

## The Residential Tenancies Act and Domestic Violence: Facilitating Flight?

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Legislation Commented On: [Bill 204: Residential Tenancies \(Safer Spaces for Victims of Domestic Violence\) Amendment Act, 2015](#)

Bill 204, the [Residential Tenancies \(Safer Spaces for Victims of Domestic Violence\) Amendment Act, 2015](#), was introduced by Deborah Drever, Independent MLA for Calgary-Bow, to mark Family Violence Prevention Month on November 15, 2015. At that time, MLA Drever stated that “This bill seeks to empower and support survivors of violence by removing some of the barriers to leaving an unsafe home environment.” ([Hansard, November 15, 2015](#)). At Second Reading on November 16, 2015, MLAs from all parties expressed support for the Bill, which passed unanimously. Perhaps most powerful was the statement of the MLA for Lethbridge-East, Maria Fitzpatrick, who [told her own story](#) of domestic violence and the barriers to leaving her former spouse ([Hansard, November 16, 2015](#)). [Amendments](#) to the Bill were agreed to and introduced by the Committee of the Whole on November 30, 2015. This post will describe the ways in which Bill 204, as amended, proposes to revise the *Residential Tenancies Act*, [SA 2004 cR-17.1](#), and will raise a number of issues that the Legislature may wish to consider before it passes the Bill in final form.

### The Details of Bill 204

Essentially, Bill 204 allows tenants to end their residential tenancies early without the usual financial penalties. It does so by adding “Part 4.1 Victims of Domestic Violence” to the current *Residential Tenancies Act*. The key aspects of Bill 204 are as follows:

- The threshold requirement is that the tenant (the “victim”) believes their safety or that of their dependent child(ren) is at risk because of “domestic violence” (defined in section 47.2) if the tenancy continues (section 47.3(1)). The Committee of the Whole broadened this threshold requirement to include the victim’s fear for the safety of a protected adult who lives with them, with “protected adult” including assisted adults, represented adults, or supported adults as defined in the *Adult Guardianship and Trustee Act*, SA 2008, c A-4.2.
- If the threshold requirement is met, the victim may terminate their tenancy by giving the landlord 28 days’ notice and a certificate confirming there are grounds for the termination no later than 90 days after the certificate is issued by the designated authority (section 47.3(2)). This 28 day notice period would apply to all types of tenancies, including monthly periodic tenancies, yearly periodic tenancies and fixed term tenancies. Under the current *Residential Tenancies Act*, one calendar month’s notice is required for a tenant to terminate a monthly periodic tenancy (section 8(1)(a)) — the most common type of periodic tenancy. A yearly periodic tenancy can only be terminated at the end of the year by notice served at least 60 days before the end of the tenancy year (section 9).

Notice does not terminate a fixed term tenancy such as a typical one year lease (section 15); it cannot be terminated prior to the day specified as the end of the term as the law now stands.

- When notice is given pursuant to the provisions of Bill 204, the victim is responsible for the rent only for the 28 day notice period, without penalty for early termination, and can ask the landlord to use their security deposit towards this payment (section 47.3(4)). Under the current *Residential Tenancies Act*, terminating a monthly periodic tenancy without the required calendar month's notice results in a delay in the notice becoming effective to the last day of the first complete tenancy month following the date on which the notice is served, with more rent — up to 33 days more rent — being payable. Termination of a yearly periodic tenancy late might result in 60 days of rent being payable, 29-32 days more (section 10(2)(c)). The current consequences for leaving premises rented under a fixed term agreement before the end date are potentially much more serious, depending on how early in the fixed term the tenant leaves. If the tenant abandons the rented premises, the landlord can continue the tenancy and sue for rent to the end of the term, or the landlord can choose to accept the tenant's repudiation and sue the tenant for damages for the loss of the benefit of the residential tenancy agreement up to the date it would have expired (section 27). If a tenant abandons rented premises one month into a one-year fixed term lease, the tenant may be on the hook for the remaining 11 months' of rent, although the landlord has a duty to try to find a new tenant. Security deposits can be used to pay the rent if the landlord and tenant so agree (section 46(2)).
- Under Bill 204, the termination of tenancy applies to all the tenants in the same residential premises, and they are entitled to notice of the termination. The termination therefore potentially binds the perpetrator of domestic violence; however, that person and the landlord are free to enter into a new tenancy relationship, as are any other tenants affected by the termination (sections 47.3(5),(6)). Quite often people living in the rented premises are not, strictly speaking, "tenants" but instead people whose name is not on the residential tenancy agreement. They might be spouses, children, relatives, friends or roommates. They would not be entitled to notice and, as is already the case under the current law, they are vulnerable to being evicted on 48 hours' notice (section 33(2)).
- The only apparent basis upon which the landlord can challenge the victim's termination notice is where the notice and certificate were not properly served on the landlord. Section 43.3(7) appears to indicate that the landlord cannot challenge the notice or the certificate substantively. However, the consequences of a tenant not complying with the mandatory form of notice (section 47.3(3)), the mandatory 28 day notice period (section 47.3(2)), or the mandatory certificate in a prescribed form (section 47.2)) are not clear. It may be that the tenant loses their right to pay only 28 days rent (section 47.3(4)), because that right accrues only "[i]f a notice to terminate a tenancy is given under this section".
- The termination notice must be supported by a certificate, confirming that domestic violence grounds for early termination of the tenancy do exist, issued by a designated authority. The application for a certificate may be made by either the victim or by someone acting on their behalf with their consent (section 47.4(1)).
- The grounds for the issuance of the certificate include an order under the *Protection Against Family Violence Act*, [RSA 2000, c P-27](#), a restraining order, a peace bond or similar court order restraining the perpetrator from contacting the victim, or an opinion

provided by a professional authorized to provide their opinion that that the victim has been the subject of domestic violence (section 47.4(2)). The list of professionals includes physicians, nurses, social workers, psychologists, police officers, shelter workers, and victim support workers (sections 47.4(3)).

- The designated authority is to be appointed by the Minister responsible for the *Residential Tenancies Act*. Designated authorities' decisions on whether or not to issue certificates are final unless there is a change in circumstances, and they are protected from being compelled to disclose information they received related to the victim. (sections 47.5, 47.6).
- Landlords are required to keep the information they receive from or about the victim confidential (section 47.7). Failure to do so is made an offence, with the landlord liable to a fine of up to \$5,000 (section 7 of Bill 204, amending section 60(1)(a) of the *Residential Tenancies Act*).
- Domestic violence is defined broadly in Bill 204 to include physical, sexual, psychological, and emotional abuse, forced confinement, stalking, and threats that create a reasonable fear of property damage or personal injury. The definition encompasses violence within a range of relationships, including spousal, cohabiting, dating, parental, family, and caregiving relationships (section 47.2).

At the Second Reading of Bill 204, MLA Drever advised that Bill 204 was drafted in consultation with “stakeholders such as police services, women's shelters, market and nonmarket landlords, housing organizations, and advocacy groups.” It was also noted during debate that similar legislation exists in Manitoba (see *The Residential Tenancies Act*, [CCSM c R119](#), ss. 92.2-92.4), Quebec (see *Civil Code of Quebec*, SQ 1991, c 64, article 1974.1) and Nova Scotia (see *Residential Tenancies Act*, [RSNS 1989, c 401](#), section 10F), and that a Bill (which is more encompassing) has been introduced in Ontario ([Bill 132, Sexual Violence and Harassment Action Plan Act \(Supporting Survivors and Challenging Sexual Violence and Harassment\)](#), 2015). ([Hansard, November 16, 2015](#))

## Commentary

As indicated during Second Reading, Bill 204 does not itself provide housing options for victims fleeing domestic violence. Although the government is providing increased funding for shelters, shelters only offer limited term stays. A longer term housing strategy and other measures to deal with social and economic inequality are also needed to respond to the many barriers facing victims of domestic violence. The Bill should be seen as a very limited, but welcome, response to one particular set of barriers associated with leaving situations of domestic violence.

We do have some questions and concerns about the Bill, however.

First, it is potentially confusing that Bill 204 uses the terminology of domestic violence, when other government legislation uses the terminology of family violence. It is the *Protection Against Family Violence Act*, [RSA 2000, c P-27 \(PAFVA\)](#) that allows victims to obtain emergency and longer term protection orders that can be the basis for a certificate under Bill 204. Will this difference in terminology create confusion amongst those who seek access to or are applying the proposed amendments to the *Residential Tenancies Act*?

Second, the definitions of family violence in the *PAFVA* and of domestic violence in Bill 204 are different. Dating relationships are included in Bill 204 but not in the *PAFVA* (see *PAFVA* section 1(1)(d)). Bill 204 includes emotional and psychological abuse in the definition of domestic violence, but these are not included in the definition of family violence in the *PAFVA* (see section 1(1)(e)). To the extent that Bill 204 is broader, that is to be commended, and indeed recommendations have been made to broaden the *PAFVA* in similar ways (see Leslie Tutty, Jennifer Koshan, Deborah Jesso, & Kendra Nixon, [\*Alberta's Protection Against Family Violence Act: A summative evaluation\*](#) (Calgary: RESOLVE Alberta, 2005) at 93-94). But again, will this cause confusion?

Third, Bill 204 uses a mix of subjective and objective standards in assessing the presence of domestic violence. In section 47.3(1), cited above, the victim may terminate where they believe their safety or that of their children or a protected adult who resides with them is at risk, which appears to be a subjective standard. In contrast, section 47.2(2) defines some domestic violence using an objective standard of reasonableness (emphasis added):

**47.2(2)** The following acts and omissions constitute domestic violence for the purposes of this Part:

- (a) any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a person;
- (b) any act or threatened act that intimidates a person by creating a reasonable fear of property damage or injury to a person;
- (c) conduct that reasonably, in all circumstances, constitutes psychological or emotional abuse;
- (d) forced confinement;
- (e) sexual contact of any kind that is coerced by force or threat of force;
- (f) stalking (defined in section 1(1)(n.1) to mean “repeated conduct by a person, without lawful excuse or authority, that the person knows or reasonably ought to know constitutes harassment of another person and causes that other person to fear for his or her personal safety.”)

Again, will this mix of subjective and objective standards cause confusion?

Fourth, the definition of sexual contact that constitutes domestic violence in Bill 204 — which is identical to that in the *PAFVA* — is narrower than the definition of sexual assault in the *Criminal Code*, RSC 1985, c C-46. Sexual assault is the intentional application of force in circumstances of a sexual nature without consent, with consent defined as the voluntary agreement of the complainant to the sexual activity in question (*Criminal Code* section 271, 273.1). To define domestic violence as including “sexual contact of any kind that is coerced by force or threat of force” is considerably narrower and should be at least as broad as the definition in the *Criminal Code*.

Fifth, the limitation on the availability of appeals of the decisions of the designated authority raises issues regarding procedural fairness (see section 47.5(5)). Presumably judicial review

would be available, but that would require an application to the Court of Queen's Bench with considerable costs and delay, making such an application unfeasible for most victims of domestic violence. This limitation on the review of decisions regarding certificates should be reconsidered. And in any event, the designated authority who is appointed by the Minister must be someone who is well versed with the complexities of domestic violence and its broader socio-legal context, in light of the powers the authority will have under the amended *Residential Tenancies Act*.

Sixth, and relatedly, are the procedures in Bill 204 too complex? For example, we have already noted that there is a mandatory form of notice, a mandatory 28 day notice period, and a mandatory certificate in a prescribed form (sections 47.2, 47.3), and that the consequences of not complying with these requirements are unclear. Professor Lois Gander, QC of the University of Alberta and Rochelle Johannson of the Centre for Public Legal Education Alberta prepared a June 2014 Report entitled "[The Hidden Homeless: Residential Tenancies Issues of Victims of Domestic Violence](#)" (which includes as Appendix B an annotated bibliography on the topic of "Residential Tenancies Issues of Victims of Domestic Violence" organized by jurisdiction). Their research into the rental housing legal context for victims of domestic violence included interviews with five key informants and three focus groups. The authors note that victims of domestic violence have to appear before a variety of courts and tribunals; confront an array of laws, regulations, policies, and procedures that require them to play a range of roles; have to frame their lives and tell their stories in different ways to access the services and remedies to which they may be entitled — and all at a time when their lives are in upheaval and their ability to cope is limited (at 4). They conclude that "the law is likely the last thing on her mind as she tries to find a safe place to live and some way to meet her basic needs" (at 5, 31). The current complexity of the law appears to be added to rather substantially with Bill 204.

Nonetheless, Gander and Johannson's work suggests that financial obligations are the biggest problems facing most victims of violence when they try to obtain or maintain rental accommodation. They note that "it is often the victim that the landlord pursues for overdue rent and damages" (at 5, 34, 38). To the extent that Bill 204 alleviates this or similar problems, it is a positive step. However, the reforms to the *Residential Tenancies Act* proposed by Bill 204 are not among the recommendations made by Gander and Johannson (at 55-56).

Seventh, Bill 204 will have its most significant monetary impact when the victim is in a yearly periodic tenancy or in a long fixed term tenancy. For those in month-to-month periodic tenancies the relaxation of notice requirements may only amount to two or three days of rent saved. However, the current one month's notice to terminate a monthly periodic tenancy must be given before the start of a new calendar month in order to be effective on the last day of that month (e.g., on or before December 1 to be effective on December 31). The new 28-day notice period is not affected by calendar months, so that notice could be given, for example, on December 15 to be effective on January 12, rather than January 31, a saving of 20 days' rent. The 28-day period is thus more flexible, but its impact may be limited.

Eighth, do we know if the provisions in Bill 204 will work and whether anyone will use them? Are victims of domestic violence often the tenants or is their name usually not on the lease? Will victims apply for certificates? Bill 204 is very similar to the legislation in Nova Scotia, Quebec and Manitoba. The revisions to residential tenancy law in those provinces are helpfully summarized and compared in Appendix C of Gander and Johannson's Final Report. The authors note that additional research needs to be undertaken to find out "whether the revisions made to residential tenancy law in other jurisdictions has been helpful for victims of domestic violence"

(at 10, 56). Unfortunately, there do not appear to be any publicly available evaluations of the measures already implemented in these three other provinces.

Ninth, Bill 204 — like the revisions enacted in Nova Scotia, Quebec and Manitoba, as well as those proposed for Ontario — does not take a proactive approach to the landlord and tenant relationship in the context of domestic violence. The legislation does not protect victims of domestic violence from eviction based on acts of violence against them or allow a landlord to remove a perpetrator of the violence from the tenancy agreement upon the request of the victim (although the landlord can terminate the lease of their own accord in circumstances involving physical violence; see our tenth point below). As Gander and Johansson note, the American federal *Violence Against Women Reauthorization Act* of 2013 appears to be more protective about such matters (at 85).

Tenth, not being believed is a frequent experience of victims of domestic violence. The requirement in Bill 204 (as in the legislation elsewhere in Canada) for a certificate that confirms domestic violence grounds exist is a corroboration requirement, suggesting that victims of domestic violence cannot be trusted to tell the truth. In Bill 204, the victim can only choose between two types of certificates: an already acquired court order or an opinion from an authorized professional. In the United States, the victim can choose among three types of evidence to prove domestic violence, including simply filling out an approved form and certifying that the information given is true. A police report, a criminal complaint or a conviction will also do (Gander and Johansson at 85-86).

Why require a victim of domestic violence to produce a certificate at all? Section 30 of the *Residential Tenancies Act* allows a landlord to terminate a tenant's lease on 24 hours' notice if the tenant has “done or permitted significant damage to the residential premises, the common areas or the property of which they form a part, or (b) physically assaulted or threatened to physically assault the landlord or another tenant”. The landlord does not need a certificate from a third party to confirm the violence that they witnessed or heard about, so it is puzzling that Bill 204 requires corroboration of the victim's account.

Eleventh, Bill 204 is very limited in its scope. Nova Scotia also allows early termination of leases without financial penalties in a wider variety of cases, some of which seem as compelling as do the situations covered by Bill 204. For example, Nova Scotia also allows early termination for income reduction due to a significant deterioration in the tenant's health (section 10B); early termination for health reasons (section 10C); early termination upon acceptance into a long-term care facility (section 10D) and early termination on death (section 10E). Some seniors on fixed incomes and some newly disabled persons may have a similarly great need for early termination of their leases without financial penalties. This is not to say that Bill 204 is wrong or that quick movement is not needed for victims of domestic violence, but it is to say that piecemeal revisions of a statute may not be the best way to proceed in the long run. There is much that is wrong with the *Residential Tenancies Act*. It is one of the weakest pieces of consumer protection legislation in Canada, if not the weakest, and piecemeal reform is therefore problematic.

This point leads us to ask whether the *Residential Tenancies Act* is the best place for these provisions. It may be better to include them in the existing statute relevant to domestic violence, the *Protection Against Family Violence Act*, where — as noted above — there are definitions of family violence already in place. The *Residential Tenancies Act* already incorporates the *Public Health Act* into reasons to terminate a lease; so it could incorporate another act that deals with domestic violence in a more comprehensive fashion, and which victims and those providing services to victims would be more likely to turn to first.

Twelfth, Bill 204 would make landlords, who are private parties — and usually innocent bystanders — bear all of the costs of early termination. Some landlords are low-income individuals renting out a portion of their house to make ends meet and they may be counting on the income from a one-year lease. Re-leasing the premises to another renter may be difficult to do, especially in a falling market such as the one that Alberta is now experiencing. If landlords do experience financial hardship as a result of bearing this new burden, is it not appropriate to ask if they should bear the entire burden, without compensation from the public? Domestic violence is a public issue and responsibility, which for too long was relegated to the private realm and ignored by the law. We no longer dismiss domestic violence as a matter between private parties, and our collective responsibility should extend to the financial costs of dealing with domestic violence in tenancy situations.

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