Housing Unit that former tenant may be barred from residing in any STÁUTW Housing Unit.

Other Specialized Circumstances

To Comply with Council or other Authority Order

- Landlords can give notice to comply with an order by Council or other authority for zoning, health, safety, building or fire prevention standards.
- Council may, by resolution, require a landlord to issue a notice to vacate where a tenant has adversely affected or is likely to adversely affect the security of another tenant or occupant of a rental unit.

Manufactured Home Pads

- For trailer pad alone, when evicting, a landlord is required to give 6 or 12 months notice depending on the circumstances and must pay the tenant's moving expenses once the tenant vacates.

Subsidized Rental Units, Tsawout Housing Units, Public Housing Bodies

- Council may give notice if a tenant no longer qualifies to be a tenant of a STÁUTW Housing Unit. Such a decision is final and binding and not open to review by an Arbitrator.

Notices may be disputed and landlords and tenants may seek orders for possession.

PART 6 – DISPUTE RESOLUTION

- The law provides an Arbitration model of dispute resolution for most residential tenancy situations. This model will not require STÁUTW to establish a panel, board or other decision making body. Instead parties may request either mediation or arbitration to settle a dispute. A dispute and the application to resolve that dispute will first be reviewed by the STÁUTW administrator established under the law.

Division 1 – Dispute Resolution Proceedings

Administrator

- Council appoints an “Administrator” to administer the law (e.g. receive complaints or applications for review, mediation and arbitration made under the law). This could be a current staff member. The Administrator's roles are listed in section 67.

- The Administrator may resolve disputes relating to STÁUTW Housing Units or any dispute regarding the content of a standard form agreement prescribed by the law. Decisions by the Administrator on these matters is final and binding.

When a dispute arises under the Law:

1. The tenant or landlord must make an application for resolution to the Administrator requesting either mediation or arbitration.
2. The Administrator assists landlords and tenants, where practical, to resolve differences brought to his or her attention.
3. If differences cannot be resolved, the Administrator will assist in referring the matter to mediation or arbitration. The Administrator may refuse to refer a dispute for further resolution if the dispute clearly lacks merit or is out of jurisdiction of the arbitrator.

Limitation Period:

- Where the law does not provide a specific time limit to apply for dispute resolution the deadline is two years.

Division 2 - Mediation

- Council, by resolution, may establish a roster of mediators.
- The parties may select the mediator, and where they cannot agree the Arbitrator may choose one.
- The mediator's role is to reach a resolution to the dispute by assisting the parties to enter into a written agreement. Agreements reached in mediation may be enforced in court or by an arbitrator.
- The Administrator, at the request tenants and landlords who have substantially similar disputes, may agree to have the mediator mediate multiple disputes at one time.
- A mediator shall have 60 days to attempt to get an agreement between the parties although this time period may be extended by the written agreement of the parties and the mediator.
- Limitation periods for bringing disputes are suspended during mediation.

Division 3 - Arbitration

- Arbitrators are appointed under the Law to resolve disputes. Tenants and Landlords with a dispute will either:

- Selected an arbitrator by agreement together or
- Apply to the Administrator to designate an arbitrator. The Administrator will designate an arbitrator from a list of arbitrators appointed by Council.
- The law provides a standard statement to ensure that an Arbitrator with an interest in a dispute is not designated.

Powers of an Arbitrator:

- An arbitrator issues orders that have the force of law in order to resolve disputes between landlords and tenants. Decisions of an arbitrator are subject to review if a tenant or landlords applies to an Administrator for review within the times period set out in the Law.
- Arbitrators may refuse to hear disputes that they believe to be frivolous.

Role of the Administrator

- The administrator provides copies of the arbitrator's decision to the tenant and landlord.
- The administrator shall keep copies of the decisions on file and may also publish the decisions of the arbitrator or otherwise make them public

Procedures:

- Council may by Resolution establish procedures for arbitrations and for reviewing decisions of Arbitrators.

PART 7 – MANUFACTURED HOME PARKS

This part applies to trailer pad rentals only.

- Under the law, the landlord and tenants of a trailer park can establish a “Local Park Committee” to make rules and govern the operation of the park. The park rules may be established to assist landlords and tenants in resolving disputes over:
 - The operation of the park
 - Rent increase
 - Other park issues

Park Committee Role in Dispute Resolution

- Park Committee may establish procedures to assist a Tenant and Landlord reach a voluntary dispute resolution.

PART 8 – GENERAL

Part 8 of the Law sets out general rules on matters such as the service or delivery of documents, claims for personal property and claims for money (“monetary claims”), fees and forms, and offences.