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Landlords, Tenants, and Domestic Violence: Landlords' Power to Terminate Residential Tenancies for Acts of Domestic Violence (and an Argument for Publicly-Accessible RTDRS Reasons for Decisions)

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Report Commented On: Centre for Public Legal Education Alberta, [Domestic Violence: Roles of Landlords and Property Managers](#)

The report, [Domestic Violence: Roles of Landlords and Property Managers](#) (CPLEA report), a research project for the [Centre for Public Legal Education Alberta](#) (CPLEA) under the lead of [Professor Lois Gander](#), explores the role that landlords of private rental housing and their property managers can play in responding to domestic violence. Appendix F of the report identifies a number of legal issues that deter landlords and their agents from providing assistance because of the uncertainty in the law or the need for reform of the *Residential Tenancies Act*, [SA 2004, c R-17.1](#) (*RTA*). This post addresses some of the termination issues identified by the landlords and property managers interviewed for the CPLEA report. Some landlords were uncertain about when they could terminate a tenancy for acts of domestic violence, and particularly when they could terminate it on only 24-hours notice (at 44). They also appeared to want more flexibility than is currently provided by the *RTA*. They wanted alternatives to termination of a tenancy, such as the ability to suspend a tenant's tenancy, the ability to convert a tenancy that included a number of co-tenants into one with fewer tenants, and the ability to evict the abuser (at 44). None of those alternatives are currently available to Alberta landlords under the *RTA*, although some may be available to Alberta tenants and occupants under statutes such as the *Protection Against Family Violence Act*, [RSA 2000, c P-27](#) (*PAFVA*), which Professor Jennifer Koshan will explore in a future post. Their absence in the *RTA* contributes to the incidence of homelessness experienced too often by victims of domestic violence: see CPLEA's [The Hidden Homeless: Residential Tenancies Issues of Victims of Domestic Violence](#), Final Report, June 2014.

After a brief word about the *RTA*'s organization, I will set out the provisions that allow a landlord to terminate a tenancy and set out three major problems with those provisions. I will elaborate on two of those three problems by discussing: first, how a change in practice to allow reporting decisions of the Residential Tenancy Dispute Resolution Services (RTDRS) would help alleviate the uncertainty inherent in most of those provisions, with reference to the practices in British Columbia and Saskatchewan; and, second, how the *RTA*'s preoccupation with termination of the tenancy, as opposed to termination of the tenancy of individual tenants, is connected to homelessness for victims of domestic violence. Most of the following discussion is devoted to illustrating why making the reasons for the decisions of the RTDRS public would be beneficial in this — and many other — contexts.

Organization

First, a word on the *RTA*'s organization, because the law concerning a landlord's remedies in the context of domestic violence is more complicated than it should be. Both landlords' and tenants' remedies are collected together in Part 3 of the *RTA* (sections 26-42), separate from the provisions outlining their obligations to each other in Part 2 (sections 16-25). This is a common pattern in the residential tenancy legislation in Canada but this separation of obligations from the consequences of failing to meet those obligations is one reason for uncertainty on the part of both landlords and tenants. Their options for remedies are often puzzling. In the Northwest Territories' *Residential Tenancies Act*, [RSNWT 1988, c R-5](#), each individual tenant or landlord obligation is set out in its own section and immediately followed, in the same section, by the possible consequences of breaches of those obligations — a drafting method that makes the law much simpler and easier to understand. The Alberta *RTA*'s complexity is exacerbated by its division of breaches into breaches of the residential tenancy agreement, breaches of the *RTA* and substantial breaches.

Landlords' Termination Provisions

Within Part 3 of the *RTA*, there are four different sections setting out landlords' remedies for different types of tenant breaches and two additional sections setting out landlords' remedies against non-tenants occupying the residential premises. The following provisions are the ones that a landlord might use in a domestic violence situation:

Section 26: The remedies in this provision are available to a landlord for a tenant's breach of their residential tenancy agreement, which may be a written, oral, or implied agreement to rent (section 1(1)(m)). Section 21 of the *RTA* specifies seven covenants or promises that "form part of every residential tenancy agreement" (emphasis added):

- (a) To pay the rent when due
- (b) To avoid significantly interfering with the rights of the landlord or other tenants in the building
- (c) To avoid performing illegal acts or carry on an illegal trade, business or occupation in the residential premises or the building
- (d) To avoid endangering other people or property in the residential premises or the building
- (e) To avoid doing or allowing someone else to do significant damage to the residential premises or the building
- (f) To maintain the residential premises in a reasonably clean condition
- (g) To leave the premises when the tenancy expires or is terminated

In situations of domestic violence, the most common breaches are breaches of the promises in section 21 (b) about significant interference, 21(c) about illegal acts, 21(d) about endangering other people or property, and 21 (e) about significant property damage: *The Hidden Homeless* at 38-39. For example, the noise associated with abuse, the repeated presence of police, verbal abuse of the landlord's staff, or threats to neighbours might result in eviction under section 21(b): *The Hidden Homeless* at 38-39; *Herman v Boardwalk Rental Communities*, [2011 ABQB 394 \(CanLII\)](#); *Beaverbone v Sacco*, [2009 ABQB 529 \(CanLII\)](#).

The remedies for all of these breaches are only available on application to the RTDRS, the Provincial Court or the Court of Queen's Bench. The landlord may ask for termination of the

tenancy, but only if the breach is a “substantial breach.” Section 1(1)(p) defines a substantial breach by a tenant to be “a breach of a covenant specified in section 21 or a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial...”.

Section 29: The remedies in this provision are available if a tenant’s breach of their residential tenancy agreement is a “substantial breach.”

The remedy for a substantial breach is termination of the tenancy on 14 days notice.

Section 30: The remedies in this provision are available to a landlord in two situations:

- (a) if a tenant is responsible for (by either doing or permitting someone else to do) significant damage to the residential premises, the common areas or the property of which the residential premises and the common areas are a part of, and,
- (b) if a tenant has physically assaulted or threatened to physically assault the landlord or another tenant.

The remedy for significant property damage, physical assault or the threat of physical assault is termination of the tenancy on 24 hours notice or an application to the Provincial Court or Court of Queen’s Bench to terminate the tenancy.

Section 33: The remedies in this provision are available to a landlord against non-tenants living in the residential premises in cases where the tenant(s) abandoned those premises.

The remedy is a 48-hour notice to vacate.

Section 36: The remedies in this provision are available to a landlord against non-tenants living in residential premises also occupied by one or more tenants, i.e., unwanted guests.

The remedy is a 14-day notice to vacate.

Problems With the Termination Provisions

There are three major problems with the termination provisions. First, several of the most commonly used provisions in situations of domestic violence require “significant” interference or “significant” damage. What interference and damage amounts to “significant” interference or damage? Because significance is a matter of degree, there is uncertainty in all but the most egregious cases about whether conduct has reached that point. However, it is difficult to say how this provision could be made more certain; any synonym for “significant” will be as uncertain because words such as significant or substantial or major or considerable describe the degree of interference or damage. The only practical way to reduce this type of uncertainty is to provide a lot of examples of situations that did and did not amount to “significant” interference or damage.

Second, for the four provisions that provide for termination on notice — sections 29, 30, 33 and 36 — a simple notice to vacate is often not enough to terminate a tenancy: Colleen Underwood, [“Calgary landlord calls for stronger protections after renters trash her property,”](#) *Calgary Sun*, 21 August 2017. Some tenants will not move without a court order, if only because it gives them more time to find and save money for their next place.

In each case where a landlord is allowed to serve a notice to vacate, if the tenant or non-tenant does not vacate the landlord can apply to the RTDRS, the Provincial Court, or the Court of Queen's Bench for an order terminating the tenancy and allowing the landlord to recover possession of the residential premises. The RTDRS is the usual choice, if only because it normally only two or three weeks to get an order from them, instead of the months it takes to use the courts. If the tenant or non-tenant still does not leave, then the landlord needs to hire a civil enforcement agency, which has the authority to evict them according to the terms of the court order.

The third major problem is that these termination provisions all terminate the whole tenancy so that the landlord regains possession of the residential premises. They do not allow for termination of the tenancies of individual tenants by either landlords, the RTDRS or the courts. A victim of domestic violence can only hope that a landlord will rent them the same premises or other premises under a new lease.

I will elaborate on the first and third of these problems in the rest of this post.

Making Public the Reasons for RTDRS Decisions

More written court or RTDRS decisions describing the conduct and whether it does or does not amount to “significant” interference or damage would be helpful. The decisions may not be binding on other decision makers in the same court or dispute service, but they would provide examples of what has and has not been judged to be “significant.” The more examples, the better the judgments that can be made about whether any particular interference or damage is likely to be seen as “significant.”

The majority of *RTA* disputes in Alberta are handled by the RTDRS because of the extra time and money it takes to access the alternatives: the Provincial Court or the Court of Queen's Bench. Service Alberta reports that the RTDRS had a record year in fiscal 2016-2017 with 10,000 applications: [Annual Report 2016-2017](#) at 4. That record year continued the steady and substantial growth seen over the previous two years, with 9,413 applications received in 2015-2016 and 8,647 in 2014-2015: Service Alberta [Annual Report 2015-2016](#) at 9. Unfortunately, the reasons for the decisions of the Tenancy Dispute Officers who hear and decide all of these thousands of *RTA* disputes are not accessible to the public. The *RTA* itself and the regulations which govern the RTDRS — the *Residential Tenancy Dispute Resolution Service Regulation*, [Alta Reg 98/2006](#) — do not have much to say about the giving of reasons. Instead, section 5 of the *Regulation* requires the RTDRS to establish rules of practice and procedure for its Tenancy Dispute Officers and the giving of reasons is covered in the [RTDRS Rules of Practice and Procedure](#) (August 2017). Section 17.1 of those rules provides:

After the hearing is concluded, the Tenancy Dispute Officer will provide oral reasons for the decision for the record. If the Tenancy Dispute Officer decides to reserve their decision, they will provide the participating parties with their written reasons for decision within thirty (30) days of the conclusion of the proceedings. (emphasis added)

The usual practice is therefore to give oral reasons to the parties to the dispute at the end of their face-to-face or telephone hearing. Even the reserved written reasons are only made available to the parties.

The Tenancy Dispute Officers are also required by section 9.1 of their Rules to record all hearings, and that recording would include their oral reasons. However, it appears from the Regulations that the recordings of the hearings are only available to parties to appeals who pay for transcription services, given directly to the transcription service by the RTDRS and returned to the RTDRS.

The hearings before the Tenancy Dispute Officer are normally open to the public to attend. Rule 8.7 of the *RTDRS Rules of Practice and Procedure* provides:

The RTDRS hearings are open to the public, unless the Tenancy Dispute Officer believes there is sufficient reason to deny the public access. While hearings are open to the public, the application files are not. That means that while a member of the public can attend a RTDRS hearing, they will not be given access to the file.

By attending hearings, a person could hear the reasons given for decisions. However, a person would not know before a hearing what issues will be raised in the hearing because application files cannot be accessed. The ability to attend hearings is of little practical use to landlords, tenants, researchers and others.

The result of these rules is that the large amount of information that would be helpful in interpreting the *RTA* and knowing what facts have and have not amounted to “substantial” interference or “substantial” damages, for example, is unavailable to Albertans. In addition, without the transparency of written reasons accessible to all, Albertans cannot have confidence in the decision-making abilities of Tenancy Dispute Officers and the fairness of RTDRS hearings. Other provinces make the reasons for residential tenancy decisions available in order to educate citizens and engender confidence in their dispute resolution services. Both of our neighboring provinces have decision-making bodies similar to Alberta’s RTDRS. The British Columbia and Saskatchewan equivalents make public a large number of the decisions of their equivalents of our Tenancy Dispute Officers.

Early in August 2017, the [Saskatchewan Office of Residential Tenancies](#) announced it has made 300 hearing decisions from the past three years available on CanLII in the [SKORT](#) database, and intended to post approximately ten percent of all decisions made each year: “[Office of Residential Tenancies' Decisions Now Available Online](#)”. Not all decisions will be reported because it takes time to redact personal information from the decisions before they are posted. The office explained that the change was made to ensure transparency, accountability to the public, and improved access to justice. The announcement specifically noted that “landlords and tenants will be able to refer to past decisions for guidance on appropriate conduct and avoiding problems.”

The British Columbia Office of Housing, Residential Tenancy Branch, has been making the anonymized decisions of its arbitrators (formerly known as dispute resolution officers) available since October 2008 in its own [database](#), searchable by both topic and by keywords. The BC

legislation requires that decisions be in writing, be signed and dated, include the reasons for the decision, and be given within 30 days after the proceedings conclude: *Residential Tenancy Act*, [SBC 2002, c 78](#), s 77.

The fairness of the BC Residential Tenancy Branch was relatively recently assessed by the [Community Legal Assistance Society](#) in [On Shaky Ground: Fairness at the Residential Tenancy Branch](#) (October 2013). That report includes an assessment of the quality of decision-making, including transparent reasons for decisions, noting that:

Ideally, written decisions can promote fair and transparent decision-making by setting out a clear and simple explanation of the reasons behind the decision. Not only do such written decisions help the decision-maker to think through the case and avoid making an arbitrary or unjustifiable decision, they also demonstrate to the parties that the issues have been carefully considered, which reinforces public confidence in the decision-maker (at 41).

The report goes on to note problems with the quality of the arbitrators' reasons after a review that included an analysis of thirty-five of the publicly available decisions on one specific issue. There were no complaints about the accessibility of the British Columbia decisions (but the entire report makes for fascinating reading). In Alberta, such public accountability is almost impossible.

What can landlords and tenants in Saskatchewan and British Columbia find out about the interpretation of their equivalents of Alberta's "significant" interference or damage? In Saskatchewan, all tenants have a right to freedom from "unreasonable disturbance" by landlords, other tenants or their guests: *Residential Tenancies Act, 2006*, [SS 2006, c R-22.0001](#), section 44; *Residential Tenancies Regulations, 2007*, [RRS c R-22.0001 Reg 1](#), section 6 and statutory condition 7. Examples of "unreasonable" disturbances similar to those commonly found in domestic violence cases were discussed in the following decisions of the Office of Residential Tenancies:

- *T.L. v Stewart Property Holdings Inc*, [2016 SKORT 342 \(CanLII\)](#), where loud noise and screaming that sounded like people fighting in the apartment of one tenant, over a period of seven to nine days, amounted to unreasonable disturbance of another tenant, who was awarded damages.
- *Regina Housing Authority v E.R.*, [2017 SKORT 60 \(CanLII\)](#), where a tenancy was terminated because the tenant had adversely affected the quiet enjoyment, safety and physical well-being of other tenants in the building following an incident at 3:00 a.m. that began as a loud argument in the tenant's apartment and culminated in physical violence which resulted in police arresting the tenant and EMS attending to injuries to the tenant's guest.
- *P.A. Community Housing Society Inc v E.I.*, [2016 SKORT 71 \(CanLII\)](#), where a tenancy was terminated because the tenant had disturbed or permitted guests to disturb other tenants in adjacent residential premises, following six or seven complaints by those other tenants to the police over a five-month period as a result of fights among the tenant and her grown children and loud parties.

In British Columbia, the wording closest to that of the relevant Alberta provisions is found in section 47(1)(d) of the *Residential Tenancy Act*, [SBC 2002, c 78](#), but section 47(1)(e) about illegal activities, which is much more limited and specific than the Alberta equivalent, is also relevant in the domestic violence context:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

- (d) the tenant or a person permitted on the residential property by the tenant has
- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
- (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; (emphasis added)

A search for “47(1)(d)” and “violence” turned up the following cases (and more), all of which involved tenants opposing landlords’ one-month notices to end the tenancies:

- http://www.housing.gov.bc.ca/rtb/decisions/2016/12/122016_Decision6880.pdf, where one incident that did not physically harm anyone did not meet the “significant” or “serious” threshold.
- http://www.housing.gov.bc.ca/rtb/decisions/2009/01/Decision1418_012009.pdf, where a tenant, who had been assaulted by her visitor who was stalking her and against whom she subsequently got a peace bond, nevertheless had her tenancy terminated because of complaints of fighting, yelling, bashing of walls, swearing, loud noise, and people coming and going at varying hours that resulted in the police being called five times and other tenants and their children living in fear of her visitor, who had also assaulted the landlord — even though the conduct of the visitor was found not to be the tenant’s fault.
- http://www.housing.gov.bc.ca/rtb/decisions/2010/10/Decision1886_102010.pdf, where a tenant, subject to a court order requiring him to stay away from the rented premises due to an incident of domestic violence, had his tenancy terminated for illegal activity after he was arrested for breaching the court order, and his spouse, who was only an occupant and not a tenant, had her occupancy ended by the termination of the tenancy.
- http://www.housing.gov.bc.ca/rtb/decisions/2011/08/Decision1875_082011.pdf, where termination of the tenancy was justified because other tenants complained of screaming and yelling and troublesome guests, and the police were called more than once.
- http://www.housing.gov.bc.ca/rtb/decisions/2012/04/Decision1331_042012.pdf, where termination of a victim of domestic violence’s tenancy was justified after the police were called to the rented premises four times in two months, even though the tenant had a

restraining order and her male partner was barred from the rented premises, because she had permitted her male partner to return.

- http://www.housing.gov.bc.ca/rtb/decisions/2013/10/102013_Decision2045.pdf, where one incident of domestic violence between a tenant's guest and his girlfriend that resulted in the arrest of the guest and charges being brought against him was held to "clearly" warrant termination of the tenancy for illegal activity.
- http://www.housing.gov.bc.ca/rtb/decisions/2017/01/012017_Decision6240.pdf, where the conduct of the tenant's boyfriend who, against the landlord's rules but with the tenant's permission, frequently used the tenant's keys to access the building (which housed many vulnerable women) and who, when asked to leave, set off a fire alarm in the middle of the night and smashed seven windows and the patio doors of the tenant's premises with a hockey stick and threatened to kill her, was held to amount to substantial interference, unreasonable disturbance and extraordinary damage to property, all justifying the termination of the tenancy.
- http://www.housing.gov.bc.ca/rtb/decisions/2016/04/042016_Decision6965.pdf, where episodes of fighting between a tenant and her boyfriend that involved lots of swearing and aggressive behavior, including his pounding on the windows and doors of the rented premises so hard that the building shook, that the tenant admitted occurred once every one to four weeks and lasted for ten minutes each time, was found to justify termination of her tenancy.

Assuming that the *RTDRS Rules of Practice and Procedure* are a valid sub-delegation of rule-making authority, an amendment to those *Rules* to require written reasons from the Tenancy Dispute Officers would not require action from the government, but would be a rather easy in-house change to the current practices. Then the will and funds to redact identifying information for some or all of those reasoned decisions so that they could be published would be all that would stand in the way of transparent decision-making, accountability to the public, and improved access to justice for landlords and tenants.

The Inflexibility of Termination of the Tenancy

As previously mentioned, one of the main problems with the *RTA* termination provisions is that they all assume that there is one tenant per residential premises. Remedies for breaches result in the termination of the tenancy — period. Everyone in the residential premises is evicted when the tenancy is terminated, whether they are abuser or victim, tenants or non-tenant residents such as children. There is no provision in the *RTA* allowing for the termination of the tenancy of only one of the tenants of a residential premises while at the same time providing for its continuation for another or the other tenants of those premises. There is no provision in the *RTA* allowing a court to force a landlord to allow the victimized tenant to stay on. This is the case even if the abuser is the person who breaches the covenant and the abuser is on the premises illegally, for example, in breach of an emergency protection order. However, as Professor Koshan will discuss, those types of protection may be available for victims of domestic violence under the *PAFVA* and other statutes such as the *Family Law Act*, [SA 2003, c F-4.5](#).

Without an order under the *PAFVA* or another statute granting exclusive possession to victims, following termination of the tenancy the landlord may, if they wish to, offer to rent those same premises or different ones back to the tenant victimized by the abusing tenant. However, the landlord does not have to do so under the *RTA*. All a victim of domestic abuse can do is ask for

compassion: see *The Hidden Homeless* at 3 and 50. Not all landlords or property managers use their discretion appropriately: *The Hidden Homeless* at 49. Some, but certainly not all, landlords take the easier way and simply terminate the tenancy for every resident of the premises. Getting rid of everyone, whether abuser or victim, removes the problem from the landlord's premises. In buildings with multiple residential premises, it helps ensure the safety of the tenants in the other premises and the landlords' on-site staff — valid concerns discussed in the CPLEA report (at 5).

Several studies have identified a link between domestic violence and homelessness in Alberta, including:

- Kolkman, J. & Ahorra, J. (2012). [Understanding tenancy failures and successes: Final research report](#). Edmonton, AB: Edmonton Social Planning Council and Edmonton Coalition on Housing and Homelessness
- Richter, M. S. & Chaw-Kant, J. (2008). [A case study: Retrospective analysis of homeless women in a Canadian city](#). *Women's Health and Urban Life*, 7 (1), 7-19
- Tutty, L., Ogden, C. & Weaver-Dunlop, G. (2008). [An environmental scan of strategies to safely house abused women](#). Final Report to the Calgary Poverty Reduction Coalition. Calgary, AB: RESOLVE Alberta

Many other studies have identified a link between domestic violence and homelessness, especially for women in rental accommodations, in other Canadian jurisdictions and in other countries such as the United States, the United Kingdom and Australia. See Appendix B of *The Hidden Homeless* report for an annotated bibliography of these studies and other literature.

The Hidden Homeless report recommended, among other things (at 9):

- no longer holding the victim responsible for criminal activity on the premises particularly when those are acts of violence against the victim or when they are caused by someone under an EPO or other form of restraining order forbidding them to be on the premises;
- revising the policies with respect to crime-free multi-housing so that the victim is not held responsible for behaviour the victim is unable to influence, let alone control;
- providing the victim with the option of remaining as the tenant of a rental property while evicting the abuser on presentation of evidence confirming the domestic violence.

The implementation of these, and other recommendations, would require amendments to the *RTA* or, preferably, an entirely new statute that could be more easily understood and used by individual tenants and landlords. An amended or new *RTA* should be better coordinated with legislation such as the *PAFVA*. Overlapping statutes contribute to the complexity of residential tenancy law.

My colleague, Professor Jennifer Koshan, has already written about the privacy laws that stop landlords from getting help for victims of domestic violence in a preventative way: "[Landlords, Tenants, and Domestic Violence: Clarifying Privacy Issues](#)". I have already addressed the question of who is a tenant in "[Landlords, Tenants, and Domestic Violence: Who is a 'Tenant' under the Residential Tenancies Act?](#)"

In subsequent posts, I will address the power of landlords and tenants to change locks to bar access to residential premises by abusers and the ability of landlords to recover the cost of repairs for damages caused by tenants or their guests — two other issues identified in the CPLEA report.

Professor Koshan will address the implications of different forms of no-contact orders for landlords and property managers in a subsequent post, which will include discussion of exclusive possession orders under the *Family Law Act*, [SA 2003, c F-4.5](#) and *Matrimonial Property Act*, [RSA 2000, c M-8](#), allowing for abusive tenants to be evicted while their victims remain in residential premises in some circumstances.

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