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Alberta Extends the *Residential Tenancy Dispute Resolution Service Regulation* for Another 5 Years

By: Shaun Fluker

Order Commented On: Order in Council [084/2022](#) (April 6, 2022)

On April 6, the Lieutenant Governor in Council issued Order in Council [084/2022](#) which amends section 35 of the *Residential Tenancy Dispute Resolution Service Regulation*, [Alta Reg 98/2006](#) to extend the Regulation for another 5 years (moving the expiry date from April 30, 2022, to April 30, 2027). There is nothing particularly unusual about this amendment, and indeed it would be very problematic if the Regulation were simply left to expire on April 30 given the role and function of the Residential Tenancy Dispute Resolution Service (RTDRS) in adjudicating landlord-tenant disputes under the *Residential Tenancies Act*, [SA 2004, c R-17.1](#) and the *Mobile Home Sites Tenancies Act*, [RSA 2000, c M-20](#). My reason for noting this here is because of what did not occur along with the amendment. Specifically, the absence of any apparent review of the Regulation and its governance measures concerning the RTDRS.

The last time the Regulation was extended – back in April 2017 – there was a review undertaken by the RTDRS Director under the oversight of the Minister of Service Alberta. I know this well because the review was one of the first projects undertaken by the Faculty’s Public Interest Law Clinic in the Fall of 2016. The Clinic’s [website](#) describes the project as follows:

As part of a housing project investigation conducted by Clinic students in the first cohort during early 2016, the Clinic approached the Minister of Service Alberta about addressing noted concerns with the Residential Tenancy Dispute Resolution Service [RTDRS] Regulation under the Residential Tenancies Act (Alberta). In response, the Minister included the Clinic in stakeholder discussions about amendments to the RTDRS Regulation held in the fall of 2017.

Residential tenancies legislation in Alberta is landlord friendly and provides less rights to tenants than is the case in other jurisdictions of Canada. The Residential Tenancies Act (Alberta) and its regulations, including the RTDRS Regulation is overdue for law reform, and particularly in relation to how the legislation addresses or fails to address the rights and interests of vulnerable tenants in Alberta.

In October 2016, we met with the Director of the RTDRS to discuss noted concerns with the RTDRS Regulation and how the service is currently administered to resolve landlord-tenant disputes. In November 2016, we hosted a roundtable with representatives from community organizations to discuss concerns with the RTDRS and later that month we forwarded a submission to the Director of the RTDRS with suggested amendments to address concerns

with the current service. The Alberta government amended the RTDRS Regulation in April 2017, and we published our review of those amendments on the Faculty of Law blog.

Amy Matychuk and Jo-Ann Munn Gafuik reported on this project for ABlawg in [Alberta Amends the Residential Tenancy Dispute Resolution Service Regulation](#). The changes made to the Regulation in 2017 certainly fell short of expectations, but at least there had been a public consultation and review process. Functional democracy at work.

The list of problems with how the RTDRS operates is long, particularly in relation to its procedures. My colleague Jonnette Watson Hamilton has followed the legal happenings at RTDRS for many years on ABlawg, and her recent posts (see [here](#) and [here](#)) illustrate some fundamental deficiencies in relation to transparency, openness, and access to justice at the RTDRS. Many of these problems originate in the Regulation which governs matters such as: (1) how cases get before the RTDRS; (2) the powers of dispute officers in adjudicating disputes; (3) hearing procedure for disputes – including the establishment of [Rules of Practice](#); and (4) appealing an RTDRS decision to the Court of Queen’s Bench.

Here are two illustrations of significant deficiencies in the Regulation. Section 23 provides for a right of appeal from an RTDRS decision to the Court on questions of law. However, unlike many other legislated appeal regimes which impose an obligation on the impugned decision-maker to file the decision record with the Court, section 23 imposes an obligation on the appellant to obtain and pay for the RTDRS hearing transcript and file it with the Court. Section 9.3 of the Rules of Practice confirms that a prospective appellant must obtain an audio recording of the hearing from RTDRS and then pay to have the recording transcribed. This is a significant access to justice problem, as the process and cost to obtain a transcript is substantial and will be overwhelming for most tenants who are navigating this process on their own. Factor this in with the other significant costs and challenges associated with arguing an appeal before the Court, and it is easy to see why RTDRS decisions are effectively final and not subject to legal scrutiny where the tenant is the aggrieved party. At the very least, section 23 should be amended to place the obligation on the RTDRS to prepare and file the full hearing record with parties and the Court.

As another example of a procedural deficiency in the Regulation, it is silent on whether hearings are open to the public. The RTDRS has recently filled this gap by adding a provision to its Rules of Practice which states its hearings are presumptively not open to the public and only conducted by telephone. These provisions read, in part:

8.7 Restricted access to the hearing

RTDRS hearings are closed to the public unless the Tenancy Dispute Officer grants permission for certain members of the public to attend, after consultation with the parties. While a member of the public might be granted permission to attend a RTDRS hearing, they will not be given access to the application or supporting documents on file.

8.8 Method of hearing

All RTDRS hearings will be scheduled to take place before a Tenancy Dispute Officer by way of telephone conference.

This closed procedure is fully inconsistent with the general trend of Alberta tribunals to be open to the public. The template provision found in the *Municipal Government Act*, [RSA 2000, c M-26](#) is as follows:

Hearings open to public

- (1) Subject to subsections (2) and (3), all hearings by TRIBUNAL are open to the public.
- (2) If the TRIBUNAL considers it necessary to prevent the disclosure of intimate personal, financial or commercial matters or other matters because, in the circumstances, the need to protect the confidentiality of those matters outweighs the desirability of an open hearing, the TRIBUNAL may conduct all or part of the hearing in private.
- (3) If all or any part of a hearing is to be held in private, no party may attend the hearing unless the party files an undertaking stating that the party will hold in confidence any evidence heard in private.
- (4) Subject to subsection (5), all documents filed in respect of a matter before the TRIBUNAL must be placed on the public record.
- (5) The TRIBUNAL may exclude a document from the public record
 - (a) if the TRIBUNAL is of the opinion that disclosure of the document could reasonably be expected to disclose intimate personal, financial or commercial matters or other matters, and
 - (b) the TRIBUNAL considers that a person's interest in confidentiality outweighs the public interest in the disclosure of the document.
- (6) Nothing in this section limits the operation of any statutory provision that protects the confidentiality of information or documents.

For an example of this type of section in a regulation, see section 18 of the *New Home Buyer Protection (Ministerial) Regulation*, [Alta Reg 220/2013](#).

Which brings us to the crux of my post. The sole purpose for legislating an expiry date in a regulation is to provide an opportunity to consider the exact sort of deficiencies that are found in the Regulation. To put the RTDRS under the microscope, assess what changes are needed, and amend its governance framework accordingly. This purpose is somewhat evident from the text of section 35 in the *Residential Tenancy Dispute Resolution Service Regulation*:

35 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on April 30, 2022.

For sure, the drafting in section 35 leaves much to be desired, and the section could more clearly articulate the reason for a legislated expiry date. It is hard to decipher how the Regulation could lose its ‘relevancy’ or ‘necessity’, short of a scenario where the RTDRS is abolished completely. In which case, the Regulation would surely be repealed anyway. Nonetheless, section 35 now reads that the Regulation expires on April 30, 2027. And while a review of the RTDRS could be initiated by the Minister at any time going forward, the most appropriate time to do so would have been in the lead up to the expiry of the Regulation this month.

As a final note, it should be mentioned that the Executive (cabinet and individual ministers) extends the expiry dates of regulations on a frequent basis. A search on the [Queen's Printer](#) website for Orders in Council reveals that cabinet has extended the expiry date of a regulation 6 times in 2022. This search result would not include instances where a Minister has the power to do so, and also would not account for instances where one Order amends expiry dates in several regulations (see for example [here](#)). My thanks to Drew Yewchuk for pointing this out.

All of this is compounded by the troubling fact that executive lawmaking is an inherently closed and non-transparent process. The need for some infusion of participatory democracy and accountability into the continually expanding universe of delegated lawmaking by the Executive is well-known. The problem is that the entity who can do something about this – the Executive – also benefits from the status quo because it is far easier to exercise power when you don’t have to justify it.

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