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## **Alberta Amends the *Residential Tenancy Dispute Resolution Service Regulation***

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**Legislation Commented On:** *Residential Tenancy Dispute Resolution Service Regulation*, [Alta Reg 98/2006](#)

In the Fall of 2016 the [Public Interest Law Clinic](#) at the University of Calgary recommended changes to the *Residential Tenancy Dispute Resolution Service Regulation*, which expired on April 30, 2017. The Residential Tenancy Dispute Resolution Service (RTDRS) is established under Part 5.1 of the *Residential Tenancies Act*, [SA 2004, c R-17.1](#) as an alternative to the Provincial Court for dealing with landlord/tenant disputes under the *Act*. ABlawg has documented significant problems with the RTDRS and the *Regulation* in several posts written by Professor Jonnette Watson Hamilton [here](#), [here](#), [here](#), and [here](#). The scheduled expiry of the *Regulation* was an opportunity for the Alberta government to address these problems through amendments. However, the amendments enacted on April 24, 2017, while including some welcome changes, fall well short of addressing noted problems with the RTDRS.

During the Fall of 2016, Clinic students and staff conducted research, met with the Director of the RTDRS, consulted with stakeholder groups, and attended at the RTDRS to observe the hearing process. This work informed a set of recommendations for amending the *Regulation* which the Clinic forwarded to the RTDRS Director in November 2016. Clinic recommendations for changes to the *Regulation* fell into three broad categories:

1. Empowering Tenancy Dispute Officers (TDOs) to re-hear matters and vary orders in situations where procedural fairness has been breached or an order issued by a TDO is otherwise unfair.
2. Modifying the appeal process from RTDRS orders to the Court of Queen's Bench to simplify it for tenants, reduce the cost of an appeal, and otherwise make the appeal process more accessible for tenants.
3. Establishing a duty counsel program at the RTDRS, where lawyers and law students could provide legal advice and assistance to unsophisticated parties with a limited understanding of the legal process, and help explain how the RTDRS works and prepare applicants for their hearings.

The new *Regulation* includes some amendments that enhance rights to procedural fairness, including provisions that reflect the Clinic's suggestions. Most of these provisions are in the newly added section 19.1:

- 19.1** (1) A tenancy dispute officer may, by an order made in accordance with this section, set aside or vary an order of the tenancy dispute officer.
- (2) A tenancy dispute officer may set aside or vary an order under this section
- (a) on the tenancy dispute officer’s own initiative, or
  - (b) at the request of a party.
- (3) A request referred to in subsection (2)(b) must,
- (a) be made within 20 days after the earlier of
    - (i) the date on which the Dispute Resolution Service provided a copy of the original order to the requesting party in accordance with [section 20](#), and
    - (ii) the date on which the original order first came to the requesting party’s attention, and
  - (b) unless the Administrator directs otherwise, be decided by the tenancy dispute officer who granted the original order.
- (4) A tenancy dispute officer may issue an interim order staying the order sought to be varied or set aside pending the tenancy dispute officer’s determination under this section
- (a) on the tenancy dispute officer’s own initiative, or
  - (b) at the request of a party.
- (5) A tenancy dispute officer may set aside or vary an order
- (a) if the order was made without notice to one or more parties,
  - (b) if the order was made following a hearing at which a party did not appear because of an accident, a mistake or insufficient notice of the hearing, or
  - (c) on other grounds consistent with procedural fairness.
- (6) If a tenancy dispute officer issues an order to set aside under this section,
- (a) the Dispute Resolution Service shall issue a notice of rehearing of the application that shows the date, time and location of the rehearing, and
  - (b) except as otherwise directed by the tenancy dispute officer, the rehearing shall be held in accordance with this regulation in all respects as if it were an original hearing.
- (7) If a tenancy dispute officer issues an order under this section, a party may file a copy of that order with the Court of Queen’s Bench, and on being filed,
- (a) the original order is
    - (i) stayed as the interim order under subsection (4) provides, or
    - (ii) set aside or varied as the order under subsection (5) provides, and
  - (b) unless the Court of Queen’s Bench orders otherwise, any execution or garnishee summons issued pursuant to the original order is stayed.

Subsections (1) and (2) now empower TDOs to rehear, vary, and set aside their decisions on their own initiative or upon the request of a party, a power they did not have under the previous *Regulation*. Previously, the RTDRS could only review its own order if the order contained an “obvious error” or “inadvertent omission”, meaning that if a tenant or landlord wanted to rectify unfair process, they had to apply to the Court of Queen’s Bench. Professor Jonnette Watson Hamilton noted problems with forcing RTDRS applicants to appeal to the Court of Queen’s Bench in [her ABlawg post](#) on *Nee v. Ayre*, [2015 ABQB 402 \(CanLII\)](#), which describes the complex legal process that a tenant or landlord must navigate and the fees they must pay to have

the appeal heard by the court. This amendment will hopefully help to rectify some of these issues by allowing a TDO to address process issues that arise from a hearing within the RTDRS.

Subsection (5) expressly empowers a TDO to set aside or vary an order based on a breach of procedural fairness, including insufficient notice for the original hearing. There have been some egregious breaches in the recent past, as identified by Professor Watson Hamilton in ABlawg posts on [Kerr v Coulombe, 2016 ABQB 11 \(CanLII\)](#) and [Abougouche v Miller, 2015 ABQB 724 \(CanLII\)](#). In *Kerr*, a tenant arrived for his hearing and checked in with the receptionist, but was never called into the hearing room. The hearing occurred without him. The tenant was successful on appeal to the Court of Queen's Bench, but not before his landlord changed the locks on his rental premises, rendering him unable to retrieve his belongings for nine days. Under the new *Regulation*, applicants to the RTDRS who experience similar obvious breaches of procedural fairness will at least have the possibility of having the matter reheard at the RTDRS rather than having to apply to the Court of Queen's Bench.

The new *Regulation* also gives TDOs the power to stay orders. Under subsection (4), if a TDO is rehearing a matter, they may issue an interim order staying the original order either on their own initiative or upon the request of a party. In addition, once a matter has been reheard, parties can file the new order with Queen's Bench to stay, set aside, or vary the initial order. Because some RTDRS complaints involve precarious tenancy situations, this is an important protection for tenants who may end up homeless while they wait for resolution.

While these changes to the *Regulation* take some steps toward providing vulnerable tenants and unsophisticated litigants with a fairer hearing process, we had hoped to see more substantive changes. The new *Regulation* does create a kind of appeal process internally at the RTDRS, but it is highly discretionary, and applicants who are dissatisfied with RTDRS decisions must still navigate the expensive and procedurally complex Court of Queen's Bench appeal process, which still only allows appeals on questions of law or jurisdiction and does not allow any new evidence. Further, while the new *Regulation* does address optional stays of orders, it would be better for vulnerable tenants if orders on appeal were automatically stayed, as with the Landlord and Tenant Board in Ontario.

The new *Regulation* also does not make efforts to enhance vulnerable and unsophisticated litigants' understanding of the RTDRS process. Although intended to provide a more accessible dispute resolution process than the Alberta courts, the RTDRS is still a legal forum which many unsophisticated litigants struggle to navigate. Neither the new *Regulation* nor the RTDRS has taken up our suggestions about establishing a mediation process or duty counsel, both of which would help participants better understand the process.

Alberta remains a landlord-friendly jurisdiction under the new *Regulation*. While the new section 19.1 may rectify some procedural fairness issues, the changes to the *Regulation* falls short of addressing more major problems with the system, as noted by Professor Watson Hamilton in her earlier posts. We hope that the internal appeal process at the RTDRS created by section 19.1 improves the experience for vulnerable litigants, but we would welcome a much more comprehensive overhaul than took place here.

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