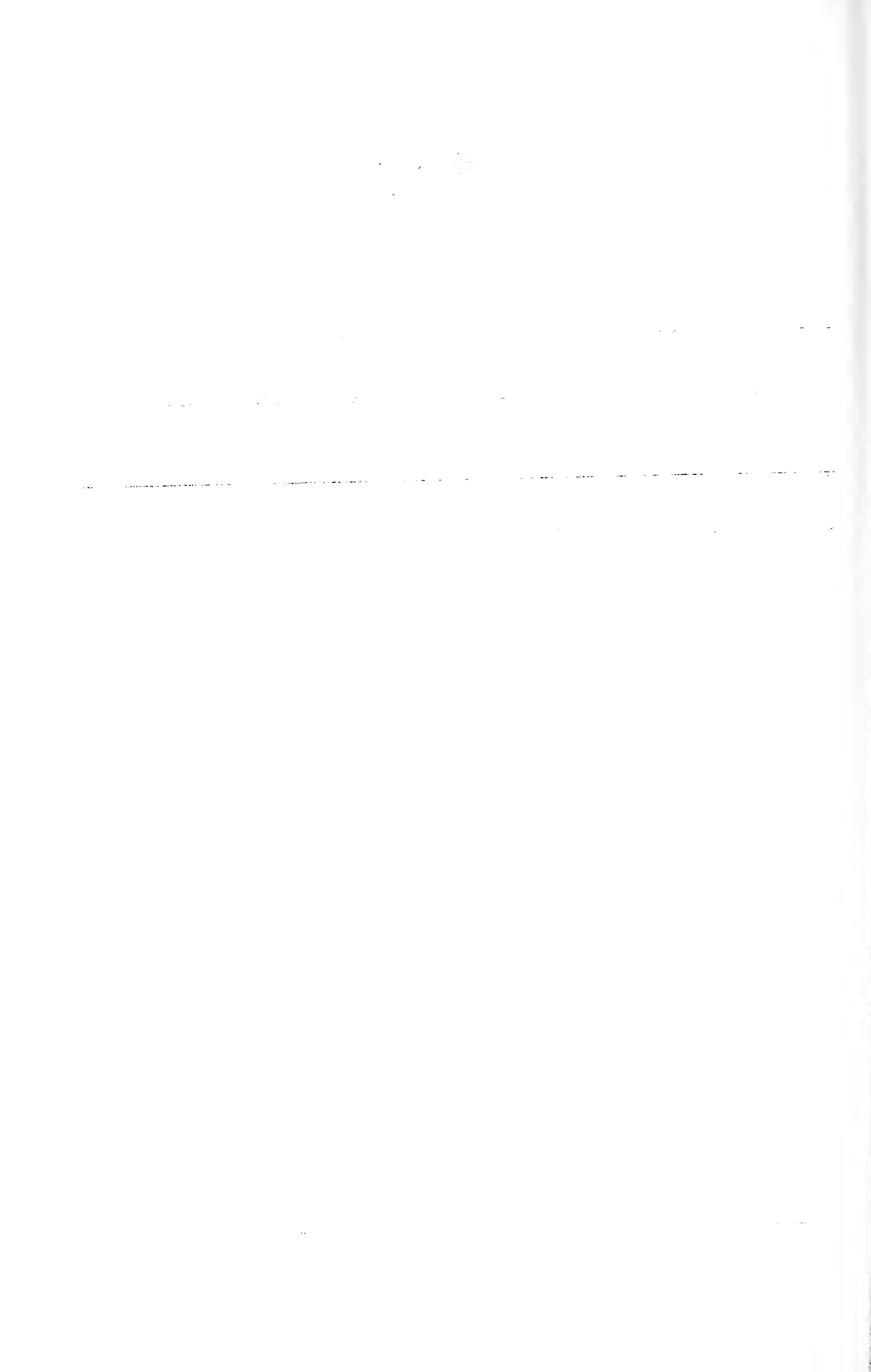
ONTARIO

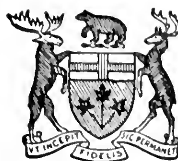
INTERIM REPORT ON LANDLORD AND TENANT LAW APPLICABLE TO RESIDENTIAL TENANCIES

ONTARIO LAW REFORM COMMISSION

1968

DEPARTMENT OF THE ATTORNEY GENERAL





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The Ontario Law Reform Commission was established by section 1 of *The Ontario Law Reform Commission Act, 1964*, for the purpose of promoting the reform of the law and legal institutions. The Commissioners are:

H. ALLAN LEAL, Q.C., LL.M., LL.D., *Chairman*
HONOURABLE JAMES C. MCRUER, LL.D.
HONOURABLE RICHARD A. BELL, P.C., Q.C.
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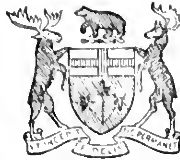


ONTARIO

ONTARIO LAW REFORM COMMISSION

PARLIAMENT BUILDINGS
TORONTO 2

To The Honourable A. A. Wishart, Q.C.,

Minister of Justice and
Attorney General for Ontario.

Dear Mr. Attorney:

Pursuant to the provisions of section 2 (1) (*a*) of *The Ontario Law Reform Commission Act, 1964*, the Commission initiated a study concerning the Law of Property. One section of this study is devoted to the law governing the relation of landlord and tenant. In view of the urgency of the problems respecting residential tenancies, work in this particular area was given priority. The Commission now submits an Interim Report dealing with some of these problems.

Further reports on the law governing the relation of landlord and tenant will be submitted when research and study now in progress has been completed. It is hoped that it will be possible with further study to simplify, consolidate and possibly codify the law in this field. An important aim of such further study would be to express the law and leases made pursuant to it in simple, easily understood and modern terminology. A simple standard form of lease for ordinary use is most desirable.

CHAPTER I

INTRODUCTION

1. Aims and Scope of the Report

On July 31, 1967 the Commission engaged Professor Morley R. Gorsky, Faculty of Law, Queen's University, to do a study of the entire law of landlord and tenant. The research demonstrates that there are some matters which require immediate legislative action. Other less urgent topics must be left for further study and a subsequent report. The aim and scope of this interim report is to deal with the following subject matters:

(*a*) *Distress*

The remedy of distress and its operation in Ontario has been studied with a view to ascertaining whether its continuance under present conditions is justified.

(*b*) *Security Deposits*

Some aspects of the practice of taking security deposits are of fairly recent origin and they have not been the subject of any legal control in this jurisdiction. We were concerned to establish whether the right of a landlord to require a security deposit upon a tenant entering into a lease should be permitted, limited or regulated. A study has been made of the various schemes which have been developed in other jurisdictions to cope with some of the problems arising out of the practice of requiring security deposits and the difficulty that tenants often experience in obtaining a return of the security deposit at the end of the lease.

(*c*) *Contracting Out*

Should the landlord be permitted to require the tenant, upon entering into the lease, to contract out of certain statutory protection that is provided for the tenant, such as the statutory provisions with respect to assigning and sub-letting, and exemptions with respect to distress?

(*d*) *Obligation to Repair*

We have reviewed the law governing the obligation to repair as it exists at common law and have studied the impact on the landlord and tenant relationship where municipalities enact minimum standard by-laws with respect to dwelling-houses. Such by-laws exist in Ottawa, Kingston, Toronto and other areas. We have devoted considerable attention to these by-laws and the demands made by landlords for increased rent as a result of repairs that have been made to comply with the standards imposed by the by-laws.

(*e*) *Restrictions Against Children*

The practice of denying accommodation in certain types of residential units to families with young children is neither new nor isolated. We have analyzed the factors in this social problem in an effort to determine whether there is a viable legal solution.

(f) Restrictions Against Tradesmen

High rise apartment dwelling is a growing factor of urban life. Restrictions are imposed by landlords or their agents on tradesmen making deliveries to these premises and on the tenant's right to select his own commodity and service supplies such as dairymen, laundrymen, etc. Should the nature of these restrictions be free of control?

(g) Rent Control

A study has been made of rent control legislation as it has existed and exists in various jurisdictions in peace time, and the law of Quebec which gives to municipalities some power to enact rent control laws. In addition, consideration has been given to *The Leasehold Regulations Act, 1951* and *The Rent Control Act, 1953.*

(h) Conciliation

Experience dictates that many disputes arising between landlord and tenant are attributable to ignorance of their respective rights and are frequently susceptible to speedy solution without resorting to full scale adjudication. Often the complaints are matters that might lend themselves to some form of adjustment through an intermediary. Consideration has been given as to whether it would be possible to develop some conciliation procedure whereby these disputes could be settled expeditiously and inexpensively.

(i) Procedure on Adjudication

We have considered whether better and less expensive procedures could be developed for settling those disputes involving landlords and tenants which come before our courts for adjudication. The particular difficulties that tenants experience have been under review. A study has been made of experiments tried in other jurisdictions.

These nine topics cover the most commonly reported areas of concern. This report, however, does make recommendations in a number of other areas and the Commission recognizes that there is a continuing need to examine the landlord and tenant laws in broader detail. This will, however, require much more time and it is hoped that this continuing need will be met and the results of further studies communicated in subsequent reports.

Experience obtained during the preparation of background studies to this report has confirmed that there is among most tenants, and many landlords, a strongly felt need for a review of the efficacy of the existing landlord and tenant laws. This need is especially clear in the areas chosen for examination.

This study is further restricted to residential tenancies. The special problems of commercial tenancies require separate attention.

2. Method of Study

There are some assumptions which guided us in the study leading to this report and some basic principles which underlie it.

(*a*) Almost every contemplated change in the landlord and tenant laws must be fully examined in order to anticipate its total effects. There is a danger that any particular change could have harmful effects which would outweigh any possible benefits. Particular attention has been given to this problem. In each case where a change in existing laws is dealt with all the foreseeable consequences are set forth. Assistance in projecting the consequences has been obtained by studying the impact of similar changes in other jurisdictions. To the extent that the conditions in such jurisdictions differ from those existing in Ontario, similar consequences may not follow if the particular changes are made here. An attempt has been made to determine if different circumstances are sufficiently material to affect the use of experience outside Ontario.

(*b*) In carrying out this study there has been no intention to ascribe particular blame or bestow praise upon either landlords or tenants. It is impossible to read the statements of concerned persons, as reported in the press, and as set forth in briefs submitted to the Commission, and various organs of government, without becoming aware of the tendency to create the "good guys" and the "bad guys" out of landlords and tenants. Not only does this tendency hamper the work of law reform but it emphasizes an approach to legislation which is irrational, in that it fails to recognize the legitimate interests of all parties involved in the landlord and tenant relationship.

(*c*) Much of the emphasis of this study is placed on the legitimate interests of the parties to the relationship. Considerable assistance in the analysis of what are the legitimate interests of landlords and tenants has been obtained by resorting to the history of the changes which have occurred in other areas of land law, and particularly in the evolution and development of the law of mortgages in Ontario. Attention has been focused upon the growth of protective legislation respecting the rights of the mortgagor or persons having an interest in the mortgaged premises, and this has proved illuminating and rewarding.

While cautioning against the moralistic approach to law reform, it is likewise suggested that the formal legal approach to the development of legal principles be discarded. An instance where this has been done is found in the law of mortgages. The courts in the exercise of their equitable jurisdiction, and the legislature in keeping with the equitable principles developed by the courts have necessarily made value judgments concerning the essential rights of mortgagors and mortgagees. Having made these value judgments courts have had a continuing legal basis for protecting the vital interests of the parties. While more will be said on this subject, in the case where one is dealing with the essential

rights of mortgagors and mortgagees, it is the money advanced by a mortgagee which the courts primarily protect and it is the right to redeem the mortgaged lands and premises of the mortgagor (or the present owner of the equity of redemption's interest in the mortgaged lands and premises) which the courts similarly endeavour to protect. Given this "golden thread" which runs through the greater part of the subject area courts have fashioned a law based on a balancing of these vital interests. Where the courts have been unsuccessful in maintaining a successful balance, the legislature has often enacted legislation to maintain the balance.

The common law of landlord and tenant, over the centuries, has not developed any legal philosophy based on a theory of vital interests. The single most important feature of landlord and tenant law is the existence of the leasehold "estate" of the tenant. The vesting of the estate in the tenant underlies the rather fixed nature of the law and has caused courts to determine the rights of tenants according to rigid land law principles rather than in accordance with the more realistic development of contract and tort law which would likely apply in the absence of the estate theory.

This is not an isolated phenomenon peculiar to the province of Ontario, but one which affects most of the common law world, including the common law provinces of Canada and most of the United States of America and England. Landlord and tenant law is not in a consistently logical sense concerned with the interests of landlords and tenants and it has not even attempted to define them. In a sense the common law of landlord and tenant is mechanical in that its conclusions as to the rights of the parties are based on the fact of the "estate", not on any realistic standard of vital interests which the law will endeavour to protect.

This dominant feature of the law has led to the following anachronistic consequences:

(1) Except for cases which for practical purposes will rarely, if ever, occur a lessee who has not first obtained actual possession cannot obtain a court order for possession even though he has a valid lease. Such a court order is only available to one who having been in possession has subsequently been dispossessed.

(2) A lessee not having entered into possession is limited to an action for damages and such damages are restricted to either his legal costs of investigating title, where there is a lack of title in his landlord, or the difference between the rent he has agreed to pay and the rent with the premises would normally yield. This means that a landlord who refuses to give possession does so at minimal risk. In the rare cases where possession is not given because of a defect in title in the landlord, there being no fraud on the part of the landlord, expenses of searching title are not a serious concern. In the more usual case where the premises are not completed or where possession is withheld

for other reasons, damages which can be awarded are likely to be non-existent. The most important elements of damage, such as loss of business profits in commercial leases or expenses incurred by dislocation, incidental to a denial of possession are not recognized by the court, unless the court can imply their being calculated as a term of the lease.

(3) At common law the court implies no obligation on the part of a landlord to effect any repairs.

(4) In the event of the destruction of a house, and perhaps an apartment, the landlord need not rebuild and is entitled to collect the stipulated rent to the end of the term of the lease. Lease covenants are, peculiarly enough, independent.

(5) Where a tenant unlawfully quits the leased premises and the landlord has an opportunity to re-let to another tenant, in all respects suitable, he is not obligated to do so, and can continue to hold the original tenant responsible without even attempting to reduce the amount of his loss or damages.

(6) At common law the landlord is not responsible for any damage caused to his tenant because of the dangerous condition of the premises, even if the landlord knew or ought to have known of such dangerous condition, and even where the danger is not readily apparent to the tenant.

This list is by no means complete and is merely produced to emphasize peculiarities which adhere to landlord and tenant law and which have moulded it.

(*d*) A further assumption which underlies this study is that the extent to which contractual provisions can equalize the position of residential tenants is limited by the disparity of bargaining power between the parties. It is attractive to assume that it is the availability of accommodation which distorts the balance of power either in favour of the landlord or the tenant. But it is not now possible to accept freedom of contract at any given time as a fact in the area of the landlord-tenant relationship any more than it is in the mortgagor-mortgagee relationship. Even during periods of abundantly available mortgage funds, mortgage companies very infrequently alter the form of the mortgage contract, although admittedly interest rates may drop in response to conditions in the money market. Similarly landlords' "standard forms" of lease do not change appreciably during periods of greater availability of rental accommodation. Rents charged may decrease, or allowances may be made by the granting of a number of "free" months rent and the dropping of "security deposits", but other terms and conditions are rarely altered or amended.

Tenants do not often insist that changes be made in lease provisions just as mortgagors do not request changes in the terms of the "standard" form of the mortgagee's mortgage. From this fact one might infer that

"standard" terms are agreed to more or less freely. This conclusion overlooks the fact that these contracts have now become virtually contracts of adhesion. The belief that one ought to be bound by one's bargain, freely arrived at, is not questioned but too often apparent freedom of contract does not stand up to close examination. The legislature has recognized this fact in relation to mortgage contracts and also with respect to various contracts relating to personal property security and consumer contracts of purchase and sale.

In each of these latter cases, statutory protection recognizes inequality of bargaining positions and the absence of freedom of contract in any real sense. Remedial legislation in such cases is admittedly based on value judgments concerning the basic interests of the parties which must be protected. The principle of freedom of contract must be flexible enough to yield where experience has shown it to be a pious hope and an unrealistic assumption.

The creation of any new value structure, based on the vital and valid interests of the parties, contains its own dangers. If the values recognized for protection are not accurately represented or if the means of protecting them are inadequate, new problems may be created and old ones, perhaps, accentuated.

(*e*) An examination of efforts to effect changes in the landlord and tenant laws demonstrates the need to create effective procedures so that the intention, inherent in the changes, can be realized. If new rights are created, they must be capable of being enforced speedily and with a minimum of expense. If procedures are slow, costly and difficult to follow, the remedy which they are intended to achieve will not be realized in the manner intended. In some cases an ineffective procedure can destroy the intent of the legislature. Examples will be provided of the ways in which procedure might support the remedy.

(*f*) Any assessment of the adequacy of landlord and tenant law which is to avoid an undue degree of subjective analysis, requires the use of empirical data based on objective studies. Answers are required to such questions as:

(i) how extensive are the problems focused upon, i.e. how many people are involved?

(ii) what is the geographic distribution of the problems?

(iii) what is the economic distribution of the problems?

(iv) what is the incidence of relief achieved by those who seek it?

To this end an opinion survey of landlords and tenants in Metropolitan Toronto was conducted. The development of the study and its results are set forth in Appendix A.

There is no doubt that in this as in other matters it has become increasingly essential to know the dimensions of the legal problem as established by empirical data. No longer is it sufficient to rely on the traditional doctrinal approach to research. We can only know about distress, for example, if we know how many distress warrants are issued; where the greatest incidence of distraints takes place; who is affected; how many irregular distraints occur; how often they are questioned in the courts. Admittedly the answers are not easy to obtain, but with the refinement of techniques of investigation, results of reasonable validity can be hoped for.

(*g*) Finally, it is necessary to recognize the limitations of what may be achieved by changes in the landlord and tenant laws. Legislation may achieve many beneficial results in the areas examined but no false hopes should be raised. The greatest single obstacle to stability and fair dealing in this area of the law is the acute shortage of housing accommodation. Amendment of the landlord and tenant laws can, however, establish an atmosphere of order and stability in this field which could provide the impetus for the creation of sufficient rental accommodation at rents within the economic means of every person. It will be readily admitted that ill conceived changes can have a regressive impact on the rental accommodation market.

Recommendations

Continuing Study: This interim report deals only with the most urgent problems in the law of landlord and tenant. It should be recognized that there is a need for further research and study.

Scope of the Study: In some important aspects residential and commercial tenancies require different legal treatment. This report is based on a study of residential tenancies. Commercial tenancies should be the subject of separate examination.

CHAPTER II

DISTRESS

The remedy of distress, available to a landlord as a means of recovering rent, has been the subject of much comment. The feudal common law origins of this remedy and the ancient lineage of the statutory law of distress, much of which is still retained, has resulted in an undue emphasis being placed upon the employment of language which appears, at best, to be quaint and at worst, to be opaque and unclear. This tendency towards criticism of the form overlooks the need for an examination of the substance of the law. If distress is to be retained it should be retained on the basis that the substance of the law deserves to be retained. Language which is archaic can be recast. Procedural anomalies can be overcome by appropriate amendment. Before this can be undertaken, the decision to continue the remedy of distress will have to be made and for this to be done the nature of the remedy must be examined, stripped of its procedural trappings.

Essentially, distress in Ontario is an extra-judicial remedy for the recovery of rent. It represents one of the remaining self-help remedies. Once the relationship of landlord and tenant is found to exist the landlord, without any judicial order, can enforce payment of rent arrears by distress.

The landlord, once rent is in arrears, has the right to effect the distress personally or through an agent, usually a bailiff holding a certificate of qualification under *The Bailiffs Act*, R.S.O. 1960, c. 29, and to enter the premises and take enough property to provide reasonable security for the outstanding rent and expenses.

By statutory amendment the landlord has the right to sell the goods, if the rent is not paid, and to apply the proceeds towards the arrears of rent and costs. For present circumstances the vast body of law and procedure on this topic need not be examined and such matters as means of levying the distress, the time of distress, method of impounding and sale, and the means of attacking an unlawful distress may be left in abeyance.

The major question requiring examination is: shall laws permitting recovery of an indebtedness by self-help, generally outside the supervision of the court, be continued? That the right of distress is an anachronism cannot be denied. A few vestiges of the self-help remedies apply outside the area of landlord and tenant law. The most notable examples are in the area of repossession and sale of chattels by conditional sales vendors, sale under power of sale in a chattel mortgage and private mortgage sales in the case of real property mortgages. In all of these cases there has been a steady growth in statutory protection for the benefit of the conditional sales purchaser, chattel mortgagor and the mortgagor of real property. Whatever may have been the justification for distress as a remedy during feudal and medieval times and during the time of the industrial revolution, its efficacy must now be determined in accordance with the contemporary standard of meeting the justifiable interests of landlords and tenants.

Landlords would justify the continuance of distress on the basis of their special creditor position. Unlike the retail merchant, the landlord, it is claimed, has no effective means of terminating the continued granting of credit. While the grocer and furniture store owner can refuse to supply additional goods, the landlord, before "credit" can be cut off, must usually commence a proceeding for possession and enforce an order for possession by the sheriff effecting the writ of possession. Even the recovery of possession does not guarantee that further losses will not occur, for a new tenant must be found and during the interval damages continue to accrue. Thus there appears to be substance in the position taken by landlords. The levying of the distress, however, does not determine the tenancy and therefore it is not legally a means of recovering possession. In practice a distress involving the removal of the chattels from the premises does result in the tenant departing and not returning to the premises. Therefore, what is achieved in practice is but a by-product of the enforcement of a legal remedy for recovery of rent.

In fact, when a distress is completed by a sale of the goods, the availability of possession is virtually assured to the landlord. Unlike the case of an execution debtor the tenant is often without any exemptions, for leases almost inevitably provide for the tenant contracting out of all statutory exemptions under *The Execution Act*, R.S.O. 1960, c. 126 as amended S.O. 1967, c. 26. A successful seizure can leave the tenant with nothing but the clothes on his back. In theory, the rent having been recovered through resort to distress, the tenant remains entitled to his leasehold estate. In practice, this poses some real problems for a tenant now devoid of the bare necessities for existence.

While the legality of contracting out of the protection of the exemption provisions of *The Execution Act* is not finally settled, it is accepted as legal by landlords and some dicta support this conclusion.

Most landlords stated, and there is evidence supporting their view, that the number of distress proceedings represents less than 1% of their total tenancies. They also stated that the threat of distress is usually effective and results in the payment of rental arrears. Some landlords maintain that the continuance of the practice whereby tenants are required to contract out of exemptions is necessary, not because the articles in question are essential to realize the rental arrears, but because an impounding of basic living requirements has the effect of making recovery of rent more certain.

In summary the evidence supporting the landlords' position would appear to be:

(1) that he is in a worse position as creditor than merchants;

(2) that very few distress proceedings are in fact taken;

(3) that the landlord rarely has to go beyond issuing a distress warrant in order to obtain payment;

(4) that even though they are engaging in self-help procedures bailiffs are concerned lest their actions subject them to loss of their certificate of qualification;

(5) that without the availability of distress, a certain number of tenants would hide behind their execution-proof status;

(6) implications of the loss of the right to resort to distress proceedings would extend to the general attitude of that minority of tenants the landlord is concerned with. Breach of repair covenants, which can ordinarily be converted into rent arrears and are therefore capable of being distrained upon will cause further loss to landlords if distress is made illegal;

(7) if distress is done away with as it has been in many Australian and American states, including New South Wales, Victoria, New York and California, what will replace it;

(8) it is the "good" tenants who will suffer for the sins of the "bad" tenants if distress is done away with.

Recognizing the strength of the landlords' position the major question remains: in an era when the tendency is to civilize debtor-creditor relations by requiring court action in aid of recovery, rather than self-help, is there a place for distress? And what of the fears of landlords if distress is to be abolished?

Without doubt an extension of self-help remedies to merchants generally would now be considered a regressive and Draconian measure, even if the collection of debts would likely be made more certain. As with credit grantors of all kinds, there is a risk and some responsibility for credit losses which should rest on the creditor who grants credit without proper investigation. There can be no suggestion that a landlord, in the private sector, is under any obligation to rent to a tenant whose credit record and past record as a tenant provides a clear indication that such prospective tenant represents a "bad" risk. No one should expect landlords in the private sector to provide rental accommodation for all potential tenants irrespective of an assessment of their history as tenants. While on a comparative basis we have been well served by private landlords, there is a large area where they cannot effectively function and should not be expected to function. Too often persons who probably should not be serviced by private landlords are the "beneficiaries" of the law's worst aspects. To submit that only an infinitesimal number of tenants are ever involved in distress procedures and that there seems little evidence of abuse is, however, not a sufficient answer.

From the tenants' position the major shortcomings of distress, apart from procedural deficiencies are:

(1) Where there is an illegal distress the tenant's remedy is inadequate. This is especially true where the tenant's chattels have been impounded off the premises.

(2) The usual requirement of the tenant giving security for the rent and costs of the distress and the other proceedings under Part II of *The Landlord and Tenant Act* are unrealistic. The tenant who is faced with the reality of a distress is rarely in a position to provide security for rent and costs.

(3) Similarly the arsenal of means available to a landlord, determined to succeed against a tenant, especially where personal animus exists, are formidable. Most well-drawn leases provide for acceleration of all or a substantial part of the rent, upon breach of any covenant, which provision has generally not been treated as a penalty and therefore is not void. There is no relief against such provisions as in the case of relief from forfeiture or against a penalty under either *The Landlord and Tenant Act*, R.S.O. 1960, c. 206, s. 19, or *The Judicature Act*, R.S.O. 1960, c. 197, s. 19. Where rent is accelerated there is little chance of a tenant preserving his interest in the chattels even if he has a partial defence.

(4) Costs of distress governed by the regulations made under *The Costs of Distress Act*, R.S.O. 1960, c. 74 are high. The following example is based on arrears of rent for two months at $125.00 per month:

(*a*)	Levying distress	$5.00
(*b*)	For taking bond in lieu of possession (If possession necessary $10.00 per day per man.)	3.00
(*c*)	Receiving, filing, preparing warrant	3.00
(*d*)	Mileage (av. 5 miles)	1.00
(*e*)	Appraisal (av. 2 app.)	35.00
(*f*)	Advertising (average)	15.00
(*g*)	Where amount due paid before sale	12.50
(*h*)	Costs of handling, tracing, removing goods, etc.	10.00
	Total (average)	$84.50

(5) These figures are not unusual where one proceeds beyond entry. Where removal of goods occurs the costs can go much higher due to removal and possession expenses. Since almost all distress proceedings result in payment before impounding or taking other steps beyond entry, the costs in practice are lower. In fact, the threat of distress alone is usually sufficient to procure payment.

Two factors emerge for consideration. Firstly: is the utility factor in favour of landlords to prevail over changing concepts with respect to self-help remedies? Where distress is pursued, it results in great hardship and disturbance. The tenant can be left without furniture and household belongings necessary for the most basic conduct of his life and that of his family, and the costs can easily equal the rental arrears. Secondly: many distress proceedings are taken with respect to goods which are subject to prior claim, e.g. those of conditional sale vendors. Tenants who are the subjects of distress proceedings are usually those buying furniture and other commodities on the instalment plan, i.e. by conditional sales contracts. In such cases the levying of a distress results in costs being incurred, usually without recovery to the landlord. Rarely is any investigation made prior to issuing the distress warrant. Where the goods have been impounded the tenant suffers and the landlord does not recover the rental arrears.

Where a sale is effected, it is inevitable that the sums realized are truly "distress" prices. Forced sales attract the bargain seeker, and the second-hand value of beds, clothing, electrical appliances and furniture is extremely low. The tenant usually must replace them at a much higher price than that obtained on the forced sale, which only worsens the situation which precipitated the distress.

The Solution

Tenants are often the authors of their own misfortune. Failure to pay rent when due can have a variety of causes ranging from sickness to unemployment and marital problems. Landlords are by no means unsympathetic to temporary difficulties and often enter into extended arrangements to provide for the satisfaction of arrears. Unfortunately, the tenant too often fails to disclose his problems until the bailiff arrives. Moreover, the propensity of landlords to serve as social counsellors is not by any means universal.

No one should demand of a landlord that he become personally involved in his tenant's misfortune, nor is this likely to become the case. As a fundamental proposition, the landlord is entitled to the payment of rent when due. No one wishes to discourage acts of charity and human understanding, but to consider these qualities as a factor in the landlord and tenant relationship can disguise the need for a more realistic approach to such remedies as distress. Jurisdictions that have legislated distress out of existence do not appear to have suffered by it. Landlords in Ontario have rare occasions to employ the remedy other than *in terrorem*. To attempt to bring it under court supervision will not solve its anachronistic qualities. Landlords, and those representing them, acknowledge that the requirement of a court order to effect a distress would impair its usefulness. Transfer of implementation of the actual distress to the sheriff of the county would, according to landlords, further reduce the effectiveness of the remedy. From the tenant's position a distress will evoke the same problems no matter which authority has jurisdiction over its operation.

On balance, the advantages of distress to landlords are far outweighed by its disadvantages to tenants and the public. It offends modern attitudes against extra-legal self-help. It is mainly effective by virtue of its devastating consequences. Even when as a rare event it is carried through to sale, the recovery to the landlord hardly justifies the expenditure and the detriment to the tenant is disproportionately onerous.

It should be borne in mind that merely removing the common law right of distress will not be sufficient unless the private contractual remedy of distress is similarly dealt with.

The problems of protecting the landlord by some other means should be explored. This will be done under the next heading "Security Deposits".

If despite our recommendation it should be decided to continue the right of distress then, at least, certain changes should be made to ensure that its functioning is not abused. In such a case we recommend the following:

(1) It appears possible for the statutory limitations on distress to be altered by agreement between the landlord and the tenant.

(See *Daniel v. Stepney* (1874), L.R. 9 Ex. 185 and also *Linton v. Imperial Hotel* (1889), 16 O.A.R. 337, per Osler J. at p. 343 where it is laid down that ". . . if the term is gone, the landlord being unable to distrain as at common law, or by virtue of the statute, the power of distress *specially mentioned* (emphasis added) in the lease can only be regarded as a *personal license* (emphasis added) to be executed on the tenant's own goods. . . .") Such form of waiver should be made illegal.

(2) Contracting out of statutory exemptions should be prohibited.

(3) It should be a requirement that a bailiff, or other person authorized to levy the distress, bring the right to statutory exemptions to the attention of the person subjected to the distress and not as at present provided in section 29 (3) of *The Landlord and Tenant Act*:

> "29.—(3) The person claiming the exemption should select and point out the goods and chattels that he claims to be exempt."

This subsection should be qualified by the requirement of making known to the tenant the nature and extent of the exemptions and then giving the tenant the right of selection.

(4) Section 29 (2) of *The Landlord and Tenant Act* which restricts the exemption in the case of a monthly tenancy to two months' arrears of rent, is unrealistic. The monthly tenant has essential and basic needs equal to those of other periodic tenants and the exemptions barely cover basic human requirements. Distress should not be a device for creating public charges out of tenants by leaving them without basic quantities of clothing and furniture. This is especially true where replacement value so far exceeds receipts upon a sale pursuant to the distress.

(5) Under section 32 (1) of *The Landlord and Tenant Act*, a tenant must either give up possession of the premises or offer to do so if he is claiming the statutory exemptions. While this may make many distress proceedings ineffective, in others they will place the tenant in a difficult position. If he claims his exemptions, he may have to seek alternative accommodation. This is contrary to the basis of distress, which does not interfere with the right to possession.

If exemptions are necessary to preserve basic human needs it is the landlord who should have to decide whether to proceed with the distress and leave the tenant in possession or to forego the right of distress if he seeks possession.

(6) At common law, chattels distrained had to be impounded. Section 50 (4) of *The Landlord and Tenant Act* provides for impounding on the premises or part of the premises. As has

been noted, if the right to distress is exercised, it means that the tenancy remains a subsisting one. If impounding off the premises is permitted without a court order, based on special danger of damage to the chattels if not impounded off the premises, the effect will be to deprive the tenant of both his chattels and his term. In theory, a sale may still leave the tenant in possession. The landlord, it is again suggested, must make a choice between possession and recovery of rent in arrears by action or distress and a continued right of possession in the tenant.

(7) There has been an attempt, in this report, to demonstrate the extreme difficulty of retaining distress in a "civilized" form, whilst still preserving its effect as a remedy. As has been previously noted, many critics of the landlord and tenant laws condemn the archaic form of the statutory language, when in fact it is the substance that matters in its operation. *The Landlord and Tenant Act* is replete with examples of puzzling sections which are puzzling because shortcomings in the common law necessitated their inclusion. (See ss. 3-9; 16; 25; 59; 60; 61; which, *inter alia*, represent conscious changes in the previous common law.) Even if the language were changed, the reason for the sections would not be apparent without an understanding of the common law which existed prior to the enactments. Similarly, in the case of distress, such often criticized sections as section 43 ". . . sheaves or cocks of grain . . ."; section 44 (1) ". . . cattle . . . feeding or pasturing on a highway . . ."; section 44 (2) ". . . standing crops . . ."; and section 48 ". . . fraudulently . . . conveyed . . . and believed to be in any house, barn, stable, outhouse . . ." are part of the law only because of limitations in the rights to distrain at common law. The articles by the Honourable Chief Justice Williams contained in his *Canadian Law of Landlord and Tenant* (3rd ed., 1957), commencing at page 235, amplify what has here been touched upon.

The essence of the dissatisfaction with the law of distress, expressed here, is not so much the archaic nature of the language, but rather its impact upon tenants. An attempt has been made to indicate the areas of concern. The conclusion reached is that the remedy is difficult to harmonize with acceptable contemporary standards of protection, without virtually destroying the remedy's efficacy as a landlords' remedy. Nevertheless, some suggestions have been made, which it is felt are essential to any modern legislative scheme of distress, if the remedy is to be retained.

Recommendation

Distress: The right to distrain, whether arising out of the common law, statute or contract, should be abolished.

CHAPTER III

SECURITY DEPOSITS

American authorities, in jurisdictions having abolished the remedy of distress, have treated the security deposit as a means of compensating landlords for the loss of the right to distrain. This can only be partially correct, for the reason that the usual security deposit against damage cannot be employed to make up arrears of rent without the tenant's consent. This can be provided by agreement, declaring the security deposit shall stand as security against damage which is the tenant's responsibility and payment of rent in arrears and performance of other covenants in the lease.

In Ontario, the security deposit is a feature of many leasing arrangements. Its emergence usually coincides with a shortage of rental accommodation. Landlords, and those representing their interests, justify the taking of security deposits on the basis of the need to have a means of controlling damage committed by tenants and also as a means of recovering at least part of such damage without recourse to the courts.

As has been noted, in jurisdictions where distress has been done away with by statute, such as the State of New York since 1846, the security deposit is thought of as one means of assuring the landlord that the tenant will discharge his obligations. These obligations, depending on the wording of the "Security Deposit" clause, may include, in addition to repair obligations, all other obligations which may result in damage being suffered by the landlord, including the obligation to pay rent.

Whatever the purpose of the security deposit it is fundamental that it is to be returned to the tenant at the termination of the tenancy, barring any breach of covenant by the tenant entitling the landlord to forfeit it, in whole or in part, on account of the damage or rent claim.

In Ontario, on the basis of tenants' submissions and the response to questionnaries and individual interviews, the problem of obtaining repayment of the security deposit is the second most serious cause of tenant concern.

The Landlords' Position

Tenants are often not unsympathetic to the landlords' arguments justifying the collection of security deposits. The landlords' investment in the leasehold property is accepted as sufficient justification for the practice. Landlords, as in the case of the remedy of distress, state that the security deposit is effective because it operates as a deterrent against breach of covenants by the tenant. The experience of landlords in these matters must be respected and their real problems are not difficult to appreciate. If distress ceases to be part of the law of landlord and tenant (and many landlords are concerned about the manner in which the remedy is capable of being enforced), the landlords' desire to maintain the right to obtain security deposits must receive sympathetic attention.

The Tenants' Position

One of the major complaints of tenants concerning security deposits is the financial burden of laying out monies at the commencement of the term. Some tenants maintain that interest should be paid to them by the landlord as the monies remain the tenants', at least until forfeiture. By far the most serious complaint, however, relates to the difficulties encountered in obtaining repayment of the deposit on the termination of the tenancy.

There is some justification for limiting the amount of a deposit to one month's rent with the stipulation that it represents security for breach of the tenant's covenants, including payment of rent and the obligation to repair. In this case no further deposit should be permitted.

Some landlords do pay interest on security deposits, but rarely does this exceed 4% per annum. As it is the custom to mix the security deposit with the landlords' funds and not to retain them in a separate account (the money then being used in the carrying out of the landlords' undertakings) this represents interest free money, save for those landlords who pay some interest on deposits. At current borrowing rates the savings to the landlord who does not pay interest is over 8% per annum.

If the security deposit is only a security deposit, it should not be treated as borrowed funds. Interest accruing at bank or trust company interest should be credited to the tenant less a reasonable amount for administration. Funds should not be mixed but should be designated as tenants' trust monies and exempt from attachment by the landlords' creditors.

Several jurisdictions, including New York State, have enacted legislation requiring the maintaining of separate trust accounts for the deposit of security deposits and make it an offence unlawfully to withhold payment after the termination of the tenancy. Abuses which relate to the present practice of mixing funds, therefore, would be largely eliminated. However, the problem of the absconding landlord, who has sold the leased premises, could only be dealt with by making the purchaser responsible for obtaining transfer to him, as trustee, of the security deposits. This procedure, if made mandatory, would involve a virtual audit of security deposits by a purchaser. To inject a municipal or provincial government department into the relationship as supervisors of all funds, as has been suggested by some, would create a new bureaucracy. In short, to protect security deposits against creditors and absconding landlords involves the development of procedures which invite delay, expense and, almost inevitably, litigation.

The rejection of this proposal does not preclude the possibility of requiring that trust accounts be opened where security deposits are taken, subject to penalties for failure to do so, as well as for retaining deposits without justification. Even here obvious shortcomings are evident. As disputes relating to deposits most often involve questions of responsibility for repair, it would be difficult to satisfy the criminal onus as it is unusual for the landlord to be lacking an arguable case.

Where penal provisions are attached to breaches occurring, in what is essentially a civil relationship calling for the application of a non-criminal onus, convictions are difficult to obtain. Examples of prosecution for breaches of *The Labour Relations Act* demonstrate this most clearly.

Almost all landlords interviewed expressed strong opposition to any scheme which would prevent their mixing security deposits with their own monies so that they could not be used in carrying on their businesses. While some would pay bank interest at the Urban Development Institute's recommended figure of 4%, this was the extent of the obligation which they felt was reasonable in the circumstances. They were candid in expressing their view that the security deposit was a form of rent. That is, if they could not treat the funds as borrowed money, rents would have to be increased. It would seem less devious to charge rent as rent. This still leaves unaffected the landlord's claim that he needs the protection of the security deposit against breaches of covenant by the tenant.

In discussion with landlords, no real claim was made that less damage was done to leased premises since the practice of taking damage security deposits became widespread. Their value as a deterrent has not been established.

As in the case of distress, it is felt that landlords, being one class of credit grantors, must accept greater responsiblity for failure to investigate prospective tenants. If this were done more thoroughly and if landlords were not prevented from collecting, say, one month's rent in advance, to be applied to the last month's rental or the rental arrears at the time of proceedings to recover possession, and such proceedings were truly summary, no great disservice would be done to landlords' interests. At the same time it must be emphasized again that the private landlord must not be expected to furnish accommodation because of tenants' economic hardship. If landlords are to be treated more like other creditors, then in recognition of their changed circumstances, they should not be expected to act differently. The landlord is entitled to his rent and the performance of the tenant's covenants. Failure by a tenant to carry out his obligations under the lease entitles the landlord to possession and an immediate right to sue for arrears of rent and other damages. Whatever the source of the tenant's failure to observe his obligations, apart from any wrongful act of the landlord, the responsibility for the social welfare of the economically oppressed or destitute tenant lies with welfare authorities, not the landlord. No doubt for reasons of insufficient income, injury, sickness, marital problems, as well as behaviour which is not accounted for, a significant minority of the population cannot be serviced adequately by the private rental sector. If the private sector is forced to do so, then the private landlord has a claim for special protective measures. If, however, the means of reasonable protective measures are afforded him, then the landlord will accept himself as another creditor with the rights of other creditors and with the hazards which can best be reduced by such adequate protective measures as a thorough investigation of prospective tenants. No attempt is being made to claim that investigation will eliminate all credit problems, however other business enterprises employ investigatory techniques to reduce credit losses. No less should be expected of landlords.

No attempt is being made to deny the merit of the landlords' position that the security deposit is a useful device. It may have some deterrent value; it saves cost of collection; it is the source of added revenue and may save the tenant who performs all of his obligations from contributing financially through increased rental flowing from the default of a tenant who is judgment proof.

Assuming the continuance of the right to demand and retain the damage security deposit, and assuming the objections relating to non-payment of interest, defalcation or misapplication can be overcome without immensely complicating the relationship, there still remains the problem of adjudicating damage claim disputes. Naturally the security deposit will be retained by the landlord if there is an alleged damage claim. Unfortunately the courts are at present an inappropriate forum for determining the right of the tenant to the return of the security deposit.

As an example, consider the situation of a tenant whose term has ended by effluxion of time. Upon requesting return of the security deposit he is advised that it has been forfeited to make good the damage caused to the premises for reasons not attributable to reasonable wear and tear and thus falling within the tenant's obligation to repair. Assuming both landlord and tenant are acting in good faith and there is an honest difference of opinion in their interpretation of the facts, the tenant who disagrees with his landlord concerning the responsibility for the alleged damage must commence legal proceedings if he wishes to recover the deposit. This is done in the division court if the amount involved is less than $400.00, which is usually the case.

The landlord, upon receipt of the division court claim attends upon his solicitor. If this is the landlord's first introduction to division court procedures, his solicitor will advise him that many cases are usually set down for hearing on the same day and that the loss of time, on even a simple matter, can involve at least one day awaiting the disposition of a case. For this reason, if a qualified lawyer is to represent the landlord a fee of approximately $75.00 will be charged and this is low considering the loss of time in attendance on the court waiting for the case to be heard.

In the case of the average landlord it is not just the single security deposit which is of concern to him. If he has other tenants he appreciates that he is really supporting his continuing position in relation to present and future tenants. If he is unsuccessful, it is only natural that word of the result will reach many of his other tenants. This situation tends to weaken the landlord's position when he again has to withhold some or all of a security deposit, which may require disposition of the second dispute in division court.

The lawyer, too, has practical and legitimate reasons for exercising discretion in amending his usual fee. Acting for a landlord is usually a continuing function and there are occasions when a specific piece of legal work may be undertaken at a loss to the lawyer.

In any event the landlord who feels, as many who responded to interviews did feel, that the courts tend to favour the tenant, is more likely to see the need for well-qualified representation as a necessary expense. Counsel should and ordinarily will advise the landlord to have an inspection of the premises made by a qualified painter and decorator and all defects noted along with the cost of repairs as well as the probable cause.

The tenant who seeks legal assistance will likely receive much the same advice except that in his case the situation is less likely to be repeated. Also there is a lesser likelihood of any reduction in the fee being offered, although the alternative of being represented by a law student is not an unusual suggestion. Regarding witnesses, the tenant generally has no connection which enables him to secure the services of a decorator. Unlike the landlord's decorator there is no reason why a decorator should be agreeable to attending to examine the leased premises and then attend at the hearing. If he can be induced to serve as a witness, it will be at the cost of a day lost from his work. Thirty dollars is not an unreasonable figure. At the trial the landlord has the following advantages:

(1) Evidence of his superintendent or other person familiar with the premises is available concerning the state of the premises before commencement of the tenancy. Some landlords use state of repair forms which are completed at the beginning and end of the tenancy. Even where such forms are used the whole subject of what may be attributable to "reasonable wear and tear" is not an easy one.

(2) The decorator appearing as the landlord's witness, no matter how honest, usually has a financial interest in the outcome and has no wish to displease the landlord. Because of his financial interest he may treat the court appearance as a service.

The tenant may choose to be represented by a law student to save on legal expenses. He usually will be without a decorator to give evidence on his behalf. Assume the tenant is successful. If he was able to secure a decorator he will have incurred average expenses of:

(*a*) Legal fees	$35.00	
(*b*) Witness	30.00	
(*c*) Loss of a day's wages	20.00	
		$85.00
Less		
No counsel fee if represented by a law student		
Witness fees	6.00	
		6.00
Cost of hearing		$79.00

If the tenant loses, his costs will be $85.00 plus a counsel fee of $25.00, witness fees and cost of filing and serving claim, an amount which can easily amount to $125.00.

The above figures were prepared based on the most advantageous circumstances existing for the tenant. No claim is made other than that experience indicates that, where the landlord employs counsel, the advantages of his position militate against recovery by tenant of a security deposit. The expense of even a successful action makes an action by the tenant impractical. Where a tenant does sue there is a natural desire on the part of the landlord to make the tenant responsible for every item of damage alleged. While he cannot be faulted for pressing his claim to its fullest, the inequality of positions often means that the tenant not only is unsuccessful in recovering his deposit but also has the court award judgment against him for the amount of damage over the amount of the security deposit.

It should be noted that landlords do not accept this as an accurate representation of the average action for return of a security deposit. They contend that the scales are more evenly balanced and that the landlord is usually represented by a student and no evidence is given by a decorator.

The problems created by the security deposit against damage can be dealt with in a number of ways:

(1) The taking of a security deposit to protect the landlord against damage as opposed to a deposit to be applied toward rental arrears, might be made illegal by statute. Evidence does not support the fear of the landlord that tenants will act irresponsibly if no security deposit is maintained. No doubt a very small minority of tenants act irresponsibly under any conditions and there does not appear to have been a marked decrease in damage attributable to tenants since security deposits became a feature of the landlord and tenant relationship.

The landlords' relative strength, in case of legal confrontation, gives them advantages which require a balancing of interests. The abolition of security deposits, against damage, would remove an oppressive element from a relationship which already has a sufficient basis for conflict.

(2) If it is deemed necessary to permit the retention of the damage security deposit to guarantee the performance of the lessee's covenants, then some safeguards should be afforded the tenant.

(*a*) The deposit should be designated as trust funds, thus making clear the nature of the obligations of the landlord with respect to these monies. Deposit of the monies should be in a separate trust account and not mingled with other funds of the landlord. In this way, the monies will truly represent the purpose for which they

were taken. Too many landlords confuse the security purpose of the funds and treat the deposit monies as a source of interest-free borrowed capital. The tenant should not be expected to finance the landlord's undertaking, especially where the deposit funds may be dissipated.

(*b*) The tenant should be entitled to the interest paid on the monies less a small charge to cover the management expenses of the landlord.

(*c*) Any purchaser of the landlord's interest by sale, assignment or otherwise must satisfy himself as to the state of the trust account and arrange for transfer to himself, in substitution for the landlord, on closing. This suggestion is made to avoid the consequences of *Re Dollar Land Corporation Ltd. and Solomon*, [1963] 2 O.R. 269.

(*d*) The landlord must repay the amount of the security deposit to the tenant within 10 days of the completion or other termination of the tenant's term. Failure to comply with this requirement should carry appropriate sanction by way of a fine.

(*e*) If the landlord has a claim to the whole or part of the security deposit then the same can only be paid out to the landlord on presentation of a court order to the bank or other institution where the funds are deposited. Thus the present difficult position of the tenant, who is refused return of the deposit, is reversed by casting the responsibility for commencing proceedings on the landlord. The justification for this suggestion is two-fold: (i) the situation of the tenant, under the present state of the law, as previously outlined, makes an action by the tenant both difficult and overly expensive in relation to the possible success which might be achieved. The landlord has the advantage of having obtained the deposit and the inequality of the parties makes it more reasonable to cast the onus on the landlord to commence action to establish the right to forfeiture of the deposit to enable payment to him out of the funds from the trust account; and (ii) ordinarily the landlord who does not have a damage security deposit would have to sue and prove his damages. This position would continue to apply notwithstanding the existence of a damage security deposit.

(*f*) If a claim is made by the landlord to part only of the deposit then the balance must be paid to the tenant within 10 days of the completion or other termination of the tenant's term.

Although considerable attention has been devoted to the means by which the hardships and injustices of present practices might be ameliorated, we are convinced that the only way to redress the existing imbalance in the relative position of landlords and tenants is to abolish damage security deposits entirely.

Recommendations

Security Deposits: It should be made unlawful for a landlord to demand or receive a security deposit against damage or any other contingency involving the demised premises. Landlords should be permitted, however, to request payment of the last month's rent in advance but any sum so paid should be treated as security for the payment of rent only.

Existing Security Deposits: The abolition of security deposits should apply only to leases created or renewed after the coming into force of the remedial legislation. Security deposits which have been paid under leases which are current at that time should be governed by the following requirements:

(*a*) interest should be payable to the tenant at the end of the term on the full amount of the security deposit at the rate of five (5) per cent a year, compounded annually, to be calculated from the day of the coming into force of the remedial legislation;

(*b*) the security deposit, together with interest, must be returned to the tenant within ten (10) days of the date of the termination of the lease, whether by effluxion of time or otherwise;

(*c*) if the landlord seeks to retain all or part of the security deposit and interest in satisfaction of any damage for which the tenant is allegedly responsible, and if the tenant does not consent in writing to forfeit that part of the security deposit and interest claimed, the landlord must commence an action against the tenant to enforce his claim within ten (10) days of the date of the termination of the lease. If he does not, his claim to retain the security deposit or any part of it should be extinguished.

Security deposits which have been paid in all other cases should be repaid to the tenants within thirty (30) days of the coming into force of the remedial legislation.

Penalty: The breach of any of the provisions enacted to give effect to the recommendations concerning security deposits should subject a landlord to prosecution, and on conviction to the payment of a fine.

CHAPTER IV

CONTRACTING OUT

1. Contracting Out with reference to Assigning and Subletting

The legislature has made provision for safeguarding certain tenant interests with respect to the right to assign or sublet and the right to exemptions from distress. Almost every printed lease form sold by legal stationers as well as almost all leases prepared on behalf of landlords by their solicitors provide for a waiver of the statutory protection.

The Landlord and Tenant Act, R.S.O. 1960, c. 206, provides:

> "22.—(1) In every lease made after the 1st day of September, 1911, containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that such licence or consent is not to be unreasonably withheld."

The wording of the section makes it clear that contracting out is permitted. The landlord's desire to maintain the right to refuse on any ground to consent to an assignment or subletting of the term or a parting with possession is understandable. He has entered into a lease with a particular tenant, relying on the "personal character" of the tenant. The right to preserve their property interests, landlords submit, requires that they be given the continued right to determine who may occupy their premises as tenants, sub-tenants, assignees of the leases or as licensees, subject, of course, to the provisions of *The Ontario Human Rights Code, 1961-62*, S.O. 1961-62, c. 93, as amended.

Judicial hostility to restraints on alienation was subject to a broad exception with respect to leasehold estates and a landlord could prohibit the tenant from transferring the leasehold estates to whatever extent he wished. On balance the courts believed that the legitimate objectives served by permitting such restraints outweighed the general attitude of the courts with respect to the evils which restraints fostered.

In undertaking a reassessment of the law of restraints against alienation by tenants, it must be measured in terms of its present validity. The changing nature of the landlord and tenant relationship has been toward increasing impersonality. With the increasing mobility of the population requiring frequent transfers, coupled with the continued accommodation shortage, it is necessary to examine some means of curtailing the landlord's absolute power of decision. At the same time, any curtailment must recognize the landlord's problems.

The Landlord and Tenant Act, R.S.O. 1960, c. 206, provides further:

> "22.—(2) Where the landlord refuses or neglects to give a licence or consent to an assignment or sub-lease, a judge of the county or district court, upon the application of the tenant or of the

assignee or sub-tenant, made by way of originating notice according to the practice of the court, may make an order determining whether or not the licence or consent is unreasonably withheld and, where the judge is of opinion that the licence or consent is unreasonably withheld, permitting the assignment or sub-lease to be made, and such order is the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease is not a breach thereof."

It will be seen that while the landlord's consent is not capable of being arbitrarily withheld the court is required to judge the conduct of the landlord in order to pass upon its reasonableness. An examination of section 22 (2) discloses that the onus of demonstrating the unreasonableness rests upon the tenant. It is open to the landlord to base his refusal to consent to an assignment or subletting upon, *inter alia*, the character of the proposed assignee or sub-tenant and the intended user.

The English *Landlord and Tenant Act, 1927*, 17-18 Geo. V, c. 36, provides:

"19.—(1) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against assigning, underletting, charging or parting with the possession of demised premises or any part thereof without licence or consent, such covenant condition or agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject—

(*a*) to a proviso to the effect that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent; and

(*b*) (if the lease is for more than forty years, and is made in consideration wholly or partially of the erection, or the substantial improvement, addition or alteration of buildings, and the lessor is not a Government department or local or public authority, or a statutory or public utility company) to a proviso to the effect that in the case of any assignment, under-letting, charging or parting with the possession (whether by the holders of the lease or any under-tenant whether immediate or not) effected more than seven years before the end of the term no consent or licence shall be required, if notice in writing of the transaction is given to the lessor within six months after the transaction is effected."

Thus, any contracting out is invalid. Admittedly, where contracting out is not possible the court is substituting its judgment for the landlord's. However, the interests of the landlord are protected as the tenant must first request the landlord's consent and failure to do so before purporting to assign, sublet or part with possession gives the landlord the absolute right to declare the term forfeited. This would discourage precipitous action by the tenant in attempting to produce a *fait accompli*. Furthermore the onus of proving unreasonableness rests on the tenant.

If it is decided to prohibit contracting out of the statutory protection there is some merit in requiring that an assignee who has in turn assigned the term be bound under the lessee's covenants in the same manner as the original lessee, that is, until the end of the term. This appears reasonable if the assignment takes place against the wishes of the lessor and only under the provisions of the statute. The mobility of tenants dictates that more adequate protection be afforded to the landlord. Whereas formerly, he could insist that an assignee bind himself contractually for the term to carry out the obligations of the lessee, even after the assignee has parted with the term, it is not certain that such a condition could be enforced under the requirement of reasonableness in withholding consent.

Similarly there is some basis for the landlord having the right to call for assignment to him of the sublessee's covenants, so that the landlord might sue either the lessee and/or the sublessee. This appears to be a reasonable requirement where the right to control occupancy has been cut down by statute.

It should be noted that under the provisions of section 19 (1) of the English *Landlord and Tenant Act* the section applies only where the covenant is not to assign, etc. "without license or consent". In the case of *Woolworth* v. *Lambert*, [1937] Ch. 37, (C.A.) Lord Justice Romer stated at p. 58:

> "Subsection 1 of section 19 deals with covenants against assignment and long before this Act ever came into force, the difference between an absolute covenant not to assign and a covenant not to assign without the license or consent of the landlord, was well recognized . . . . If every covenant not to assign . . . is to be deemed to be a covenant not . . . to assign . . . without the license or consent of the landlord, then the words 'without license or consent' in the subsubsections would be . . . useless."

In view of these decisions section 22 of *The Landlord and Tenant Act* in Ontario should be amended to provide that every lease wherein the right to assign, sublet or otherwise part with possession is restricted, shall be deemed to contain a provision that leave to assign, sublet or part with possession will not be arbitrarily or unreasonably withheld; and that any agreement purporting to waive this right shall be null and void.

Under the present state of the law where consent to assignment, etc. may be arbitrarily withheld many tenants have complained that their landlord has required the payment of a substantial sum in order to be induced to grant the request for the right to assign. It cannot be denied that there are expenses which arise upon such request being made and the landlord should not have to give his consent and bear such expenses. The English section 19 (1) states that ". . . this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such license or consent. . . ." The Ontario legislation should be amended to

provide that the landlord is entitled to reasonable expenses incurred in granting leave. It is difficult to provide for an upper limit for such expenses, and such determination must be left to the court under section 22 (2) of the Ontario Act.

2. Contracting Out of Exemptions from Distress

Another contracting out clause common to leases is that relating to the exemptions from distress. A common form of such covenant is: "The lessee hereby waives and renounces the benefit of section 29 of The Landlord and Tenant Act being chapter 206 of The Revised Statutes of Ontario, 1960."

The goods and chattels exempted are those set out in *The Execution Act*, R.S.O. 1960, c. 126, as amended by S.O. 1967, c. 26, and include:

1. Necessary and ordinary wearing apparel of the debtor and his family not exceeding $1,000 in value.

2. The household furniture, utensils, equipment, food and fuel that are contained in and form part of the permanent home of the debtor not exceeding $2,000 in value.

3. In the case of a debtor other than a person engaged solely in the tillage of the soil or farming, tools and instruments and other chattels ordinarily used by the debtor in his business, profession or calling not exceeding $2,000 in value.

It will be noted that those goods and chattels represent the basic necessities of life and the means of earning one's livelihood. A question arises whether there is any public policy which would make any contracting out null and void. No case dealing directly with this point has been found. However, the Ontario Court of Appeal in the case of *Shields v. Dickler*, [1948] O.W.N. 145 dealt with a lease which contained such a contracting out or waiver clause. The clause in that case was more extensive in its application, since it also referred to ". . . any other section of the [Landlord and Tenant] Act. . . ." The right arbitrarily to withhold consent to assignment was in issue, and the court did not have to deal expressly with its application in the case of the exemption from distress.

Our investigations indicate that the clause relating to exemptions from distress is employed so as to treat all goods and chattels, except chattels of strangers and chattels subject to conditional sales contracts, as being subject to distress.

It is therefore recommended that if distress is retained as a landlords' remedy, then any waiver of exemptions should be treated as null and void. The resort to chattels exempt from seizure has a tendency to demoralize the tenant subject to the distress. It is also felt that when landlords distrain upon chattels normally exempt from seizure they have no real intention of disposing of them through a sale since as a general rule they have little market value.

It is significant that in *Shields v. Dickler, supra,* the lease contained a contractual right of distress, in addition to the common law right of distress. This reinforces the need to make private contracts permitting distress null and void if the common law and statutory provisions are also to be taken away.

There are other provisions in the Ontario statutory law which were enacted for the protection of tenants or to redress any imbalance in the bargaining position of the parties as reflected by the letter and tenor of the written instrument. Such a provision is found in sections 18 (2) and 19 (1) dealing with relief from forfeiture of the lease as a result of a breach of covenant or condition on the part of the tenant. The public policy decisions which prompted the insertion of such provisions are frustrated if as a result of ignorance of the law or economic pressure tenants are permitted to contract out of the protection which the statute affords them. Public policy should be implemented by an express statutory prohibition against contracting out. An amendment to *The Landlord and Tenant Act* should so provide.

3. Contracting Out with reference to Tax Reduction Benefits

The Residential Property Tax Reducation Act, 1968, S.O. 1968, c. 118, provides, *inter alia,* that:

> "4.—(2) Where in any year a reduction of municipal taxes is made to a landlord in respect of any residential property, the landlord or his agent shall pay or allow as a reduction in rent to the tenant thereof the amount of such tax reduction in such manner and at such time or times as are prescribed by the regulations made under this Act.
>
> (3) The right of a tenant to receive the reduction of municipal taxes mentioned in subsection 2 is not assignable and may not be waived before or after this Act comes into force.
>
> 7. Every landlord and every agent as defined in section 4 who contravenes any of the provisions of section 4 or of the regulations made under this Act is guilty of an offence and on summary conviction is liable to a fine of not more than $200, and in addition the magistrate shall order the landlord or agent to pay or allow as a reduction in rent the amount of any credit on municipal taxes that in the opinion of the magistrate has not been paid or allowed as a reduction in rent in accordance with section 4."

It seems clear from the provisions of section 4 (3) that any attempt by the tenant to contract out of the benefit conferred by the Act in the form of a tax reduction is null and void. It is not so clear that the provisions of section 7 make it an offence by the landlord to offer to the tenant for his signature a lease in which the tenant purports to waive his rights. It is difficult to assess the prevalence of this practice but there is no doubt that it does exist as evidenced by an excerpt of a letter dated October 30, 1986 and written to the Commission. The letter reads, in part, as follows:

"Since this new 'Tax Reduction' plan was introduced the Tenant has had one or two alternatives:

(*a*) he signs a clause in the lease waiving any rebate in Taxes granted by the Provincial or Federal Governments [sic].

(*b*) he has his rent increased by the expected amount of any rebate.

Thus any amount of moneys returned by the Government end up in the pocket of the Landlord.

In my own case I signed a lease with the aforementioned clause. It was a choice of either signing the lease or not renting the house."

One suspects that the amount of rent paid or the amount of tax deductions lost to tenants throughout the province under this invalid clause may be substantial. In an effort to stamp out the practice and to carry out the intention of the legislation it is recommended that the Act be amended by stipulating in clear language that it is an offence for any landlord to insert such a waiver clause in the lease.

Recommendations

Contracting Out with reference to Assigning or Subletting: Section 22 of *The Landlord and Tenant Act*, R.S.O. 1960, c. 206, provides as follows:

"22.—(1) In every lease made after the 1st day of September, 1911, containing a covenant, condition or agreement against assigning, underletting, or parting with the possession or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that such licence or consent is not to be unreasonably withheld.

(2) Where the landlord refuses or neglects to give a licence or consent to an assignment or sub-lease, a judge of the county or district court, upon the application of the tenant or of the assignee or sub-tenant, made by way of originating notice according to the practice of the court, may make an order determining whether or not the licence or consent is unreasonably withheld and, where the judge is of opinion that the licence or consent is unreasonably withheld, permitting the assignment or sub-lease to be made, and such order is the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease is not a breach thereof."

This section should be amended to give effect to the following requirements:

(*a*) every lease wherein the right to assign, sublet or otherwise part with possession is restricted should be deemed to contain a provision that consent to assign, sublet or part with possession will not be unreasonably withheld;

(*b*) any agreement purporting to waive the requirement set out in (*a*) shall be null and void;

(*c*) the landlord should be entitled to reasonable expenses incurred in granting leave;

(*d*) in determining whether consent to assign, sublet or part with possession has been unreasonably withheld, a court should consider all the relevant circumstances, including but not limited to the duration of the original term and the length of the term remaining when consent is sought.

Contracting Out of Exemptions from Distress: Any attempt on the part of the tenant to waive his rights with respect to exemptions from distress and other protective measures under *The Landlord and Tenant Act* should be null and void.

Contracting Out with reference to Tax Reduction Benefits: The Residential Property Tax Reduction Act, 1968 should be amended to make it an offence, punishable by fine, for any landlord to insert a waiver clause in a lease whereby the tenant purports to waive the benefits conferred upon him by the Act.

CHAPTER V

THE OBLIGATION TO REPAIR

The question of where the primary responsibility for the repair of leased premises should lie has been a source of much concern. Briefs which were submitted to the Commission and the survey of tenants' opinions (the results of which are reproduced in Appendix A) indicate that repairs are an important factor in the landlord and tenant relation. This chapter will give a brief history of the responsibility to repair at common law, the manner and extent to which it has been modified by statute, and the recommendations which the Commission makes for reforming this part of the law.

1. The Responsibility to Repair

The general rule of the common law is that, in the absence of express stipulations and except in the case of furnished premises, a landlord warrants neither that the premises are fit for any particular purpose nor that he will put them in repair at the commencement of or during the term. In addition, the landlord is not liable for injuries sustained by the tenant or his guests as a result of the defective condition of the premises. Even in the case of furnished premises, although there is an implied condition that they are fit for human habitation when let, the landlord is under no obligation to keep them in that condition. Apart from fraud or from any statutory or contractual requirements, the landlord of unfurnished premises has no obligation to repair.

Historically, the law of landlord and tenant was developed in an agricultural setting based on extended tenancies. The justification for relieving the landlord from liability for harm sustained by the tenant and his guests and from an implied obligation to repair had at least an arguable validity. The growth of modern cities and the inevitable changes it has wrought in the way people order their lives requires a re-evaluation of the efficacy of the traditional common law rules regarding fitness and repair.

It is an economic fact that the modern residential tenant is less likely to be able to bear the cost of undertaking repairs. In the typical urban apartment tenancy, which is usually of quite a short duration, the landlord is generally considered to be the person having the major interest in the condition of the leased premises. It is the landlord who receives not only the rent, but also the benefit which results from improvements to the property, including repairs. It is the landlord, therefore, who ought to bear the primary responsibility to repair. He should be required to provide premises which are fit for human habitation and are in a good state of repair and he should be primarily responsible for keeping them in that condition.

The following examples indicate some consequences of the present state of the law:

(*a*) In the usual case where there is no agreement by the landlord that he will repair, then apart from fraud and the operation of local by-laws and such statutes as *The Public Health Act*, the landlord is not responsible for any repairs, no matter how necessary. Nor is he responsible for damages suffered by the tenant because of the defective condition of the premises;

(*b*) If a house which has been leased is destroyed, apart from contractual stipulations, the landlord is under no obligation to repair or rebuild, and the tenant must continue to pay rent and carry out his other obligations contained in the lease covenants;

(*c*) If a tenant has entered into the usual covenant to repair taken from *The Short Forms of Leases Act* and found in most residential leases, i.e. "to repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted" with the further requirement "that the tenant will leave the premises in good repair on the expiration or sooner determination of the term," then, subject to the exceptions noted, the following consequences may ensue:

(i) as the covenant to repair in *The Short Forms of Leases Act* includes the obligation to keep "in good and substantial repair," then in the absence of any contrary stipulation, should the premises be wholly destroyed by external agency other than fire, lightning or tempest, the tenant is required to rebuild the premises;

(ii) as recently as 1963, in the case of *Vicro Investments Ltd.* v. *Adams Brands Ltd.*, [1963] 2 O.R. 583, the Ontario High Court has declared that the short form repair covenant obliges the tenant to leave the premises in the condition in which he found them at the beginning of the term, apart from reasonable wear and tear and damage by fire, lightning and tempest. If the tenant is required to put the premises in any higher state of repair, that requirement must be expressed in plain language in the lease. Even on this basis, however, the tenant assumes a heavy burden to effect repairs;

(iii) in any event, even if the tenant is not bound by covenant to repair, unless the landlord has obligated himself to repair he cannot be compelled to do so. The result is that the tenant must repair at his own expense or continue to suffer the inconvenience caused by the lack of repair;

(*d*) Even where there is no covenant regarding repair and neither the landlord nor the tenant is under an obligation to repair, the common law implies an obligation on the tenant to use the leased premises in a tenant-like manner. The law is well settled that, in the absence of a covenant by the tenant to repair he is not liable for mere wear and tear. He is liable, however, if he fails to effect such repairs as are necessary to prevent decay or destruction of the premises. Failure, for instance, to repair a minor breach in the roof of a leased house when afterwards the roof is blown off because of the failure to repair, can result in the tenant being liable for the resulting damage.

The obligation referred to in example (*d*) is not completely and clearly defined by the present law. Apart from the question of who shall be responsible for repair generally, it would seem proper to consider limiting the tenant's responsibility for such "house-keeping" obligations to actions which are short of actual repair. It is reasonable to require a tenant to notify his landlord within a reasonable time of the need to effect repairs to prevent increasing the damage. It is, however, impractical to expect the tenant to know, as he now must, if his attempt to accomplish minor repairs in order to forestall the need for major ones will be effective. It would indeed be to the landlord's advantage to control the making of all repairs and hence the safeguarding of his investment.

This re-ordering of affairs need not affect other normal house-keeping obligations which should be with the tenant. In any case, tenants should still be responsible for damage caused by their negligence or wilful actions. The tenant's house-keeping tasks would best be limited, however, to such items not requiring true repair, as the changing of electric fuses, keeping the premises clean and unblocking minor plugs in sink and toilet drains where the services of a plumber are not required.

2. The Tort Liability of Owners and Occupiers

It has been necessary to allude to a landlord's lack of responsibility for personal injury to the tenant and his guests by reason of the non-repair of unfurnished premises. It must be pointed out that this is not an area of the law where responsibilities are clearly defined.

The Commission is mindful of the serious nature of the policy and practical considerations involved in these matters and in the law of tort generally. In this interim report we are mainly concerned with the rights and duties of landlords and tenants arising *ex contractu*. We reserve the matter of general tort liability for consideration at a future time.

3. The Present Position in Practice

Almost all landlords interviewed were of the opinion that it should be the landlord's responsibility at the beginning of the tenancy to provide premises which are fit for the purposes intended and to maintain them during the tenancy so that they remain in a fit condition as far as health and safety are concerned. Many landlords believed this to be the present state of the law. To some extent this misconception was based on the existence of housing standards by-laws in some municipalities. Very few landlords, however, apart from those renting substandard accommodation, ever became involved with municipal officials responsible for enforcing such by-laws. Except for these few, landlords' knowledge of the operation of housing standards by-laws is minimal.

With rare exceptions those landlords who hold the view that the responsibility for effecting repairs and maintaining leased premises should be upon landlords were opposed to any statutory enactment to accomplish this end. Their attitude was that enforcement of public health statutes and municipal housing standards by-laws was sufficient protection for tenants. In effect they cast the onus on municipal authorities for ensuring enforcement of the standards of dwelling houses. Both landlords and tenants agreed that the landlords' responsibility to repair and maintain premises should be subject to the tenants being liable for negligent or wilful damage and also subject to an obligation on tenants to perform normal house-keeping tasks such as keeping the premises clean.

Minimum standards by-laws have been passed by many municipal councils both under the authority of their private acts (Toronto, Ottawa and Windsor) and under section 30 of *The Planning Act* (Kingston). An examination of the City of Ottawa By-law 100-64, which is reproduced as Appendix B to this report, indicates that minimum standards are set out in substantial detail. In almost all the by-laws examined the specifications represent a serious and studied attempt to achieve a reasonable standard of health and safety requirements.

The concept of local municipal councils being enabled to set minimum housing standards has the following factors to recommend it:

(*a*) Municipalities have differing needs. A reasonable standard in one municipality may be inappropriate in another. Ideally, local control is more likely to achieve the ends sought than general legislation aimed at providing for the establishment of minimum housing standards. The locally elected municipal representative might be expected to have a greater understanding of local conditions. Local administration also has the advantage of being close to the community it is intended to serve and also of having a greater appreciation of local conditions.

(*b*) By-laws of this type, having enforcement machinery, can have and do have a beneficial result in requiring adherence to minimum standards. By-laws provide for inspection and the citing of infractions by municipal inspectors. Failure to carry out the correction of infractions can result in proceedings before a magistrate for breach of the by-law. Failure to comply with the requirements for repair and maintenance of the dwelling can ultimately result in an order requiring the building to be demolished and the land levelled and cleared.

(*c*) Provision is made for extensions of time for carrying out the requirements of the by-law as ordered and for enacting by-laws providing for loans to owners by the municipal council to finance the cost of repairs or of levelling and grading.

Both the Toronto and Ottawa by-laws were examined in their operation. Those responsible for administering them have achieved many of the purposes envisaged by their drafters. It was observed that inspectors made every reasonable effort to obtain evidence to substantiate the violations noted. Objectivity of assessment was aided by the taking of excellent colour photographs of the interiors and exteriors of premises. There appeared also to be excellent liaison with such other concerned authorities as the Department of Public Health, Ontario Hydro, local fire departments and welfare organizations.

Minimum standards by-laws have certain limitations. Those responsible for their administration acknowledged that a considerable limitation is imposed by the size of the inspection staff available. At the time of this study the City of Ottawa reported that they had 18 inspectors, Toronto had 55, and Kingston had one. At least one authority has considered that in order to achieve reasonable enforcement of standards there should be one inspector for every thousand buildings or one inspector for every ten thousands of population. Municipal authorities examined are aware of the need for adequate inspection but some additional provincial initiative would be necessary to further the enforcement of housing standards.

Another factor limiting the effectiveness of the housing standards by-laws is that there is no provision for any private right of action. Those municipal housing standards by-laws examined do not affect the repair obligations by which tenants are bound in their leases. Section

3 (4) of Toronto By-law 73-68 casts the burden of the owner's responsibility for maintaining standards on tenants where they are made responsible for repair and maintenance by covenant as well as on owners. See also Ottawa By-law 100-64, section 42 (c). (. . .)

In practice the enforcement of housing standards by-laws is almost exclusively concerned with dwellings where the municipal enforcement officials do not call upon tenants to effect repairs. Landlords in these cases have small hope of recovery against tenants. If however, the by-laws were enforced in cases where tenants could be sued and recovery obtained, it is apparent that, even if the landlord were initially made responsible under the by-law provisions, the burden for paying for repairs would ultimately be on the tenant. This will most likely be the case where *The Short Forms of Leases Act* applies and the covenant to repair contained there is used.

The initial priority of housing standards by-laws is the maintenance of standards. The impact of the burden of compliance, while usually on the landlord, is not always so. As a result, the by-laws do not really affect the ultimate responsibility of the landlord or the tenant for repairs.

In examining the operation of municipal housing standards by-laws, the beneficial aspects represented only one side of their effects. Other effects, which were not unanticipated, are a serious cause for concern.

When a property owner, under compulsion of a housing standards by-law, expends a considerable sum of money in converting a substandard dwelling into one conforming to the by-law, certain results are almost inevitable. Quite naturally, a rental increase usually follows and often such increase places the accommodation outside of the financial capacity of the existing tenant.

In addition, many landlords report that certain tenants are chronically poor house-keepers and do not respect their obligations towards the landlord. Municipal officials administering minimum standard housing by-laws noted the significance of this complaint. Hence, where repairs are effected, very many tenants can anticipate receiving a notice to quit. In recognition of this fact, the City of Ottawa has introduced special house-keeping training classes for tenants involved in the city's urban renewal projects. These excellent projects can have little impact in the case noted.

It appears unfair to landlords that they should be compelled to retain a tenant when previous experience indicates that he will be unsatisfactory. The private landlord cannot be and should not be expected to continue to rent to an unsatisfactory tenant. While the landlord may have been content to do so when the premises were in an unsatisfactory state of repair he should not be forced to undertake the duties of social welfare authorities.

The limits of the private sector to satisfy the pressure for rental accommodation must be recognized. Increasingly, it has become apparent that unless the public sector (represented by various govern-

mental, quasi-governmental, co-operative and service organizations, including subsidized rental schemes within the private sector, limited dividend projects under section 16 of the *National Housing Act*, and low rental government projects based on inter-governmental co-operation), fulfils a greater role in rental development, inordinate pressure will be exerted on the private sector. If the private landlord is required to assume the greater part of the responsibility for the maintenance of standards he is entitled to maintain a maximum of freedom in making business decisions relating to a tenant's suitability. Interestingly, a significant amount of landlord opinion welcomed the growth of the public sector to assist in the fulfilment of the commonly accepted goal of good housing for all.

If tenants know that their security of tenure is threatened by the enactments which are intended to ensure reasonable standards of fitness, it is not unreasonable to suggest that they will be reticent to seek enforcement. Nevertheless, landlords often are of the opinion that the tenant is responsible for the housing standards by-law being enforced. As a result, "retribution" often follows.

Some jurisdictions, in response to this problem, have required that a certificate of fitness must be obtained at fixed periods or when a new tenancy is entered into with respect to uncertificated premises (see Michigan Enrolled House Bill No. 3188, reproduced as Appendix C). This, it is felt, will provide the means of ensuring a regular course of maintenance and repairs. Municipal by-laws (e.g. Ottawa, section 46 (b)) provide for the issuance of certificates of compliance to any interested person. By-laws also contain provisions similar to Kingston By-law No. 5721, which prohibits the use of any residential property for residential purposes that do not conform to the minimum standards. Such schemes as that obtaining in Michigan advance the procedure by requiring a certificate of clearance before the premises may be rented, as well as requiring certificates to be obtained on a periodic basis. The merit of such a scheme is that inspections become routine and do not depend on the reporting of alleged violations. To this extent tenants will not be suspected of having "informed". The danger inherent in such procedures is that their administration will be difficult and that they will spawn a new bureaucracy.

The Commission is convinced that housing standards by-laws and public health legislation do provide a partial means of dealing with the problems of repairs and of substandard dwellings. In themselves, howhowever, such enactments are not enough. Some further legislation is needed to set out clearly the obligations of landlords and tenants and how they may be enforced.

4. The Proposed Solution

While the various aspects of the landlord and tenant relationship were being considered the property interest of the landlords was constantly borne in mind. If the need for protecting the private property interests of landlords is neglected, not only will a vital interest be overlooked but an unfavourable reaction can be anticipated ranging in form

from withdrawal of rental investment capital to increased rents. Experience in other jurisdictions can provide some insight into which measures are considered necessary in order to provide a landlord and tenant law more balanced in its effects, between landlords' interests, tenants' interests and the public interest and which will achieve a salutary effect in this troubled area. As in so many other areas, being the subject of scrutiny for law reform purposes, the *public* interest has become an increasingly important consideration.

The notorious anomalies, peculiar to the law of landlord and tenant, were formerly considered almost exclusively the concern of the immediate parties to the relationship. Increasingly, the public interest has been the basis for intervention in the area of consumer purchase contracts, as well as in the area of real and personal property mortgages. As has previously been stated, the law of landlord and tenant has seen little development beyond its property concepts rooted in the tenants' acquisition of a leasehold estate. Where the realities of life and the need for the protection of vital human interests are not recognized by the existing law, and when this lack of recognition produces many unhappy and anomalous results, then existing arbitrary legal rules must yield to a re-examination of the law, based upon a realistic assessment of values and needs.

The present landlord and tenant laws furnish tenants with very little recourse where premises are unsafe and unhealthy, even if the condition is not of their doing. The physical and psychological effects of housing which is below reasonable standards of fitness have become increasingly well known. Faced with such unsafe and unhealthy conditions, and a landlord who is insensitive to such conditions, tenants have available to them the expedient of seeking more suitable accommodation—but only at the end of the leasehold term. A farmer who raises his domestic animals in conditions which amount to cruelty under the *Criminal Code*, section 387 (c) is subject to criminal prosecution. Upon conviction, the farmer must mend his ways and take steps to remedy the situation. Apart from acts amounting to criminal negligence under section 191 (1) of the *Criminal Code* and provisions of *The Public Health Act* and minimum standards by-laws, the residential landlord has no comparable obligation to his tenants.

If repairs are effected by a landlord, the obligation to bear the repair expenses is not affected by the statutes. In addition, apart from criminal negligence, any illnesses or injuries suffered by the tenant or his family which are occasioned by the condition of the premises, are at present matters for which the landlord is not legally responsible.

It is for these reasons that the Commission recommends that the repair obligation and an obligation relating to the fitness of the premises for habitation should be placed upon the landlord. Through his property interest, the landlord is the principal beneficiary of repairs effected. Many landlords recognize and voluntarily carry out the repair obligation without the goad of mandatory legislation. The major impact of the suggested changes will be on those landlords who do not recognize any but a mandatory legal obligation.

Reasonable qualifications must be placed upon the extent of the landlord's obligations. The negligent or wilful acts of the tenant and his guests are instances for which the landlord ought not to be held responsible. There are, in addition, a number of house-keeping tasks which, in the absence of contractual stipulation or a management policy to the contrary, tenants ought to do for themselves. These tasks would include cleaning, polishing, and changing fuses and light bulbs within the demised premises.

For those who were instilled with the importance of maintaining freedom of contract and of enforcing contracts legally entered into, there is a natural reluctance to interfere in leasing arrangements. Canadian courts have steadfastly adhered to freedom of contract concepts in dealing with the landlord and tenant relationship. The situation has been described as a cyclical one. Under conditions favourable to landlords, the bargaining power of the landlord allows for the inclusion of covenants imposing greater burdens on the tenant. When conditions change and there is a greater availability of rental accommodation the bargaining position changes in favour of the tenant. This, however, is not a correct model of what does happen. During periods of high demand for rental accommodation a variety of obligations are imposed upon tenants, along with provision for higher rents. From the experience of landlords during the period 1963-1965, however, when there was an increase in the rate of apartment building and a brief "over-supply" of rental accommodations, it is apparent that tenants do not obtain compensating advantages. Rental allowances, of from one to three months, were given, but rarely were changes made in the other lease covenants. It is not completely clear whether the failure to extract advantages by way of relief from the usual onerous tenant covenants was because of unwillingness on the part of landlords to agree to, or of tenants to require, such changes being made as a condition for executing the lease.

The landlord and tenant relationship is not, if indeed it ever was, one where tenants have a real freedom to contract. Traditional statements which maintain that a tenant need not agree to the leasing covenants but can seek agreement on more suitable terms elsewhere are not borne out by what happens in the real world of landlords and tenants. If protection is necessary for tenants and if a balancing of the interests of the landlords and tenants is to be undertaken, then inevitably, some long standing concepts must suffer.

As even the most objective assessment of the landlord and tenant relationship discloses an impressive disparity between the rights and duties of the landlord and tenant, the changes suggested seem inevitably to take place at the "expense" of the landlord. Ultimately, the policy which governs whether these changes should be made must be based on a close examination of the rights which are to be affected. If a law is, on balance, unfair, it should be changed. If mere tinkering with a particular right in order to "civilize" it will still leave its worst features intact, then change can hardly do more than excite false hopes. Thus to give statutory protection to a class of citizens and yet permit contracting out of that protection invites contracting out. To maintain

that tenants freely contract out of the statutory protection relating to assignment and subletting and exemptions from distress is to regard freedom of contract in its most limited sense. It is unlikely that tenants signing the standard form of landlords' lease undertake contracting out obligations voluntarily, for, as has been stated, the modern lease more often represents a contract of adhesion than an individual contract freely entered into. In the area of landlord and tenant there are sound reasons for the legislature intervening in order to do justice.

For these reasons, and because contracting out of statutory protection is the rule where leases are professionally drawn, it is necessary to provide expressly that any attempt to limit the application of the statutory provisions in whole or in part, will be null and void. The extent of contracting out of the statutory protection, in cases of the right to assign or sublet and in the case of exemptions from distress, provide an adequate basis for predicting that contracting out of the proposed repair and fitness provision will take place if it is permitted.

It is further suggested that the statutory change in repair obligations which is proposed contain a provision that the privilege of a prospective lessee to inspect the premises shall not defeat his right to the benefit of the new obligations imposed on landlords. In enacting similar legislation effective July 1, 1968, the State of Michigan (Bill No. 3384) added a corresponding provision.

All residential tenancies and holdings, including licences, should be covered by the landlords' obligation to repair and maintain. The licencee-licensor arrangement must be included to prevent landlords from evading their responsibility by altering the form but not the substance of the landlord and tenant relation. All residential tenancies, of whatever duration, must be included because the cost of repairs ought to be apportioned economically among a series of tenants throughout a period of time. If the obligation to repair is left on tenants then the tenant at the time when repairs are effected must immediately bear the entire cost of the repairs. This precludes the spreading of such costs over a reasonable period and among the subsequent tenants who would also benefit.

A further problem is who should enforce the obligation for maintenance and repair to be imposed upon the landlord. It is apparent that municipalities, being the only bodies legally able to enforce minimum standards by-laws, are not likely to have the facilities to enforce any enlarged standards of maintenance in as many cases as will require attention. Unless there is clear provision giving a private right of action none will be inferred by the courts. The municipal by-laws provide for enforcement by the municipality, the costs being borne collectively by the taxpayer, defendants on prosecution and recipients of orders for demolition and levelling. This still leaves open the subject of damages for breach of the obligation. Unless a private right of action is given to persons who might be affected by a breach of the landlords' repair obligations, the obligation will be largely precatory.

When in the course of an action on the new landlords' obligation a court is called upon to determine the nature and extent of that obligation, it should be proper for the court to consider all the relevant circumstances. This would mean that reference could be made to the standards imposed by any relevant public health legislation, regulations, or by-laws, whether directly applicable or not.

Alternatively to an action on the obligation, a breach of the landlords' covenant to repair should give rise to a right in the tenant to effect the repairs himself, at a reasonable price, and deduct the repair expenses from the next ensuing rental instalments. The tenant would have a right to sue for any amount which cannot be so deducted because of the end of the term. As an alternative to effecting repairs and deducting the repair expenses, the tenant should be able to terminate the tenancy and thereupon be discharged from further payment of rent and performance of other conditions or covenants contained in the lease.

In order that this right to effect repairs and deduct the cost from the rent or to determine the tenancy may be supervised adequately, the procedures whereby it may be exercised should be subject to the supervision of the court under summary proceedings similar to those set out in Part III of *The Landlord and Tenant Act.* This would require the giving of notice to the landlord to remedy the breaches of the obligation, similar to that required by section 18 (2) of the Act, subject to a prohibition against proceeding to repair or quit the premises without a court order or the written consent of the landlord.

Under *The Short Forms of Leases Act,* Schedule B, a breach of any tenant's covenant gives a right of re-entry and entitles the landlord to forfeit the term. This is subject to relief against forfeiture of the term given under section 19 of *The Landlord and Tenant Act.* A tenant, however, cannot determine the tenancy, save for a breach of a condition in the lease upon which the continuation of the lease is founded, or in the case of such occurrences as eviction by a title paramount to that of the landlord. Even a breach by the landlord of such covenants as that for quiet enjoyment provides the tenant with no means for the determination of a tenancy. It is therefore necessary to give such a right on breach of the landlords' implied repair covenant. Otherwise, tenants may be compelled to live in unsafe or unhealthy premises. This would be true especially if the tenant could not obtain enforcement of the local municipal housing standards by-law and has no funds to effect repairs upon obtaining a court order to do so.

One last point must be made in this chapter. It is necessary to be aware of the fact that if greater obligations are to be cast upon landlords, problems of financing will be created in areas where mortgage funds for renovation are not easily come by. It is not within the scope of this interim report to deal in detail with a solution for such problems. A perceptive, realistic and helpful assessment of this problem is contained in an unpublished study included as Appendix D to this report.

Note should be taken of the contents of the last mentioned article dealing with tax incentives for private construction and rehabilitation in the United Sates and in particular to the late Senator Robert F.

Kennedy's proposal, S. 2100, 90th Cong. 1st Sess., introduced July 13, 1967, amendment introduced on September 14, 1967, Amendment No. 316. Proposal S. 2100 combines long term low interest rate mortgage loans by the Government with tax benefits at every stage to induce private investors to build or substantially rehabilitate low rent accommodation. Considerable intergovernmental co-operation is required in dealing with municipal tax incentives. The proposal contains limited dividend provisions and cost of qualifying. The Commission recommends that consideration be given to providing similar financial assistance to landlords in Ontario.

Recommendations

The Commission therefore recommends that:

(1) Landlords be under a duty at the beginning of the term to hand over possession of premises in a good state or repair and fit for habitation.

(2) Landlords be under a duty to maintain the premises in a good state of repair and fit for habitation during the tenancy. This duty, however, should be subject to an obligation on the tenant to repair damage caused by his wilful or negligent conduct or that of persons brought onto the premises by him. The landlord's duty should also be subject to the obligation of the tenant to perform such normal housekeeping tasks as cleaning, polishing, changing fuses and light bulbs, etc.

(3) In determining the nature and extent of the landlord's obligation to repair, a court be able to consider all relevant public health legislation and municipal minimum housing standards by-laws.

(4) Tenants be given by statute a right of action to enforce, each for his own benefit, any repair obligation, whether devolving upon landlords by contract, lease, statute or municipal by-law.

(5) Where a landlord is in breach of his obligation to repair, the tenant after giving notice to the landlord and upon obtaining the order of a court, have the power to terminate the tenancy. By analogy to relief against forfeiture a court should be empowered to grant the landlord time to remedy the breach. Alternatively, at the request of the tenant, the court should permit the tenant to make the necessary repairs and deduct his expenses from the next ensuing instalments of rent.

(6) Consideration be given to the establishment of a system of tax incentives and low interest loans for the financing of the repair and renovation of substandard dwellings. If obligations are to be imposed on landlords reason dictates that they be given proper means to discharge those obligations.

(7) A prospective lessee's inspection of the premises not defeat his right to the benefit of the landlord's repair obligation.

CHAPTER VI

RESTRICTIONS AGAINST CHILDREN

Many tenant submissions were critical of landlords who refused to rent to families with young children. There is an admitted serious problem for such families which is not an outgrowth of the current crisis in housing but merely a continuation of a long standing situation. Landlords are sympathetic to the plight of such families but insist that it is both unfair and unrealistic to single them out as instruments of a desirable social policy. They maintain that in order for them to be in a position to expand the available market for family accommodation many changes must be made in the municipal taxation and zoning laws.

Firstly, they claim that there is an irrefutable logic in their present practice of, in effect, maintaining "segregated" accommodation. The social problems, especially in multiple family buildings, which are caused by families with young children being mixed with unmarried people, families with no children and older tenants are considerable. Whatever the sociological literature may have to say about the benefits of having an admixture of the generations, older people feel they are entitled to live in quiet surroundings, which is hardly possible in buildings where children are present. In the case of younger tenants, especially unmarried ones, the possibility of life styles causing conflict is the principal factor dictating separation.

Some jurisdictions in the United States have made illegal any discrimination against families with children "on the sole ground that there are children in the family". Where accommodation is denied to families with children for any other reason than that there are children in the family the statute clearly would not apply. The reason might be that the building was occupied with tenants without children and the landlord wished to preserve this special character of the premises. In fact, it would appear that the only time the statute would apply is where a family with children was being excluded from a building already occupied by families with children.

Landlords complain that zoning by-laws which create low density requirements make the cost of building higher than it need be. This, in turn, requires the maximization of profit through limiting the occupation of accommodation to tenants without families or to families with only one child (usually under a stated age). This is in addition to the management reason which is based on the incompatibility of mixing the tenants with and without children.

Examples of landlords who do not maintain such divisions are numerous and no claim is made that the decision to separate tenants is universal. Yet to force landlords to rent to families with children goes beyond the basic obligations which should be imposed on landlords.

The experience of the New York statute indicates that the decision to refuse to rent to a family with children is based on business reasons. Alleviation of the problem of families with children must proceed in a

different fashion. The superficially attractive solutions, such as requiring the rental to families with children, are precisely the kind of treatment which can lead to development capital being diverted to other investment sources.

It is basic to this problem that municipal, provincial and federal levels of government must provide incentives to private developers of accommodation for families with children. Current municipal tax and zoning structures, as well as development cost factors, favour development for a limited purpose occupancy. These factors, coupled with the higher maintenance and management costs of family accommodation units and amenities, which must be provided where children occupy rental units, militates against the development needed to satisfy needs for adequate rental accommodation.

The problem is circular because the financial obligations of municipal government require taxation and planning policies which often have a negative impact on providing necessary incentives to builders. The financial problems of municipal governments cannot be solved without co-operation and assistance from the other two levels of government. It is not the purpose of this study to examine the impact of these factors on the market of rental accommodation. However, the interrelation of the problems is noted for the purpose of establishing the proper means of apportioning responsibility. Were this not done the landlord would too often appear to be the culprit where public needs and expectations are unfulfilled.

It is certain that landlords do not deliberately discriminate against the family with children. The apparent discrimination has an economic basis. If the climate created by governments was favourable to the development of the family unit the private sector would no doubt voluntarily do its share towards relieving the existing conditions of hardship.

Recommendation

The problem of restrictions against children cannot be dealt with adequately by legislation. Many restrictions apparently unfair, in fact result from the special nature of the particular building rather than from any desire to discriminate. The accommodation problems of families with young children can be treated best by making it as attractive for developers to build for families with children as it is for other occupants. Discrimination solely on the basis that prospective tenants have young children is condemned but legislative action by way of direct prohibition is not recommended because it is not feasible and has not worked satisfactorily in other jurisdictions.

CHAPTER VII

RESTRICTIONS AGAINST TRADING

Tenants' submissions indicated that a significant body of landlords in the multiple accommodation area place restrictions on the tradespeople with whom their tenants may deal. The most usual restrictions relate to bread and milk deliveries, and cleaning serivces. In the case

of row housing (town houses, maisonettes, etc.) where the tenant is responsible for heating his own unit, restrictions are sometimes imposed requiring the purchase of fuel from a particular supplier and for preventing the transfer from one class of fuel to another (e.g. from fuel oil to natural gas).

In both classifications the objection is raised that it is an unwarranted restriction upon the tenant's freedom of choice. A second serious objection is that, not infrequently, the restriction results in a financial advantage to the landlord by way of payment from the particular supplier of goods or services. Payment is either fixed or is based upon a percentage of the dollar value of goods and services supplied. In the case of fuel requirements, the advantage to the landlord will usually be related to second mortgage terms, which terms are more advantageous than those available on the open market.

As far as the supply of such items as bread, milk and dry cleaning service is concerned the landlords' position is that an unrestricted admission of tradespeople causes too many people to be on the premises during the course of a day. This causes additional maintenance and repair expenses, inconvenience in elevator services at peak periods of use and an increase in the risk of theft and break-ins. Most tenants concede the merit of the landlords' reasoning. They still take objection, however, to the way this reasoning is translated into action.

The most frequent solution put forward is the establishment of a tenants' council to decide which suppliers should be given permission to enter the premises. As a democratic ideal the submission has some validity. As an administrative proposition it contains the basis for unduly complicating an already complicated relationship.

To leave the general situation as it is, it is submitted, does no great injustice to tenants. To create a structure for achieving a tenant consensus concerning the particular persons who will have the right to supply these goods and services contains within it more areas for new conflicts than the problem warrants.

Restrictions upon the purchase of heating fuels are usually included as provisions in the mortgage documents, often by way of restrictive covenant. To intervene in the landlord's financing arrangements, it is submitted, is an unwarranted interference.

In fairness to tenants the provisions relating to limitations upon the freedom to trade with whomsoever the tenant wishes should be brought to his attention in the lease. It is suggested that, in the case of fuel purchases, the vendor company should have to charge prices which are competitive with those of other suppliers in the municipality. If this latter condition is not met then the restriction should not be binding upon the tenants.

Restrictions on tradespeople imposed for legitimate purposes are acceptable realities of high rise apartment living. Tenants made aware of such restrictions in advance and unable to accept the nature and quality of the services offered with respect to particular accommodation are free to seek more agreeable arrangements elsewhere.

Restrictions imposed on tradespeople for purposes of ill-gotten gain fall into a different category. It may be that many landlords do not receive such payments, although acknowledgment of their receipt has been admitted publicly by one landlords' association. There is ample evidence to support the fact that they are received by building superintendents, frequently surreptitiously. Tenants should not be denied freedom of choice of tradespeople where such restrictions are imposed for improper purposes. The practice of tradesmen making payments to owners, their building superintendents or managers should be made illegal.

An informed electorate is the bed-rock of our democratic society. Its achievement and maintenance require concessions, compromises and, indeed, sacrifices. The restrictions imposed on tradespeople should not be extended to political canvassers, at reasonable periods and reasonable hours. It is no answer to say that these privileges are denied to other people engaged in other pursuits. One frequently has to draw the line where visible inconvenience results. The whole of human affairs involves a balancing of interests. Political canvassing beyond the threshold of the individual's private premises, whether in an apartment building or detached dwelling, is a matter of personal invitation. The political canvasser should not be denied the opportunity of having the invitation extended.

Recommendations

Restrictions Against Trading: Although there are valid reasons for permitting restrictions concerning the admission of tradesmen to multiple unit dwellings, the practice of tradesmen making payments to owners or superintendents of buildings in exchange for the privilege of exclusive access should be made illegal and subject to penalty.

Note: Mr. McRuer would prefer this paragraph to read as follows:

> [Although there are valid reasons for permitting restrictions concerning the admission of tradesmen to multiple unit dwellings the practice of tradesmen making payments to agents or employees of owners of buildings in exchange for the privilege of exclusive access should be made illegal and subject to penalty.]

Subject to this, restrictions should be permitted but where they are imposed their precise nature should be set out in a separate clause in future leases. The tenant should acknowledge in the lease that the restrictions were drawn to his attention before he signed the lease.

In this, as in other matters, the importance of the tenant receiving a true copy of the lease is apparent. We recommend that it be made obligatory that tenants be given such copy.

Legislation should provide that landlords of multiple family units shall not restrict canvassing and orderly distribution of election literature by candidates or their authorized representatives in federal, provincial, municipal or school board election campaigns.

CHAPTER VIII

ACCELERATED RENT

Many leases contain a covenant providing that upon breach of any covenant to be performed by the lessee, then at the option of the lessor all or part of the rent for the balance of the term shall immediately become due and payable. Such covenant, as it does not amount to a forfeiture, is not capable of being relieved against under the provisions of section 19 of *The Landlord and Tenant Act.* Not being a penalty, there is similarly no power in the court to relieve against enforcement of the acceleration of rent under the powers contained in section 19 of *The Judicature Act.*

Acceleration provisions are not peculiar to landlord and tenant law. Mortgages similarly provide for acceleration of principal repayments in the event of a breach of any of the terms of the mortgage including the provisions for repayment. In recognition of the basic unfairness of acceleration provisions the Ontario legislature enacted what is now section 20 of *The Mortgages Act,* R.S.O. 1960, c. 245, which states:

> "20.—(1) Notwithstanding any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable,
>
> (*a*) at any time before sale under the mortgage or before the commencement of an action for the enforcement of the rights of the mortgagee or of any person claiming through or under him, the mortgagor may perform such covenant or pay the amount of moneys due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay any expenses necessarily incurred by the mortgagee, and thereupon he is relieved from the consequences of such default; or
>
> (*b*) in an action for enforcement of the rights of the mortgagee or of any person claiming through or under him, upon performance of such covenant or upon payment of the moneys due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and upon payment of the costs of the action, the mortgagor may apply to the court for relief, and
>
> (i) if judgment has not been recovered the court shall dismiss the action, or
>
> (ii) if judgment has been recovered but no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place the court may stay proceedings in the action.

(2) Notwithstanding subclause ii of clause *b* of subsection 1, where judgment has been recovered and recovery of possession of the land has taken place, the court may stay proceedings in the action upon the application of a person having a subsequent lien, charge or encumbrance, made under subsection 1 within ten days after service of notice of the judgment has been made upon him.

(3) Where proceedings have been stayed under subclause ii of clause *b* of subsection 1 or under subsection 2 and default again occurs under the mortgage, the court upon application may remove the stay.

(4) This section applies to mortgages existing on or made after the 2nd day of April, 1953.

The interest of the mortgagee is thus protected by the requirement that the dismissal of the action or stay of proceedings is not ordered by the court until the unaccelerated arrears are paid or until the other breaches of covenant are remedied.

A similar provision might be introduced into *The Landlord and Tenant Act*, and the acceleration provisions, while still permitted, would be subjected to reasonable controls. As in the case of mortgages, the requirement that breaches of covenant be cured and unaccelerated arrears paid, will safeguard the landlord's interest.

The peculiarities of rent acceleration represent yet another example of the incidents of the tenant's leasehold estate. The acceleration does not destroy the tenant's leasehold estate; it merely provides for an alternative means of payment of rent.

Recommendation

Accelerated Rent: In order to make rent acceleration clauses less subject to abuse whilst still protecting landlords' legitimate interests where the landlord claims an acceleration of rent and if the tenant pays arrears or remedies the breach of covenant, a court should have a power to stay proceedings similar to that conferred by section 20 of *The Mortgages Act*, R.S.O. 1960, c. 245.

CHAPTER IX

MITIGATION OF DAMAGES UPON ABANDONMENT OF PREMISES BY TENANT

As long as the landlord does not acquiesce in the tenant's abandonment, rent accruing due under a lease remains recoverable.

The case of *Goldhar* v. *Universal Sections and Mouldings Limited*, [1963] 1 O.R. 189 (C.A.) is a clear example of a further anomaly based upon the tenant's acquisition of a leasehold estate. Mr. Justice McGillivray deals with this peculiarity at page 200:

"An anomalous situation undoubtedly exists when the duty imposed upon a plaintiff by the law of contract to do what he can to minimize the damages might, if allowed under property law, result, when he re-lets, in his being deprived of a right of recovery for his loss and the following extract from an article in The Michigan Law Review, vol. 23, pp. 221-2, must reflect the opinion of many:

> 'Turning aside for the moment from the attempt to mirror these legal rules of yesterday, today and the immediate tomorrow, one reflects on the curious yet characteristic glimpse it affords of the growth of our law. Long after the realities of feudal tenure have vanished and a new system based upon a theory of contractual obligation has in general taken its place, the old theory of obligations springing from the relation of lord and tenant survives. The courts here have neglected the caution of Mr. Justice Holmes, "that continuity with the past is only a necessity and not a duty." If one turns from a decision upon the conditions implied upon a contract for the sale of goods in installments, to one upon the obligation of the parties to a lease, one changes from the terms and ideas of the twentieth century to those of the sixteenth. The notion of "privity of estate" and its attendant rights and duties appears as quaint and startling as a modern infantryman with a cross-bow.
>
> 'The ancient weapons, reshaped though they have been in the attempt to fit them for modern uses, will at some future day, one conjectures, be altogether thrown aside. The doctrine of implied conditions, no longer disguised under such names as "constructive eviction" will be applied to leases and the law of landlord and tenant will be assimilated to the law of contracts generally. When the process is complete, one cannot doubt that the old rules as to the effect of surrender by operation of law, forfeiture, and eviction, as preventing the landlord from recovering his actual loss from the tenant's breach of contract, will wholly disappear and will be supplanted by the principles governing the effect of repudiation, breach, and rescission of other contracts. No less certainly the logic, inescapable according to the standards of a "jurisprudence of conceptions", which permits the landlord to stand idly by the vacant, abandoned premises and treat them as the property of the tenant and recover full rent, will yield to the more realistic notions of social advantage which in other fields of the law have forbidden a recovery for damages which the plaintiff by reasonable efforts could have avoided.' "

Thus, upon abandonment of the premises by the tenant there is no obligation upon the landlord to mitigate damages. This is an apparently unreasonable distinction between the obligation to mitigate damages applicable to a simple contract under contract law and the total absence of such obligation under the landlord and tenant law. There does not appear to be any reason to maintain this distinction. This would not only harmonize the responsibility of landlords with the generally accepted

requirements of contract law, but would also dispense with the requirements placed upon the landlord who chooses at present to mitigate damages as outlined at page 200 of the *Goldhar* case.

Recommendation

Mitigation of Damages: Where a tenant abandons the premises the present rule whereby the landlord is not required to mitigate his damages should be reversed so that the ordinary rules of contract relating to mitigation of damages will apply.

CHAPTER X

DOCTRINE OF FRUSTRATION

It is trite law that in the absence of an express provision to the contrary the liability of the tenant to pay rent remains notwithstanding the subsequent occurrence of some unforeseen event which makes the obligation unconscionable. Thus a tenant must continue to pay rent despite the fact that the premises are completely destroyed by fire: *Matthey* v. *Curling*, [1922] 2 A.C. 180. In such a case the tenant cannot take refuge in the doctrine of frustration applicable to contractual obligations. Under this doctrine the contractual obligations are discharged if the transaction is frustrated by the occurrence of some unexpected event that strikes at the root of the agreement. The effect of the application of the doctrine is that the contractual rights and obligations cease automatically upon the occurrence of the unanticipated event.

In Ontario the rights and obligations of the parties are further defined by the provisions of *The Frustrated Contracts Act*, R.S.O. 1960, c. 157, which amplifies and clarifies the implications of the common law doctrine. This statute does not apply to leases and neither does the common law doctrine of frustration, although doubts have been cast by high authority upon the soundness of this view: see Lord Simon and Lord Wright in *Cricklewood Property & Investment Trust Ltd.* v. *Leighton's Investment Trust Ltd.*, [1945] A.C. 221.

The classic reason ascribed for this unhappy state of affairs is that a lease creates more than a contract. It creates an estate in the land. The argument proceeds that since the estate remains vested in the tenant, the land remains available to him even though the buildings have been totally destroyed. The lease does not cease merely because it has become burdensome or, indeed, because performance of one or more of the contractual obligations has become impossible: Cheshire, *The Modern Law of Real Property* (9th ed., 1962), at page 396.

Though historically defensible, this view of the matter, particularly with reference to residential tenancies, is outmoded and unacceptable. The traditional rule should be reversed and the doctrine of frustration made applicable to residential tenancies. *The Frustrated Contracts Act* should also be made expressly applicable in order that the total rights of the parties may be properly adjusted.

Recommendation

Frustration of Lease: The doctrine of frustration of contract should be made applicable to leases. Where the premises have been destroyed by fire or been so damaged that they are no longer of use for the purposes for which they were let, the obligation to pay rent should cease. When the obligation to pay rent ceases, the landlord's obligation to repair should cease as well.

CHAPTER XI

TERMINATION OF TENANCIES

The subject of termination of tenancies has caused much difficulty for both landlords and tenants. Many tenancies have been kept alive because of an improper understanding of the means of terminating them. In addition there is uncertainty as to the status of overholding tenants after a term of years, there being apparent conflicting decisions in the Ontario Court of Appeal. The problem is shortly stated in Laskin, *Cases and Notes on Land Law*, revised edition, 1964, page 325: "Where rent is paid and accepted on a holding over so that a new periodic tenancy results, should the governing consideration in determining the kind of tenancy be the term or period length of the original lease, or should it be the way in which or the time unit for which rent is reserved?"

A number of statutory attempts have been made to deal with the problems of termination. *The Landlord and Tenant Act* of the Province of Alberta, S.A. 1964, c. 43, provides an excellent basis for study. The statute, being Appendix E to this interim report, provides:

(*a*) for notice in writing. There is a problem in permitting oral notice to quit where there is a dispute as to sufficiency.

(*b*) that an irregular notice shall take effect on the last day of the period of the tenancy next following the giving of notice. This provision corrects a hardship which exists at present in Ontario, where the notice is improperly given.

(*c*) for the form of notice which may be used (Forms A & B). It is suggested that the relevant provisions for giving notice be posted in rental accommodations setting out the rights and duties of tenants and that the forms of notice be added as a component part.

(*d*) for the problem of serving the tenant by establishing alternative methods of service.

(*e*) for the simplification of termination of weekly and monthly tenancies in cases where rent is payable other than on the first day of the week or month.

(*f*) that the tenancy from year to year may be terminated by notice "on or before the sixtieth day before the last day of any year of the tenancy" which is an improvement over the present

requirement of one-half year's notice. The problem of a year to year tenancy not based on a calendar year is dealt with in section 8 of the statute.

(*g*) rules governing the creation of a tenancy by overholding and payment of rent (section 9 (1)). It will be noted that in the case of a tenancy for a term of years, where the term has expired, the payment of rent does not create a new tenancy unless the parties agree. The onus of proving the creation of a new tenancy is on the person so claiming (section 9 (2)). The landlord is entitled to compensation for use and occupation after expiry of the term. The tenancy from year to year is an anomaly and rarely exists other than by implication. Therefore section 9 of the Alberta statute represents a realistic avoidance of this anachronism.

Recommendation

Termination of Tenancies: New rules should be enacted to govern the form of notices to quit, the time for giving such notices, the method of calculating time when notice has been given, the cases where overholding tenancies will arise and to provide for substitutional service. The Alberta legislation is a helpful guide in the formulation of these rules.

CHAPTER XII

THE INDEPENDENCE OF LEASE COVENANTS

This study has emphasized the unhappy legal positions of tenants which result from the lease being considered a conveyance of an estate in land. Very few covenants are implied in favour of the tenant and even where there are covenants agreed upon in favour of the tenant, an additional complication exists. The usual rules of contract law making bi-lateral contractual provisions mutually dependent will excuse one party from further performance upon a substantial breach of a material covenant by the other party. In the case of a lease, covenants are presumed to be independent, therefore a breach of the landlord's covenant, for example, to heat, does not relieve the tenant of his obligations, including the obligation to pay rent. (See *Johnson* v. *Givens*, [1941] O.R. 281, (C.A.); see *Edge* v. *Boileau* (1885), 16 Q.B.D. 117).

The logic of the distinction is difficult to discern. Historically the early agricultural economy, out of which our landlord and tenant law grew, placed principal importance on the conveyance of the leasehold interest. The supporting covenants being secondary, there emerged the continuing duty to pay rent even though the building is destroyed. Covenants may be broken by the landlord without any effect on the obligation to pay rent for his estate. Concepts rooted in an agricultural economy of a by-gone day provide little logical relevancy for today's landlord and tenant realities.

The independence of covenants in a lease does not usually affect the landlord because of the provision contained in *The Short Forms of Leases Act*, R.S.O. 1960, c. 373, Schedule B, para. 12 which in effect transforms tenants' covenants into conditions, including the covenant to pay rent. Thus, the violation of a covenant provides the landlord with the right to re-enter "as of his former estate" just as in the case of a condition. The result is an imbalance of rights in favour of the landlord.

A re-examination of the independence of covenants in leases is required, and it is submitted that covenants be treated as dependent in the case of the tenant's obligation to pay rent where the landlord has broken his obligation such as covenants to heat, for quiet enjoyment or to repair. Under the present state of the law the strange result is that, barring a total eviction, the tenant must continue to pay rent even if he has a right to sue for damages.

As under paragraph 12 in Schedule B of *The Short Forms of Leases Act*, covenants amount to conditions in favour of the landlord, there is some justification for giving similar rights to the tenant. There is little excuse for requiring a tenant to be bound to pay rent where the landlord's covenants for making repairs, heating, and for quiet enjoyment have been broken.

It is suggested that the right to terminate the lease and to obtain possession would best be restricted to cases where a court order is obtained, under proceedings similar to a Part III application under *The Landlord and Tenant Act*, and that self-help be done away with except in cases of an abandonment.

At present self-help in regaining possession is permitted. Unfortunately, many tenants and landlords report that this is often effected by the landlord changing the locks. The changing of locks represents an illegal, though a very effective, means of regaining possession and of effecting an illegal distress. Effectiveness, while it has much to recommend it, cannot be countenanced where the conduct is patently illegal. In order to encourage use of correct legal procedures a penalty should be attached to the illegal changing of locks.

Under a statutory provision permitting determination of tenancies for breach of landlords' as well as tenants' covenants the court should have the power to grant relief against forfeiture not only to the tenant but to the landlord as well, on such terms as the court may deem just.

The proposals made above, if implemented, would have the following effects:

(*a*) they would make self-help illegal except in the case of abandonment as described;

(*b*) they would make it punishable by fine to change locks with a view to terminating a tenancy or effecting an illegal distress;

(*c*) they would remove the obligation on the part of a tenant to go on paying rent if certain important covenants of the landlord were breached; and

(*d*) they would equalize the rights of landlords and tenants to determine the tenancy upon breach of covenant, but only after adjudication by the court. This would not affect determination of tenancies by mutual agreement.

Recommendation

Independence of Covenants: The covenants in leases should be treated as dependent, each upon the others, and the positions of landlords and tenants respecting breach of covenants should be assimilated. This would eliminate the anomaly of a tenant having to pay rent and perform his other obligations under a lease even though the landlord has broken such covenants as to repair, provide heat and give quiet enjoyment.

Where the other has broken a covenant in the lease, either the landlord or the tenant should be able to apply to a court for an order terminating the tenancy. Relief against forfeiture should be available to either party in a proper case.

CHAPTER XIII

LESSEES' RIGHTS PRIOR TO TAKING POSSESSION (*INTERESSE TERMINI*)

The "interest in the term" obtained by a tenant under a valid lease, before entry, has been referred to earlier. Without an actual entry the "estate" interest does not vest in the tenant and no covenant dependent on the existence of an estate, for example, the covenant for quiet enjoyment, can be enforced under mere *interesse termini*. In Laskin, *Cases and Notes on Land Law* there is an excellent summary of the *interesse termini*. With the kind permission of the author this summary has been reproduced and is annexed as Appendix F. The *interesse termini* represents another instance of the negative impact of the estate aspect of landlord and tenant law. It has been dealt with by legislation in England and under this present law a tenant under a valid lease is in the same position before and after possession has been taken. It is suggested that legislation be enacted in Ontario to the same effect.

Recommendation

Lessees' Rights Prior to Taking Possession (Interesse Termini): A lessee under a valid lease should have the same rights *before* he takes possession as *after*. Accordingly the doctrine of *interesse termini* should be abolished. The inadequacy of relief available to a lessee to whom possession has been wrongfully denied thus would be remedied.

CHAPTER XIV

COVENANTS RELATING TO THINGS IN BEING (*IN ESSE*) AND THINGS NOT IN BEING (*IN POSSE*)

One of the ancient rules, as enunciated in *Spencer's Case* (1583), 5 Co. Rep. 16a, which has remained part of the law of landlord and tenant is that an express covenant which touches and concerns the subject matter of the lease runs with the land and is binding on successors in title whether or not these "assignees" are named, so long as the covenant refers to something already in existence (*in esse*). An example is a covenant to repair an existing wall. Where, however, the covenant refers to something not in existence (*in posse*) at the time of the lease, the covenant does not bind the assignees unless the original lessee covenanted for himself *and his assigns.*

As in the case of the *interesse termini*, this anachronism should be done away with by appropriate legislation. Thus covenants "*in posse*" should be treated in the same way as covenants "*in esse*".

Recommendation

Covenants Relating to Things in Being (*In Esse*) *and Things Not in Being* (*In Posse*)*:* The rule which holds that covenants concerning the leased property relating to things in existence at the time of the demise run with the land, while covenants relating to things not in existence at that time do not run with the land, should be abolished.

CHAPTER XV

THE LEASEHOLD ADVISORY BUREAU

Unless reasonable procedures are made available to tenants to permit their rights to be dealt with speedily and inexpensively, changes in the law, ostensibly for their benefit, are apt to remain little more than pious wishes. There is evidence, based on responses from Area Legal Aid Directors, that applications for certificates arising out of landlord and tenant disputes have been negligible in number. Similar experience has been noted in American and English studies. Those tenants who most require assistance are the least likely to seek legal redress by consulting a lawyer.

Any serious legislative approach to the revision of the landlord and tenant laws must be predicated on the introduction of effective reforms. Traditionally, it has been held that it is up to the intended beneficiaries of a statutory provision to utilize the rights created upon the changes being effected. Ideally this is what is hoped for. When a new statutory provision is not used by those it was designed to help it is a reasonable assumption that the reasons for its enactment were somehow misconceived. Any such assumptions concerning the landlord and tenant laws must be tested against an additional consideration. There is evidence that many tenants because of unhappy experience or because

of unfamiliarity with their rights are unwilling to take a matter to the courts. They are happier resorting to government agencies and tenants' associations for advice and assistance. Evidence disclosed that these agencies and associations have had very creditable success in a conciliatory role.

Municipal authorities could play a very useful role if they were authorized to create rental conciliation services to aid landlords and tenants in settling their disputes. Many landlords are unaware that certain of their actions are in fact illegal because the means they employ have never been questioned by a tenant. The changing of locks without the tenant's consent is, for instance, common practice. A communication from a third party questioning the legality of what the landlord has done often results in legal advice being sought and a correct legal procedure being followed. Tenants also can benefit from being advised to seek legal advice and in proper cases should be referred to the local area legal aid director.

It must be emphasized that no conciliation service should act in the capacity of legal adviser, now has this been the case in those government departments and in those tenants' associations which have been studied. Various kinds of conciliatory programmes have been employed in the United States in landlord and tenant matters. The history of conciliation in labour disputes has been a feature of Canadian labour law for over forty years and a recent survey of labour and management opinion acknowledges its continued usefulness. It is not without reason that among experiments in landlord and tenant relations one of the more successful has been the collective agreement between landlords and tenants' associations, a feature of which is conciliation. Failure to recognize that total reliance on traditional procedures is not enough can result in statutory reform failing to achieve its purpose.

The recommendation that conciliation procedures be created is not intended and should not be interpreted as a criticism of the courts. It is intended only to deal realistically with a problem where a different approach, in some ways unconventional, could usefully be employed. A conciliation procedure would in no way usurp the function of the courts whose paramountcy must be and is recognized.

Professor A. Chayes of the Law School of Harvard University in the foreword of Wald, *Law and Poverty* (1965), stated:

> "... there is a built-in promise that the law itself can be the dynamic of change, that the poor man, by learning about his rights under the law and by acting to vindicate them can gain self-respect, a sense of personal worth, the realization that he has value in himself and is not just an object to be manipulated by the system."

Professor Chayes' statement supports the axiom that when rights are given to the subject they should be rights which he can exercise. There is evidence, both in the United States and England, that substantive law reform is not always sufficient by itself. Reference will be made in a subsequent chapter to the need for examining means of making

the courts both more accessible and better able to handle the volume of litigation which can be anticipated. There is, however, the problem of the "perfect" statute which does not approach the expectations of those responsible for its enactment.

The case of the English *Rent Act, 1965*, published as 1965, c. 75, is illustrative. The then Minister of Housing said at the time of its enactment:

> "Anybody who is the rightful occupier of a house in the broadest sense will from now on be protected against people who bully them, people who prosecute, people who . . . try to force them to get out of a place. That will become a crime. These people are to be protected throughout the country."

The "Shelter" Report *Notice to Quit* published in September, 1968, dealt with the Act's efficacy. One of the major discoveries of the "Shelter" Report is that there still exists a considerable body of tenants who are either ignorant of their rights or fearful about exercising them. The Report states:

> "It is clear . . . that there is a great need for advice and guidance on housing matters . . . the field is complicated and few are familiar with more than a part of it. Advice is needed on the law relating to landlord and tenant, public health requirements . . . and the 1965 Rent Act."

The late Senator Robert Kennedy, when Attorney-General, told the Chicago Law School:

> "Our new problems are a little more difficult. The fees are less. The rewards are greater. First we have to make law less complex and more workable. Second, we have to begin asserting rights which the poor have always had in theory but which they have never been able to assert on their own behalf. Unasserted, unknown, unavailable rights are no rights at all. Third, we need to practice preventive law on behalf of the poor."

Available evidence indicates that if municipal governments were to set up landlord and tenant conciliation services, many disputes and disagreements might be settled without the need for litigation. Because many problems can be attributed to the ignorance of the parties, the services of a disinterested third party would serve the purpose of obtaining voluntary compliance with the laws.

While there are objections which can be made to the establishment of municipal conciliation services, on a balance of considerations the advantages of such services far outweigh the disadvantages. Experience in other jurisdictions, where laws are not dissimilar from our own, indicates that amending the law is not enough. The realities demonstrate that many people, who have traditionally occupied an inferior social and economic position must be assisted in making use of the law and must be educated as to their rights. No more is intended than the law

be made known to all and that persons be directed to the means of obtaining legal assistance, where necessary. To some extent we are the victims of a mythology which stresses individual responsibility for protecting legal rights. That ideal must never be lost sight of and cannot be seriously questioned. What, however, of a reality which shows that a substantial body of citizens do not, for various reasons, utilize the laws enacted for their protection? Humanity dictates that they not be abandoned because they do not or cannot act in accordance with our beliefs. In any event, tenants would not be playing a passive role for they would have to seek out the conciliation service.

Perhaps the only way we can expect the realization of the ideal of individual responsibility is to demonstrate that the laws do protect all of the citizens. If a conciliation service demonstrates the availability of relief and serves an educative role, it should not be rejected merely because it is strange and possessed of certain risks.

It is most definitely intended that a conciliation service should not practice law and should in no way abandon its conciliatory role. This does not mean, however, that the service should not have its own legal advisers. Municipalities are aware of the extent and seriousness of the present housing crisis and surely wish to do everything possible to improve the climate between landlords and tenants. Their co-operation is therefore certain to be forthcoming.

Not all municipalities have housing problems requiring the establishment of conciliation services. If the services were established on a local option basis, the service in each municipality being locally organized and staffed, the programme could be tailored to suit local conditions and its overall cost kept to a minimum.

Recommendations

The Leasehold Advisory Bureau:

(1) Municipalities should be authorized to establish, as a matter of local option, offices or networks of offices to be called Leasehold Advisory Bureaux (L.A.B.). Landlords or tenants having problems arising out of a tenancy could go to an office near to them and seek advice as to the nature of their rights and how they might proceed to enforce them. The staff of the office would use their best endeavours to obtain a satisfactory and perhaps amicable settlement of the problem. If that proved impossible, they would then advise the parties as to how they might obtain a settlement of the issue by the courts or by setting administrative action in motion. In appropriate cases parties could be referred to legal aid.

(2) Where metropolitan or regional municipalities have been established, it would be preferable that these powers be granted to the metropolitan or regional councils, rather than to the local or area municipalities.

(3) The functions of each L.A.B. should be the provision of information, conciliation and rent review. It would answer the questions of landlords and tenants, explain the benefits and burdens of provincial legislation affecting them, seek to mediate disputes and to aid in fair settlements, and when necessary, undertake a full rental review.

(4) On the L.A.B. staff would be a Rent Review Officer whose duties would be to attempt to obtain fair and just settlements of disputes concerning the payment or increasing of rent at any time during or at the end of the tenancy, and of disputes over whether a tenancy should be continued or renewed. A more thorough description of the function and duties of the Rent Review Officer will be given in the next chapter.

(5) Either the Attorney General or the Minister of Financial and Commercial Affairs should exercise a general supervisory role over the entire programme.

CHAPTER XVI

RENT CONTROL

1. History of Rent Control in Canada

(*a*) *Federal Legislation*

The major experience of Canadians with a system of rent control, was under wartime and post-war legislation justified by the conditions of a war-oriented economy. Order-in-Council 9029, approved on the 21st of November, 1941, under the provisions of the *War Measures Act*, R.S.C. 1927, c. 206, gave authority to the Wartime Prices and Trade Board to make regulations governing the maximum amount of rental which might be charged for any particular accommodation, and any particular services supplied by the landlord to the tenant thereof, and giving to the tenant some degree of security of tenure in addition to that accorded by the ordinary common law and applicable statute law.

Section 5 of P.C. 9029 established a maximum rent for all real property in Canada which was subject to a lease on the 11th of October, 1941, and for which a maximum rental had not been previously fixed by or on behalf of the Board. The maximum rent chargeable for affected accommodation was to be the rent payable under the lease in effect on the specified date. The section also fixed the maximum rent for real property not subject to a lease on such date, at the rent payable under the last lease in effect between the 2nd of January, 1940, and the 11th day of October, 1941. "Lease" was defined in section 2 (1) (*c*) of the Order as any enforceable contract for the letting or sub-letting of all property whether oral or written and included any leave or licence for the use of real property.

Section 3 gave the Board power to fix the maximum rent at which any real property might be rented, to prescribe the grounds upon which and the manner in which leases might be terminated. Provision was made for the appointment of a Rentals Administrator, a Rentals Appraiser, a Court of Rental Appeals, and for the appointment of other officials.

A system of rent control is inextricably bound up with a great deal more than merely the control of rents. In *Rental Control in Canada*, an article contained in the first volume of the Refresher Course Lectures, arranged by the Law Society of Upper Canada in 1945 for its Members in the Armed Forces, at pages 295 to 368, Wishart F. Spence, now Mr. Justice Spence of the Supreme Court of Canada, stated:

> "It has been alleged, however, that the Wartime Prices and Trade Board have no jurisdiction in entering the second field of regulation (that relating to security of tenure) and that so long as the Board controls the maximum price at which accommodation may be rented, the problem of who is to occupy the accommodation and to pay such maximum price is not a topic with which an anti-inflation agency can be concerned. . . ."

> Mr. Justice Spence went on to say:

> "The answer to such allegations is two-fold.

> Firstly, security of tenure is absolutely necessary for the enforcement of control on the price; experience has shown that so soon as security of tenure is let go, control of the price disappears."

Peacetime rent control cannot overlook tenure control. These two concepts are opposite sides of the same coin. Almost every rent control system maintained in peacetime has controlled both rental and tenure aspects.

What then are the basic differences between peacetime and wartime controls? As Mr. Justice Spence dealing with the wartime basis stated in the lecture cited above: "In Canada [rent regulation] is an integral and most important part of the general policy of price freezing, as a means of preventing wartime and post war inflation. . . ."

The obvious difference between peacetime and wartime control is the existence of total or almost total price fixing in wartime, of which rent regulation is only a part—albeit an important part. There is a further important distinction, in that residential contruction during wartime was reduced to the barest trickle. These two distinctions demonstrate the difficulty of comparing the efficacy of peacetime rent control with that of rent control imposed during the war. The impact cannot be the same. Where all or most prices are fixed there is little basis for excluding rents. During the war, rent control would not have any impact on the rate of construction as it might have in a peacetime economy.

There is, however, one common basis for instituting rent control, whether in time of war or peace. Appropriately enough, it is expounded in the following quotation taken from a report of one of the few North American jurisdictions having a form of peacetime rent control. In *Rent Control in New York City* (1967), at page one it is stated:

> "The fundamental, and legal, basis of rent control is to prevent the speculative, unwarranted and abnormal increases in rents that would result from the unnatural competition of too many tenants bidding for too few apartments and the economic and social hardships this would cause. . . .
>
> "The prime purpose of rent control is to make it possible for tenants to find and keep decent apartments at reasonable rents."

(*b*) *Ontario*

When the Government of Canada left the field of rent control, transitional legislation was enacted by the Province of Ontario. Section 3 of *The Leasehold Regulations Act, 1951* provided for the continuation of the Wartime Leasehold Regulations. By section 4, provision was made for the continuation of proceedings in accordance with the said Regulations. The powers formerly vested in the Wartime Prices and Trade Board were, by section 5, transferred to the Lieutenant Governor in Council.

Subsequently, by a series of regulations made under the powers contained in section 6 of the Act of 1951, the provisions of the Act ceased to be applicable to named areas of the province.

The Rent Control Act, 1953 represented a further change in the operation of rent control in Ontario. Under the provisions of section 2 (1) of that Act:

> "The council of any municipality in which . . . [regulations made under *The Leasehold Regulations Act, 1951*] . . . are in force on the day this Act comes into force may pass by-laws,
>
> (*a*) adopting such Regulations as are in force in the municipality on the 1st day of March, 1954, and declaring them in force in the municipality;
>
> (*b*) creating a rental authority and providing for the administration and enforcement of the Regulations;
>
> (*c*) revoking, amending, remaking or substituting for any of the Regulations."

Under section 2 (2) of the Act of 1953, such by-laws could be passed with respect to the whole or part of the municipality.

Section 3 of the Act of 1953 provided for continuation of proceedings commenced before the 2nd day of March, 1954, under the provisions of the new Act.

By section 5 of the Act of 1953 *The Leasehold Regulations Act, 1951*, was repealed on the 2nd day of March, 1954.

An examination of the regulations passed under the Act of 1951 indicates that such cities as Ottawa, Toronto (but not all of what is now Metropolitan Toronto), Hamilton, Fort William, Port Arthur and Kingston were "municipalities in which the regulations were in force on the day" the Act of 1953 came into force. (2nd April, 1953). There is nothing in the wording of the Act of 1953 which indicates that a failure at any point in time to adopt the existing Regulations or to create a rental administration authority would disentitle a municipality from doing so later.

It could be argued that because the Act of 1953 is unrepealed, although unconsolidated, it is still in force. Therefore, any municipality included in section 2, could now pass by-laws pursuant to the authority of section 2.

At least one municipality has apparently been advised that the 1953 legislation cannot be acted upon unless there was no hiatus in the continuation of the Wartime Leasehold Regulations. A number of municipalities (e.g. Ottawa and Windsor) by a vote of council have urged the provincial government to pass enabling legislation. In the case of the City of Windsor the request was only for the establishment of a rent review tribunal with only recommendatory powers. A by-law passed pursuant to the Act of 1953 could, of course, be tested by a direct challenge or by a reference under *The Constitutional Questions Act*, R.S.O. 1960, c. 64.

(*c*) *The Province of Quebec*

In 1951 the Quebec Legislature passed "An Act to Promote Conciliation between Lessees and Property Owners." The Act is not one of general application either in a geographic or an economic sense.

By an amendment passed in 1963, section 35 of the Act sets out the municipalities where the Act applies. It would seem that the Act applies to centres of greater population density (i.e. of more than 10,000 population). The law applies only within the limits designated in section 35 of the Act as amended. Pursuant to an amendment, passed on March 7th, 1968, thirty-three municipalities made a request for coverage under the Act.

As amended in 1962, section 32 of the Act provides that the Lieutenant Governor may permit a municipal council to withdraw from the Act's provisions upon a vote of an absolute majority of the council.

A Rental Office has been established in each municipality. Each office has a Rental Administrator whose decisions may be appealed to the Rental Commission by either party. The Rental Commission has power to modify the decision of the Rental Administrator.

Under section 35a of the Act, which was created by amendment in 1962, on the Island of Montreal only, the Act ceases to apply to houses (including dwelling or apartment but not rooming houses) for which the rent legally in force on the 1st of December, 1962, exceeded $125.00 per month. In other municipalities this figure is $100.00 per month.

The basic scheme of the Act is that during a specified period before the expiry of a term, landlords and tenants may discuss the renewal of the lease for another year. It is only where no agreement can be achieved that the tenant can make application to the Rental Administrator, applying for an extension of the lease and the fixing of rent. Hence the description of the statute as one "to promote conciliation".

The Act is re-enacted every year and this has the effect of renewing leases for an additional year. Under section 25, however, if he has broken covenants in the lease or is in arrears of rent for three weeks, the tenant may be evicted upon authorization by the Rental Administrator.

The Act only comes into operation where the parties cannot agree. When they do agree or are deemed to have agreed, they are bound by the agreement. Rent may be reduced or the lease terminated, however, where, *inter alia*, the premises are in a state of disrepair. Sections 26 and 26a deal with such a situation in the following manner:

> 26. Whenever a house, without the act or fault of the lessee or of a person for whom he is responsible, suffers any deterioration which seriously reduces its rental value, or whenever the lessor reduces its space, services, or conveniences, the lessee, failing agreement with the lessor, may apply to the local administrator for a reduction of rent and the administrator shall have power to grant him such reduction if he deems it equitable.
>
> 26a. The administrator may annul the prolongation of a lease whenever, through age, disrepair, fortuitous event or irresistible force, the house is in danger of falling and dangerous to the public or occupants.
>
> He may also permit an owner who so desires to make repairs to such house, and for such purpose may, if necessary, order the same to be temporarily vacated on such conditions as he deems it expedient to fix for the protection of the lessee's rights.

Section 23 and those sections following it provide that the owner may, in proper cases, recover possession of a house for his own use or for the use of members of his family. That is, he may take the premises out of the rental market if he is acting in good faith.

Premiums, commissions or bonuses are forbidden by section 28 and they can be recovered by action. Section 29 prohibits the obtaining of a higher rent from a new tenant than that received from the former tenant without authorization of the rental administrator.

The Quebec Act is aimed at protecting low income tenants. The Montreal offices of the Rental Commission were visited and its officials were questioned. A number of Montreal lawyers were questioned as well. The statute appears to have had a beneficial effect on the position of the low wage tenant and its scheme represents a model deserving of close attention.

2. The Most Common Forms of Rent Control

There are a number of differently conceived rent control schemes. *First*, there is the method of changing the common law landlord and tenant relationship by conferring upon existing courts the power to assist tenants threatened either with eviction or an "unreasonable" demand for rental. This was characteristic of various American plans during World War I. *Second*, there is the "rent freeze" method which was employed in Canada during World War II. It is also characteristic of the legislation passed under the United States federal *Emergency Price Control Act* of 1942. The *third* device is "fair rent" legislation which provides machinery for testing any queried rental as to whether it affords a "fair return" to the landlord. An example of this approach is found in the Virginia *Emergency Fair Rent Act* of 1947, and to a degree in the United States federal legislation of 1949. On occasion all three of these approaches have been employed in a single statutory rent control scheme.

3. Analysis of the Positions of those Favouring and of those Opposing Rent Control

A great deal of comment has been made recently about the need for rent control legislation in Ontario. A good many advocates of rent control have favoured a form of the "fair return" philosophy. Conversations with developers of rental properties indicate a remarkable unanimity of viewpoint between two seemingly polarized groups. The developers stated that all they wished to achieve was a fair return. The eight per cent return on their investment, often quoted as being average, is not far off the mark cited as representing a fair return by many advocates of rent control.

One apparent divergence of opinion results from developers feeling uncertain of what their position would be in a tenants' market if their rents, and hence their profits, were to be controlled during a landlords' market. Some developers, perhaps facetiously, have stated that a "fair return" system of rent control might be acceptable to them if it was guaranteed during periods of partial occupancy. Of all the areas of the landlord and tenant relationship the subject of rent control remains the most heated and controversial. Its imposition has been justified because of the lack of any true free housing market and because of the fact that for practical purposes no freedom of contract exists in the rental market.

The many studies made of English and New York City rent control during peacetime further exhibit the extreme polarization of positions on this subject. The maintenance of a rent control system is either beneficial or harmful depending on the report examined. It is interesting

to note that both the English and New York City statutes are intended to be in effect only temporarily, until the normalization of the rental situation. In New York City, the magic figure for removal of rent control is a vacancy rate of 5 per cent. Once instituted, however, peacetime rent control tends to survive changes of governments and changes of municipal administrations. It should be reported that in New York City between 1960 and 1965 the percentage of controlled apartments dropped from 77 per cent to 69 per cent.

It is doubtful, however, whether analogies can readily be drawn from the experience either in England or New York City in the area of rent control. The high density of population, the low percentage of occupant owned homes, the small land areas involved, the different concepts of construction, and the different economic *milieu* of these jurisdictions all militate against comparisons.

Certainly the evidence received by the Commission has disclosed the existence of much hardship among tenants in Ontario, much of it attributable to recent frequent increases in rent. Landlords stoutly maintain that most landlords only raise rents in response to such increased costs as taxes, interest rates, and maintenance and repair costs. In the case of new construction, sales tax, land costs, subdivision costs and interest charges incurred during development are cited as reason for higher rents. There are some advocates of rent control who, in order not to discourage new private construction would exempt from controls buildings recently erected, say, within the last five to ten years.

Suspicion of rent gouging and profiteering, however, is not alone enough to justify controls. It is essential that so drastic a measure not be undertaken unless it is certain that the welfare of our society demands it. One of the factors which has made rent control acceptable to persons normally unsympathetic to such controls has been the conduct of lessors. It has been seriously questioned whether they maintain a reasonable degree of self-control in the light of their advantageous bargaining position. On the other hand, however, if they are the victims of a general inflationary trend, they ought not to be made the scapegoats for a universal economic malaise.

4. Conclusions

There is no doubt that many tenants are the victims of landlords who are taking advantage of the acute housing shortage in some areas to charge excessive and in some cases unreasonable rents. This results from the fact that in those areas there are too many prospective tenants bidding in the market where there are too few rental units available. It is obvious that the only effective long term solution to this problem is to increase the supply of housing units available for sale or rent. Until this long term solution can be realized a serious social evil will continue.

Rent is an important element in the cost of living but it is only one element. A consideration of any system of rent control cannot be dissociated from consideration of control over all those elements that

go into the cost of construction and maintenance of housing accommodation. This includes the cost of land, building supplies, wages, and the food and clothing for the wage-earners and their families, together with municipal and other taxes. The wisdom of such controls is something that requires a wide economic study and policy decisions that go far beyond the powers of this Commission as a law reform body.

It is in the light of this that we put forward recommendations with a view to alleviating hardship as far as possible without entering upon consideration of state control over the various areas of the economy of the province which cannot be adequately considered without considering their relation to the economy of the nation.

Provision should be made for a rent review procedure to be adopted on a local option basis in those areas of the province where market conditions demand it. The review procedure should be operated in conjunction with the Leasehold Advisory Bureaux discussed in the preceding chapter.

The Rent Review Officer there referred to would be responsible for the administration of this scheme. The function of the Officer would be to conciliate and recommend. Tenants believing a rent increase to be improper would be able to consult with a local Rent Review Officer who would be required to consider the circumstances of the complaint and determine whether the proposed increase is fair and if not, what increase, if any, is appropriate. His findings should be made known to both parties and a record be made of what action the landlord takes in response to them.

Municipalities which consider it necessary to control further their local landlord and tenant problems should in addition be empowered to create Rent Review Boards to which matters that have not been adjusted by the Review Officer may be referred by either the landlord or tenant.

The powers of the Board would be to investigate and recommend. Its duty would be to make a complete investigation of the case. It should have power to summon witnesses and call for the production of documents. The findings of the Board should be embodied in a written report and communicated to the parties to the dispute. The landlord should be allowed an opportunity to act on the Board's recommendations and if satisfactory action is not taken a copy of the report and the landlord's response should be forwarded to the local municipal council for its information and the report be made public.

If this procedure is not effective to remedy the situation that now exists, more stringent measures will have to be considered.

Alternative measures which might be considered are:

(1) To confer power on the Rent Review Board to fix rents subject to appeal;

(2) To set up a system of rent regulation under which rents in specified areas would be frozen at levels current on a given day or during a given period. In order to be able to increase the rent chargeable for a particular unit a landlord would have to appear before a Rent Review Board and show cause why the rent should be increased. Only if the board gives its approval would it be possible for the landlord to collect a higher rent.

The Commission points out that the latter alternative might operate to penalize some landlords who have charged lower rents in the past and likewise operate to the advantage of landlords who were charging excessive rents at the time the freezing regulation came into effect. The Commission wishes to emphasize that before a comprehensive form of rent control legislation is enacted there should be a study in depth of the relative economic factors and full consideration should be given to the administrative machinery that would be necessary for the just enforcement of the law.

Recommendations

Rent Control:

(1) Municipalities should be empowered to appoint Rent Review Officers within the organization of Leasehold Advisory Bureaux.

(2) Rent Review Officers should be authorized to investigate complaints of unreasonable rent increases brought to them, to mediate between the parties in an effort to obtain a proper settlement of the dispute, and to recommend to the parties what increase in rent, if any, is justifiable in a given situation.

(3) Municipalities should be empowered to establish Rent Review Boards.

(4) Rent Review Boards should be authorized, on the application of a Rent Review Officer, a landlord or a tenant, to re-investigate a case where the Rent Review Officer's recommendations have not been followed or where any party is dissatisfied with the Officer's disposition of the case.

(5) After making its investigation the Rent Review Board should send a copy of its findings and its recommendations as to what would constitute a just resolution of the case to all parties in the form of a written report.

(6) Where a landlord fails to act in accordance with the Rent Review Board's recommendations, the Board should be under a duty to send a copy of its findings and recommendations, together with the landlord's response to them, to the local municipal council.

(7) The local municipal council should be empowered to publish the report of the Board.

(8) Either the Attorney General or the Minister of Financial and Commercial Affairs should exercise a general supervisory role over the entire scheme.

(9) If these measures do not prove sufficient to secure just rents the introduction of a more stringent and compulsory system of control should be considered. Such control should be considered after a careful study of the economic factors involved and the effect that it may have on them and on provision for future housing accommodation.

CHAPTER XVII

PROCEDURE ON ADJUDICATION

There is a general consensus that legal process must be made more accessible to tenants. Even landlords generally agreed that this was so although they expressed the belief that it was merely part of the larger problem of procedure in the courts.

Parts II and III of *The Landlord and Tenant Act* contain examples of summary procedures in the county or district courts, designed as alternatives to the traditional, expensive and slow course of legal process in disputes over the legality of distraint or recovery of possession. The tendency in many areas of law has been to create summary procedures and to transfer jurisdiction to the county courts. While admirably conceived this solution for cases where delay and expense are a problem has been overtaken by events. Steadily expanding court lists, especially in larger population centres, show the county court system to be inundated with cases. The result is that it has become quite difficult to obtain appointments for the speedy disposition of landlord and tenant matters.

With a view to easing this situation the Commission recommends that the Attorney General consult with the Chief Judge of the County Court to devise some system whereby landlord and tenant matters in urban areas may be brought forward and dealt with more expeditiously. Evening sittings, for instance, might be very beneficial, although they are by no means a complete answer.

Tenants would not be the only beneficiaries of the more expeditious disposition of landlord and tenant matters. Recovery of possession is of continuing importance to landlords and is likely to be of even greater significance once tenants' rights are expanded generally.

Furthermore, because delays in obtaining relief are of such importance in landlord and tenant matters, injunctive relief should be available for breaches of covenants where appropriate. Landlords, for example, would find it useful in cases where, say, a tenant was keeping animals in breach of a covenant. Tenants could employ it in the face of a breach of the covenant for quiet enjoyment. At present, there is no alternative in these cases to the slow and expensive action on the covenant.

Recommendation

Procedure on Adjudication:

(1) The Commission recommends that the Attorney General consult with the Chief Judge of the County Court to devise some system whereby landlord and tenant matters in urban areas may be brought forward and dealt with more expeditiously.

(2) In cases where it would be appropriate, injunctive relief should be made available to landlords and tenants to restrain breaches of covenants.

CHAPTER XVIII

PROTECTION FROM RETALIATORY EVICTION

One serious difficulty with any law to provide for the protection of tenants is that the tenant who takes advantage of it may receive a one month's notice to quit, if he is a periodic tenant, or may fail to have his lease renewed in the event that he has a tenancy for a fixed term. This is known as retaliatory eviction. Unless some measure of protection from retaliatory eviction is enacted the purpose of remedial legislation may be frustrated.

Very few statutory attempts have been made to deal with this problem in other jurisdictions. The result has been a less satisfactory utilization by tenants of rights enacted for their benefit. One of the few statutes enacted to restrain retaliatory evictions is contained in the State of Michigan Enrolled House Bill No. 3384 (1968) which provides as follows:

> "Sec. 5634. The person entitled to any premises may recover possession thereof in the manner hereinafter provided, in the following cases:
>
> (4) When proceedings commenced under this chapter are to regain possession of the premises following the alleged termination of a tenancy, if the defendant alleges in a responsive pleading and if it appears by a preponderance of the evidence that any of the following situations exist, judgment shall be entered for the defendant:
>
> (*a*) That the alleged termination was intended as a penalty for the defendant's attempt to secure or enforce rights under a lease or contract, or under the laws of the state or its governmental subdivisions, or of the United States.
>
> (*b*) That the alleged termination was intended as a penalty for the defendant's complaint to a governmental authority with a report of plaintiff's violation of any health or safety code or ordinance.

(*c*) That the alleged termination was intended as retribution for any other lawful act arising out of the tenancy.

(*d*) That the alleged termination was of a tenancy in housing operated by a city, village, township or other unit of local government, and was terminated without cause.

(5) When proceedings commenced under this chapter are to regain possession of the premises following the alleged termination of tenancy, if the defendant alleges and it appears by a preponderance of the evidence that the plaintiff attempted to increase the defendant's obligations under the lease or contract as a penalty for such lawful acts as are described in subsection (4), and that the defendant's failure to perform such additional obligations was a material reason for the alleged termination, judgment shall be entered for the defendant on the claim of possession, and all such additional obligations shall be void."

We do not advocate the imposition of statutory tenancies, i.e. tenancies which can only be terminated for cause, but rather the adoption of controls without which the tenants' rights would be in jeopardy by retributive action on the part of landlords. We therefore recommend protective measures covering periodic tenancies only and not tenancies for a fixed term which terminate automatically by the effluxion of time.

Recommendations

Protection from Retaliatory Eviction:

(1) The Leasehold Advisory Bureaux should be given specific responsibility to investigate and report upon cases where landlords are accused of retaliation against tenants who have resorted to their statutory rights.

(2) On an application for a writ of possession or in an action for possession, if it appears to the court, on a balance of probabilities that:

(*a*) the notice to quit was given because of the tenant's complaint to any governmental authority of the landlord's violation of any statute or municipal by-law dealing with health or safety standards, including minimum housing standards by-law; or

(*b*) the notice to quit was given because of the tenant's attempt to secure or enforce his legal rights;

then the court may refuse to grant an order for possession and may declare the notice to quit invalid. In such case the previous tenancy shall continue as if no notice to quit had been given.

CHAPTER XIX

SUMMARY OF RECOMMENDATIONS

This chapter lists the recommendations made by the Commission in this Interim Report. With the exception of recommendations 23 and 24, a full explanation leading to the recommendations is found in the text of the report. Recommendations 23 and 24 are self-explanatory.

1. *Continuing Study*: This interim report deals only with the most urgent problems in the law of landlord and tenant. It should be recognized that there is a need for further research and study.

2. *Scope of the Study*: In some important aspects residential and commercial tenancies require different legal treatment. This report is based on a study of residential tenancies. Commercial tenancies should be the subject of separate examination.

3. *Distress*: The right to distrain, whether arising out of the common law, statute or contract, should be abolished.

4. *Security Deposits*: It should be made unlawful for a landlord to demand or receive a security deposit against damage or any other contingency involving the demised premises. Landlords should be permitted, however, to request payment of the last month's rent in advance but any sum so paid should be treated as security for the payment of rent only.

5. *Existing Security Deposits*: Our recommendation abolishing security deposits should apply only to leases created or renewed after the coming into force of the remedial legislation. Security deposits which have been paid under leases which are still current at that time should be governed by the following requirements:

   (*a*) interest should be payable to the tenant at the end of the term on the full amount of his security deposit at the rate of five (5) percent a year, compounded annually, to be calculated from the day of the coming into force of the remedial legislation;

   (*b*) the security deposit, together with interest, must be returned to the tenant within ten days of the date of the termination of the lease, whether by effluxion of time or otherwise;

   (*c*) if the landlord seeks to retain all or part of the security deposit and interest in satisfaction of any damage for which the tenant is allegedly responsible, and if the tenant does not consent in writing to forfeit that part of the security deposit and interest claimed, the landlord must commence an action against the tenant to enforce his claim within ten days af the date of the termination of the lease. If he does not his claim should be extinguished.

   Security deposits which have been paid in all other cases should be repaid to the tenants within thirty days of the date of the coming into force of the remedial legislation.

6. *Penalty*: Breach of any of the provisions enacted to give effect to the recommendations concerning security deposits should subject a landlord to prosecution, and on conviction to the payment of a fine.

7. *Contracting Out*:

    (1) Section 22 of *The Landlord and Tenant Act*, R.S.O. 1960, c. 206, should be amended to give effect to the following requirements:

    (*a*) every lease wherein the right to assign, sublet or otherwise part with possession is restricted, should be deemed to contain a provision that leave to assign, sublet or part with possession will not be arbitrarily or unreasonably withheld;

    (*b*) any agreement purporting to waive the requirement set out in (*a*) should be null and void;

    (*c*) the landlord should be entitled to reasonable expenses entailed in granting leave;

    (*d*) in determining whether leave to assign, sublet or part with possession has been arbitrarily or unreasonably withheld, a court should consider all the relevant circumstances, including but not limited to the duration of the original term and the length of the term remaining when leave is sought.

    (2) Any attempt on the part of the tenant to waive his rights with respect to exemptions from distress and other protective measures under *The Landlord and Tenant Act* should be null and void.

    (3) *The Residential Property Tax Reduction Act, 1968* should be amended to make it an offence, punishable by fine, for any landlord to insert a waiver clause in a lease whereby the tenant purports to waive the benefits conferred upon him by the Act.

8. *Obligation to Repair*:

    (1) The landlord should be under a duty at the beginning of the term to hand over possession of premises in a good state of repair and fit for habitation.

    (2) The landlord should be under a duty to maintain the premises in a good state of repair and fit for habitation during the tenancy. This duty, however, should be subject to an obligation on the tenant to repair damage caused by his wilful or negligent conduct or that of persons brought onto the premises by him. The landlord's duty should also be subject to the obligation of the tenant to perform such normal housekeeping tasks as cleaning, polishing, changing fuses and light bulbs, etc.

(3) In determining the nature and extent of the landlord's obligation to repair, a court should consider all relevant public health legislation and municipal minimum housing standards by-laws.

(4) Tenants should be given by statute a right of action to enforce, each for his own benefit, any repair obligation, whether devolving upon landlords by contract, lease, statute or municipal by-law.

(5) Where the landlord is in breach of his obligation to repair, the tenant, after giving notice to the landlord and upon obtaining the order of a court, should have the power to terminate the tenancy. By analogy to relief against forfeiture a court should be empowered to grant the landlord time to remedy the breach. Alternatively, at the request of the tenant, the court should permit the tenant to make the necessary repairs and deduct his expenses from the next ensuing instalments of rent.

(6) Consideration should be given to the establishment of a system of tax incentives and low interest loans for the financing of the repair and renovation of substandard dwellings. If obligations are to be imposed on landlords reason dictates that they be given proper means to discharge those obligations.

(7) A prospective lessee's inspection of the premises should not defeat his right to the benefit of the landlord's repair obligation.

9. *Restrictions Against Children*: The problem of restrictions against children cannot be dealt with adequately by legislation. Many restrictions, apparently unfair, in fact result from the special nature of a particular building rather than from any desire to discriminate. The accommodation problems of families with young children can be treated best by making it as attractive for developers to build for families with children as it is for other occupants. Discrimination solely on the basis that prospective tenants have young children is condemned, but legislative action by way of direct prohibition is not recommended because it is not feasible and has not worked satisfactorily in other jurisdictions.

10. *Restrictions Against Trading*: Although there are valid reasons for permitting restrictions concerning the admission of tradesmen to multiple unit dwellings, the practice of tradesmen making payments to owners or superintendents of buildings in exchange for the privilege of exclusive access should be made illegal and subject to penalty.

NOTE: Mr. McRuer would prefer this paragraph to read as follows:

> [Although there are valid reasons for permitting restrictions concerning the admission of tradesmen to multiple unit dwellings the practice of tradesmen making payments to agents or employees of owners of buildings in exchange for the privilege of exclusive access should be made illegal and subject to penalty.]

Subject to this, restrictions should be permitted but where they are imposed their precise nature should be set out in a separate clause in future leases. The tenant should acknowledge in the lease that the restrictions were drawn to his attention before he signed the lease.

In this, as in other matters, the importance of the tenant receiving a true copy of the lease is apparent. We recommend that it be made obligatory that tenants be given such copy.

Legislation should provide that landlords of multiple family units shall not restrict canvassing and orderly distribution of election literature by candidates or their authorized representatives in federal, provincial, municipal or school board election campaigns.

11. *Acceleration Clauses*: In order to make rent acceleration clauses less subject to abuse whilst still protecting landlords' legitimate interests, where the landlord claims an acceleration of rent and if the tenant pays arrears or remedies the breach of covenant, a court should have a power to stay proceedings similar to that conferred by section 20 of *The Mortgages Act*, R.S.O. 1960, c. 245.

12. *Mitigation of Damages*: Where a tenant abandons the premises the rule whereby the landlord is not required to mitigate his damages should be reversed so that the ordinary rules of contract relating to mitigation of damages will apply.

13. *Frustration of Lease*: The doctrine of frustration of contract should be made applicable to leases. Where the leased premises have been destroyed by fire or been so damaged that they are no longer of use for the purposes for which they were let, the obligation to pay rent should cease. When the obligation to pay rent ceases, the landlord's obligation to repair should cease as well.

14. *Termination of Tenancies*: New rules should be enacted to govern the form of notices to quit, the time for giving such notices, the method of calculating time when notice has been given, the cases where overholding tenancies will arise and to provide for substitutional service. The possible form which these rules might take is given in the text.

15. *Independence of Covenants*: The covenants in leases should be treated as dependent, each upon the others, and the positions of landlords and tenants respecting breach of covenants should be assimilated. This would eliminate the anomaly of a tenant having to pay rent and perform his other obligations under a lease even though the landlord has broken such covenants as to repair, provide heat and give quiet enjoyment. Where the other has broken a covenant in the lease, either the landlord or the tenant should be able to apply to a court for an order terminating the tenancy. Relief against forfeiture should be available to either party in a proper case.

16. *Penalty for Lock-out*: In order to prevent resort to self-help as a means of regaining possession and effecting a *de facto* termination of the tenancy, a landlord who unlawfully changes the locks on doors giving access to the leased premises should be subject to prosecution, and on conviction to the payment of a fine.

17. *Lessees' Right Prior to Taking Possession* (*Interesse Termini*): A lessee under a valid lease should have the same rights *before* he takes possession as *after*. Accordingly the doctrine of *interesse termini* should be abolished. The inadequacy of relief available to a lessee to whom possession has been wrongfully denied thus would be remedied.

18. *Covenants Relating to Things in Being* (*In Esse*) *and Things Not in Being* (*In Posse*): The rule of distinction which holds that covenants concerning the leased property relating to things in existence at the time of the demise run with the land, while covenants relating to things *not* in existence at that time do not run with the land, should be abolished.

19. *The Leasehold Advisory Bureau:*

(1) Municipalities should be authorized to establish, as a matter of local option, offices or networks of offices to be called Leasehold Advisory Bureaux (L.A.B.). Landlords or tenants having problems arising out of a tenancy could go to an office near to them and seek advice as to the nature of their rights and how they might proceed to enforce them. The staff of the office would use their best endeavours to obtain a satisfactory and perhaps amicable settlement of the problem. If that proved impossible, they would then advise the parties as to how they might obtain a settlement of the issue by the courts or by setting administrative action in motion. In appropriate cases parties could be referred to legal aid.

(2) Where metropolitan or regional municipalities have been established, it would be preferable that these powers be granted to the metropolitan or regional councils, rather than to the local or area municipalities.

(3) The functions of each L.A.B. should be the provision of information, conciliation and rent review. It would answer the questions of landlords and tenants, explain the benefits and burdens of provincial legislation affecting them, seek to mediate disputes and to aid in fair settlements, and when necessary, undertake a full rental review.

(4) On the L.A.B. staff would be a Rent Review Officer whose duties would be to attempt to obtain fair and just settlements of disputes concerning the payment or increasing of rent at any time during or at the end of the tenancy, and of disputes over whether a tenancy should be continued or renewed.

(5) Either the Attorney General or the Minister of Financial and Commercial Affairs should exercise a general supervisory role over the entire programme.

20. *Rent Control:*

(1) Municipalities should be empowered to appoint Rent Review Officers within the organization of Leasehold Advisory Bureaux.

(2) Rent Review Officers should be authorized to investigate complaints of unreasonable rent increases brought to them, to mediate between the parties in an effort to obtain a proper settlement of the dispute, and to recommend to the parties what increase in rent, if any, is justifiable in a given situation.

(3) Municipalities not believing that Rent Review Officers alone are sufficient to handle their local rent increase problems should be empowered to establish Rent Review Boards.

(4) Rent Review Boards should be authorized, on the application of a Rent Review Officer, a landlord or a tenant, to reinvestigate a case where the Rent Review Officer's recommendations have not been followed or where any party is dissatisfied with the Officer's disposition of the case.

(5) After making its investigation the Rent Review Board should send a copy of its findings and its recommendations as to what would constitute just resolution of the case to all parties in the form of a written report.

(6) Where a landlord fails to act in accordance with the Rent Review Board's recommendations, the Board should be under a duty to send a copy of its findings and recommendations, together with the landlord's response to them, to the local municipal council.

(7) The local municipal council should be empowered to publish the report of the Board or to take such other action as it deems proper.

(8) Either the Attorney General or the Minister of Financial and Commercial Affairs should exercise a general supervisory role over the entire programme.

(9) If these measures do not prove sufficient to control improper increases in rent, the legislature should consider the introduction of a more stringent and compulsory system of control.

21. *Procedure on Adjudication:*

(1) The Commission recommends that the Attorney General consult with the Chief Judge of the County Court to devise some system whereby landlord and tenant matters in urban areas may be brought forward and dealt with more expeditiously.

(2) In cases where it would be appropriate, injunctive relief should be available to landlords and tenants to restrain breaches of covenants.

22. *Protection from Retaliatory Eviction:*

(1) The Leasehold Advisory Bureaux should be given specific responsibility to investigate and report upon cases where landlords are accused of retaliation against tenants who have resorted to their statutory rights.

(2) On an application for a writ of possession or in an action for possession, if it appears to the court, on a balance of probabilities that:

(*a*) the notice to quit was given because of the tenant's complaint to any governmental authority of the landlord's violation of any statute or municipal by-law dealing with health or safety standards, including minimum housing standards by-law; or

(*b*) the notice to quit was given because of the tenant's attempt to secure or enforce his legal rights;

then the court may refuse to grant an order for possession and may declare the notice to quit invalid. In such case the previous tenancy shall continue as if no notice to quit had been given.

23. *Effective Dates:* Of the foregoing recommendations, some, by their nature, would apply to existing tenancies, while others would apply only to future tenancies. The Commission recommends that recommendations numbered 3, 5, 7 (1) and (2), 11, 12, 13, 15, 16, 18, 19 and 20 be made applicable to all existing residential tenancies. Recommendation 8 would be applicable only to new leases, except that in the case of existing periodic tenancies, it should become applicable on the first anniversary date of such tenancies after the legislation becomes effective. Other recommendations would become effective in respect of leases concluded after the legislation becomes effective.

In the period between the introduction of a Bill implementing these recommendations and Royal Assent to the Bill, it is possible that arrangements might be made to frustrate the protection the Commission has proposed. Accordingly, the Commission recommends that the Legislature consider making the new Act effective from the date of its introduction.

24. *Short Forms of Lease: The Short Forms of Leases Act*, R.S.O. 1960, c. 373, applies to commercial as well as residential leases. This report deals only with the latter. Some of our recommendations concerning residential leases are inconsistent with the provisions of the Act. If the recommendations are implemented the Act should be amended accordingly.

Conclusion

In the course of our research of the project and in the preparation of this interim report we have studied the experience of other jurisdictions. Attention has been focused on that of the other provinces of Canada, the individual states of the United States and England, but reference has also been made to the Scandinavian and other European countries. The problems are not by any means indigenous to the Province of Ontario although, admittedly, there are local complicating factors which require special treatment. These matters have been taken into account in our recommendations.

At the beginning of this report reference was made to the opinion survey of landlords and tenants conducted in Metropolitan Toronto. We wish to thank the substantial number of landlords and tenants who responded to our request to complete questionnaires. The Commission also published a notice in the *Ontario Reports* and newspapers having wide circulation throughout the province inviting all interested parties to submit briefs. The Commission has received briefs from departments of government, municipalities, landlords' associations, tenants' associations, associations of real estate boards, individual landlords and tenants. In addition, the Commission office has received many hundreds of telephone calls from individuals, chiefly tenants, making oral submissions and requesting information. With the helpful co-operation of Mr. Andrew M. Lawson, Director of The Ontario Legal Aid Plan, special questionnaires were completed by the area directors in all legal aid areas throughout the province. We are grateful to all these individuals, institutions and associations for their assistance.

The Commission records its thanks and sense of obligation to Professor Morley R. Gorsky, the research supervisor of the project, for his scholarly research and assistance. In addition we thank the members of the permanent staff of the Commission who assisted us in this onerous but challenging task.

All of which is respectfully submitted.

H. ALLAN LEAL,
Chairman.

JAMES C. McRUER,
Commissioner.

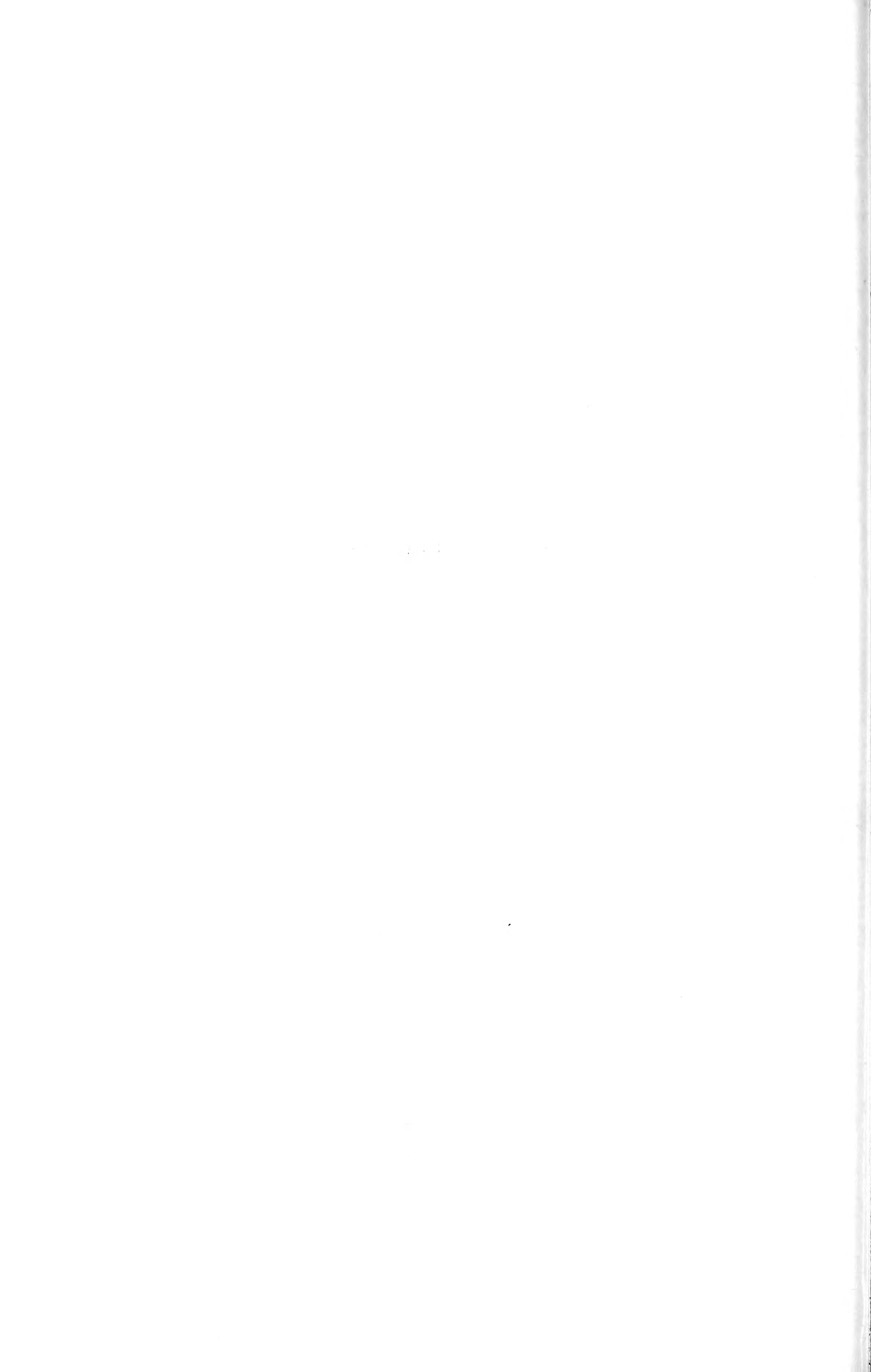
RICHARD A. BELL,
Commissioner.

W. GIBSON GRAY,
Commissioner.

WILLIAM R. POOLE,
Commissioner.

December 10, 1968.

APPENDICES



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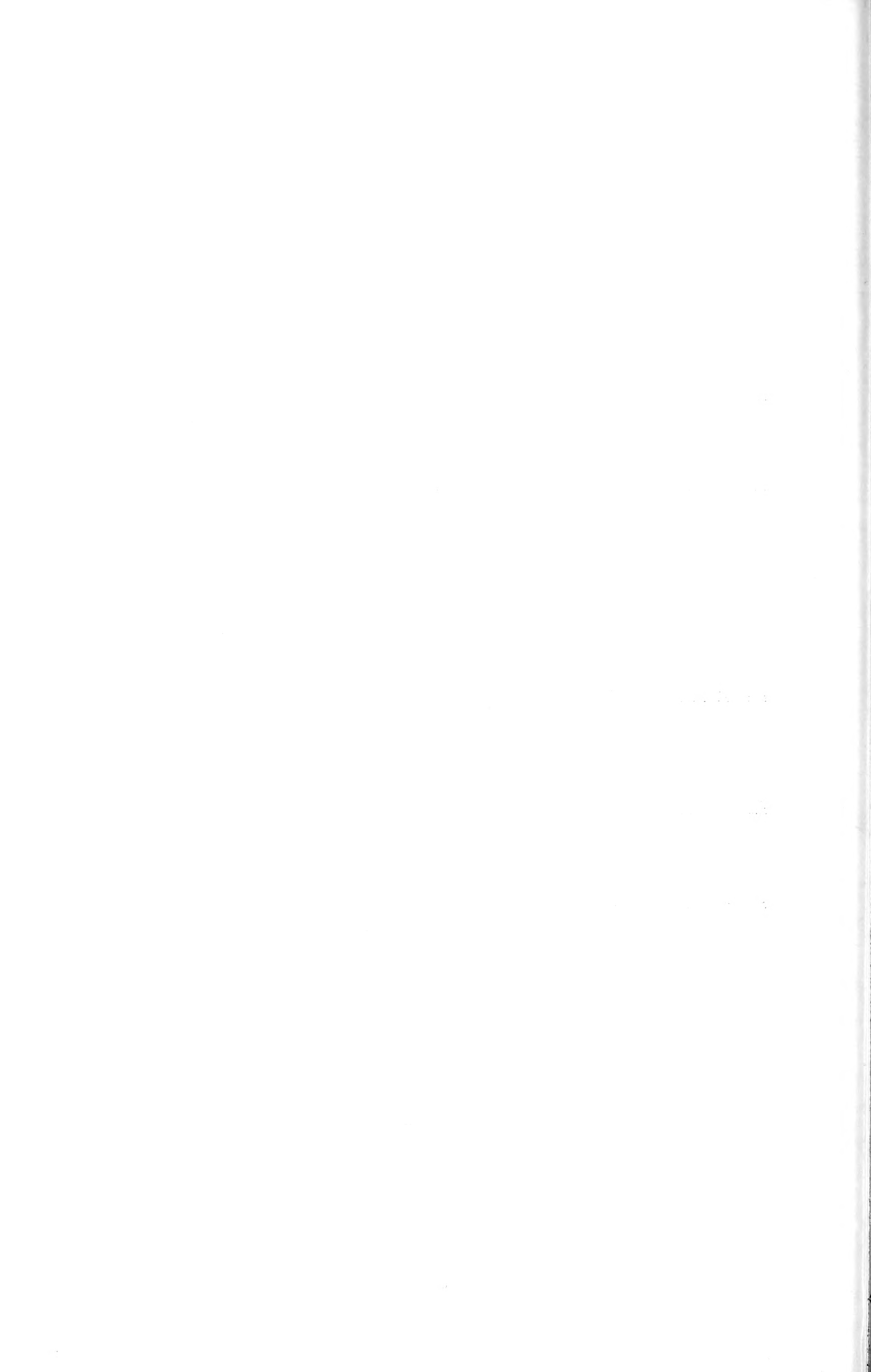


APPENDIX A

REPORT

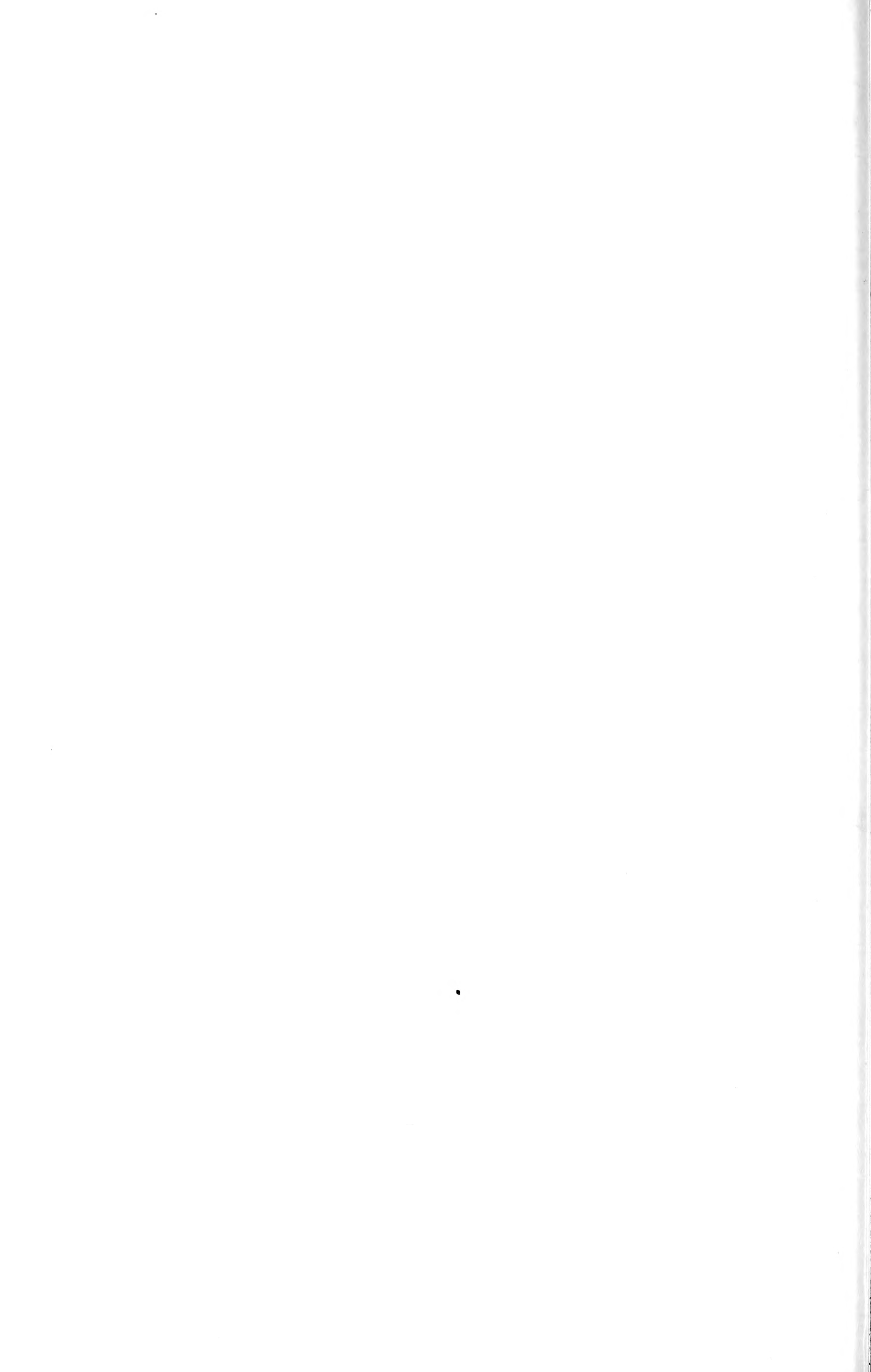
TO

ONTARIO LAW REFORM COMMISSION

ON

APARTMENT ACCOMMODATION IN TORONTO

1968



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Map of Metropolitan Toronto

INTRODUCTION

PURPOSE OF THE STUDY

The purpose of this study is to investigate the subjective attitudes of both landlords and tenants to a variety of aspects of their relationship. The statistical evidence obtained indicates what are the areas of concern of landlords and tenants.

The landlords and tenants chosen for study were drawn from the City of Toronto. Their answers were individually processed and the results tabled statistically in terms of percentages.

From the statistical analysis certain conclusions may be drawn, which are mainly supportive of information obtained from personal interviews and submissions directed to the Commission. This study is an exploratory one, however the general techniques would prove useful in studies which might be undertaken in other Ontario communities. If time and resources permitted such studies might employ controlled personal interviews as an additional control.

For detailed information about the design of the study, see Part III of this Report.

ORGANIZATION OF THE REPORT

Parts I and II are divided into two headings: Tenant Study and Landlord Study. Each study has been divided into topic divisions. Each topic division is introduced by statistical information which is broken down for each area of the City from which responses were received. The material which follows the statistical information is made up of a detailed analysis of the facts, explanations and conclusions based thereon.

Part III explains in detail the general methodology of each study describing the sample, questionnaires and procedure used.

Part IV is made up of appendices which contain the basic materials used in order to obtain the responses from those selected according to the planning area shown on the map of Metropolitan Toronto which follows the Appendices.

PART I — THE TENANT STUDY

CHAPTER 1

RENT

The Average Amount of Rent that is Paid per Area

Area	Lease[1]	No Lease[2]	Area	Lease	No Lease	Area	Lease	No Lease
1	$147	$111	6	$129	$105	11	$155	$127
2	$129	$121	7	$142	$122	12	$159	$130
3	$136	$115	8	$152	$129	13	$133	$120
4	$161	$132	9	$144	$135	14	$132	$129
5	$156	....*	10	$139	$116			

The Average Number of Rooms per Apartment per Area

Area	Lease	No Lease	Area	Lease	No Lease	Area	Lease	No Lease
1	2.4	2.0	6	2.4	2.2	11	3.1	2.6
2	2.4	2.3	7	2.9	2.6	12	3.3	2.0
3	2.7	2.6	8	2.9	2.9	13	3.0	2.5
4	2.6	2.4	9	3.2	2.7	14	2.9	2.6
5	3.1	....*	10	2.5	2.6			

*Not sufficient returns.
[1]Lease—written lease.
[2]No lease—oral lease.

THE AVERAGE AMOUNT OF RENT THAT IS PAID PER AREA PER APARTMENT

Area	Bachelor				One Bedroom				Two or More Bedrooms			
	No. of Returns	Lease	No. of Returns	No Lease	No. of Returns	Lease	No. of Returns	No Lease	No. of Returns	Lease	No. of Returns	No Lease
1	[21]	$109	[13]	$92	[61]	$139	[32]	$111	[35]	$168	[18]	$132
2	[9]	$ 99	[3]	$88	[33]	$126	[14]	$115	[15]	$160	[5]	$138
3	[7]	$ 92	[4]	$87	[37]	$131	[17]	$105	[40]	$148	[22]	$126
4	[15]	$111	[14]	$99	[80]	$130	[23]	$119	[77]	$201	[19]	$164
5	—	—	—	—	[21]	$134	—	—	[40]	$167	—	—
6	[5]	$105	[6]	$75	[20]	$120	[24]	$105	[10]	$155	[8]	$131
7	—	—	[1]	$88	[5]	$125	[9]	$116	[8]	$156	[9]	$131
8	[1]	$ 90	—	—	[7]	$140	[5]	$117	[17]	$153	[6]	$139
9	—	—	—	—	[2]	$106	[2]	$131	[7]	$156	[3]	$141
10	—	—	[1]	$48	[8]	$135	[11]	$133	[6]	$141	[5]	$133
11	—	—	—	—	[11]	$125	[9]	$120	[30]	$198	[8]	$145
12	—	—	—	—	[3]	$134	—	—	[9]	$171	—	—
13	[2]	$ 74	—	—	[9]	$121	[2]	$100	[22]	$146	[6]	$134
14	[1]	$ 80	—	—	[11]	$118	[4]	$115	[7]	$134	[5]	$133
Total Average	[61]	$ 96	[42]	$82	[308]	$127	[152]	$116	[323]	$161	[114]	$137

THE AVERAGE NUMBER OF PEOPLE PER APARTMENT PER AREA

Area	Bachelor		One Bedroom		Two Bedroom	
	Lease	No Lease	Lease	No Lease	Lease	No Lease
1	1.1	1.2	1.5	1.5	2.8	2.9
2	1.3	1.0	1.9	2.0	2.5	4.2
3	1.2	1.5	1.8	1.8	2.9	3.1
4	1.0	1.0	1.4	1.5	2.0	2.4
5	....	....	2.0	....	2.8	....
6	1.0	1.0	2.1	1.7	2.5	2.6
7	....	1.0	2.4	1.7	2.6	3.3
8	1.0	....	2.0	1.3	3.0	2.3
9	....	....	2.5	3.5	3.3	3.3
10	....	....	2.1	3.3	3.7	3.6
11	....	....	1.6	2.1	2.7	2.0
12	....	....	2.0	....	4.3	....
13	1.0	....	2.4	2.0	3.4	3.0
14	1.0	....	1.9	1.8	3.7	3.4
Total Average	1.1	1.1	2.0	2.0	3.0	3.0

In 98% of the tenants sampled the rent was paid on a monthly basis, 2% paid on a weekly basis and none on a yearly basis.

The average number of tenants sampled per area who had to pay rent in advance in addition to a safety deposit not including the usual one month's rent in advance:

Area	Lease	No Lease	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	31	5	6	33	3	11	31	16
2	23	18	7	25	16	12	21	0
3	21	7	8	15	0	13	20	50*
4	25	13	9	10	50*	14	21	14
5	35	..	10	0	0			

The average number of tenants sampled per lease and no lease who had to pay rent in advance in addition to a safety deposit not including the usual one month's rent in advance: lease 22%

no lease 15%

*Not sufficient returns.

RENT

The difference of rental rate between apartments with written leases and those without written leases.

An examination of the figures shown in the pages preceding indicates the rent generally charged for apartments that are rented under a written lease is higher by approximately $21 than those apartments that are usually rented on a monthly basis with no written lease.

There are several possible explanations for this; *firstly*: apartments that have no written leases allow the landlord to raise or lower the rent according to the general market demand for his apartment units and therefore allow him to vary the rental charges according to the general market conditions each month. Those renting with written leases for a longer term must make a pre-estimate of the market value for each unit for the term of the lease and rent accordingly.

Secondly: the explanation may be that the difference is due to the lack of sophistication of small landlords. Larger landlords more often require a written lease, whereas the small landlords more often rent on a month to month basis, without a formal written lease. From interviews conducted, it appears that the smaller landlord seldom knows what the market value of each of his units is at any particular time and tends to follow the rent structure established by the larger landlords for similar units.

Larger landlords generally run their operations on very slim financial arrangements and cannot afford to risk depressed or declining market values of units and therefore to ensure themselves against such declines employ a lease which will assure themselves of receiving a specific rate regardless of the actual market values of these units. However, in order to prevent their units from suffering potential losses, in that advantage cannot be taken of any future increases in the market values of units, they make a projected estimate of what the average market price of each unit will be and this becomes the monthly rental charged for each unit for the term of the lease. Some larger landlords employ a formal written month to month lease which, in a rising market provides them with greater flexibility in establishing higher rents without much danger of a tenant serving notice of termination.

Thirdly: the larger landlord, because of his superior financial accounting structure is aware of what he must charge for each unit, in order to meet his obligations, and this dictates what the monthly rental will be. If this is the case, then the monthly rental of units will vary according to the size and financial stability of each landlord and not strictly according to the present market price of each unit based on demand.

Fourthly: the larger landlord determines his rent on the basis of both his financial obligations and the market demand for his units.

Fifthly: the quality of accommodation could also represent an influencing factor in establishing rentals. The nature of this study did not permit an examination of this factor.

Rooms

Figures show that the average number of rooms per apartment with a written lease is smaller than the average number of rooms for apartments that have no written lease. The difference is approximately one more room in no-lease apartments.

The reason for this, as far as can be determined, is that no-lease apartments are older units when the utility of space was not so important as today. Other influencing factors are inflation, increased building costs and the increased cost of land.

Persons

There is no significant difference in the number of persons who are governed by written leases and those who have no written lease.

Conclusions

Rent is based on the projected determination by the experienced landlords (landlord-developers) of the true market value of their apartment units for the term of the lease. This is a function of supply and demand in the apartment market and also may be a function of that particular landlord's financial structure.

The inexperienced or small landlord generally does not have the facilities or the same need to make accurate market determinations for each of his units and tends to base his rental charges on what the larger landlords are charging. If this is correct, then the tenant is paying not for the market price of his rental unit based on supply and demand, but rather according to the financial structure of the landlord-developer at that particular period.

This would mean that the tenant, of the larger landlord, is also an insurer in that he is insuring that landlord-developer against business risks which may be encountered.

Considerations based on an analysis of statistical information.

Controls

(*a*) If rent is determined as a direct function of a true market situation where the landlords know the real value of each unit at any particular time and charge that amount including reasonable profit, then rent control if it established a ceiling which is lower than the market value, could discourage the building of apartment units.

(*b*) If, on the other hand, the alleged market value is a function of the supply and demand as well as the tenant insuring the landlord against the risk of business failure, or financing further developments, then it would seem that the landlord enjoys an excessive profit.

CHAPTER 2

THE LEASE

Table 1. The number of tenants who claim to have a lease, whose lease is in writing.

Area	%	Area	%	Area	%
1	100	6	100	11	94
2	71	7	100	12	93
3	100	8	100	13	76
4	75	9	100	14	71
5	97	10	100		

The average number of tenants sampled who have written leases as above: 91%.

Table 2. The number of tenants per area who claim not to have lease as above.

Area	%	Area	%	Area	%
1	29	6	51	11	30
2	60	7	61	12	63
3	34	8	29	13	22
4	25	9	40	14	29
5	3	10	50		

The average number of tenants sampled who have no lease, as above in 1,: 37.5%.

The number of tenants per area who received a copy of their written lease.

Area	%	Area	%	Area	%
1	97	6	100	11	100
2	98	7	100	12	93
3	96	8	100	13	100
4	93	9	92	14	100
5	98	10	100		

The average number of tenants sampled who received a copy of their lease: 98%.

The number of tenants per area who said they read their lease before signing it:

Area	%	Area	%	Area	%
1	92	6	97	11	94
2	97	7	78	12	93
3	92	8	100	13	77
4	95	9	100	14	91
5	97	10	87		

The average number of tenants sampled who said they read their lease before signing it: 92%.

The number of tenants per area who said they understood their lease.

Area	%	Area	%	Area	%
1	88	6	89	11	69
2	94	7	85	12	87
3	76	8	92	13	77
4	85	9	83	14	77
5	81	10	60		

The average number of tenants sampled who said they understood their lease: 82%.

The number of tenants per area who had their lease explained to them:

Area	%	Area	%	Area	%
1	21	6	17	11	14
2	39	7	19	12	87
3	17	8	0	13	12
4	21	9	25	14	5
5	24	10	33		

The number of tenants sampled who had their lease explained to them: 24%.

Who usually explained the lease per area:

Who	Area													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
No one	..	55	..	7	..	..	..	..	5	33	20	20	..	10
Landlord	..	5	20	13	31	12	..	40	..	..	10	..	..	..
Leasing Agent	..	20	..	16	..	..	..	..	..	33	20	40	10	..
Superintendent	53	20	53	43	54	88	..	40	95	33	20	40	80	60
Lawyer	12	..	..	21	7	..	..	20	..	..	10	..	..	..
Friend	35	..	27	..	8	..	..	..	..	..	..	..	10	30

Out of the total number of tenants sampled the lease was explained by the landlord in 10%, leasing agent in 11%, superintendent in 52%, lawyer in 6%, a friend in 9%, and no one in 12%, of the questionnaire returns.

The average number of tenants per area who had trouble with their lease:*

Area	%	Area	%	Area	%
1	2	6	6	11	0
2	4	7	7	12	0
3	7	8	17	13	15
4	2	9	92	14	5
5	5	10	13		

The number of tenants sampled who had trouble with their lease: 13%.

*Trouble here means trouble of any type.

The number of tenants per area who had some difficulty in understanding their lease.*

Area	%	Area	%	Area	%
1	23	6	17	11	31
2	29	7	8	12	13
3	34	8	11	13	32
4	10	9	50	14	32
5	25	10	47		

The average number of tenants sampled who had some difficulty in understanding their lease: 26%.

*Difficulty here means difficulty of any type.

The average number of tenants per area, who would prefer a form of lease approved by the government which has to be used by everyone:

Area	Lease	No Lease	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	65	43	6	64	37	11	90	80
2	87	45	7	75	47	12	100	75
3	77	50	8	78	72	13	85	67
4	79	58	9	83	67	14	79	88
5	67	..	10	100	87			

The number of tenants sampled who would prefer a form of lease approved by the government which has to be used by everyone:
lease 81%
no lease 63%.

With very little exception, all leases have a clause which specifies the extent of the tenant's obligation to make repairs. In response to a question directed at whether there was such a clause in their leases the respondents indicated (69%) that there was no such clause. This is clearly inconsistent with established facts, i.e. that nearly all leases do contain such a clause.

The questionnaire also revealed that 82% of the respondents are certain that they understand their lease. This 82% is of the 92% who said that they read their lease.

On reading the questionnaire responses, especially to questions 4, 9, 10, 13, 25 and 26, we have concluded that in fact most of the respondents do not understand their lease, especially the technical legal wording and obviously do not understand the legal implications.

The majority of those who read their leases and indicated that they had no difficulty in understanding their leases, however, in their answer to question No. 25 went on to suggest that there should be a summary of or an explanation of each clause in the lease in layman's language or it should be made compulsory to have a lawyer explain each lease to the new tenant before he signs the lease, and if this is not done the lease would not be binding.

From this it may be inferred, that of those respondents who said they understood their leases, that most of them experienced a great deal of difficulty in attempting to do so. Probably most were uncertain whether, in fact, they understood their leases fully.

NOTE: In referring to *tenants* specified in the tables 1 and 2 on page 17 entitled "The Lease", they shall herein be referred to respectively as *tenants with a lease in writing* and *without a lease in writing* or words to the same effect.

Although the research conducted did not keep accurate records of the problems that were revealed by phone calls to the Commission, it would seem fair to say that there was an average of six calls a day and the majority of those callers demonstrated that they did not understand even the most basic of covenants in their leases.

Therefore, it may be concluded that the majority of leaseholders do not, in fact, understand their leases with respect to basic covenants and clearly do not appreciate the legal consequences of those covenants.

The study also indicated that the majority of tenants do not have any assistance in understanding their leases. The statistics show that, from the total number of respondents, only 24% had their leases explained to them and a lawyer was least consulted for this purpose (6% of the time). The superintendent, on the other hand, was the most widely consulted (52% of the time). This indicates that the tenant is not receiving proper guidance with respect to his rights and obligations as contained in his lease and by the common law and by statute.

Therefore, it may be concluded that the majority of those people who consider that they understood their leases, after having them explained to them, in fact do not, and probably are receiving quite incorrect interpretations of their rights and obligations as tenants.

However, the statistics indicate that only 12% of the number of tenants, who responded, claimed to have had any difficulty with their lease (this information was revealed in the responses to question No. 2 of the questionnaire).

It is clear that the language employed in most leases is not comprehensible to the large majority of tenants, nor do they appreciate the legal implications of their tenancies. Furthermore, a large number of tenants are so exasperated by the language, size and fine print contained in their leases that they do not even attempt to read them. This was revealed in answers we received to question No. 25 in the tenant questionnaire.

In question No. 25 we also asked the respondents for any suggestions they may have as to how the understanding of leases could be made simpler.

1. *The language of the lease*

In order to meet the expressed desires of tenants the language of the lease should wherever possible be drafted in clear language uncomplicated by unnecessary use of technical terminology.

Wherever the use of legal terminology cannot be avoided, an explanation of such terminology should follow explaining the general meaning of the terminology. If possible examples should be given of the practical application of the language.

2. *The form of the lease as contained in replies to questionnaire*

Respondents suggest that it would be of a great deal of assistance to have it made legally compulsory to use large type in leases.

It has been suggested also that the lease should be divided into various subject headings so as to enable the tenant to make immediate reference to any area with which he is having difficulty without having to reread the entire lease; for example, subject headings such as rent, children, repairs, redecorations, and restrictions, etc.

It was also suggested that there be a clear division in the lease so that in one division the landlord's rights, duties and responsibilities are defined, and that the other division contain the rights, duties and obligations of the tenant.

The suggestion was made that a numbered index might be employed so as to permit easy reference to the subject headings.

The study indicated that 72% of all tenants sampled desired a standard form of lease required by statute. Of this 72% the study revealed that 81% of those living in premises which had a written lease desired such a lease, whereas 63% of those living in premises which had no written lease desired such a government-approved lease.

3. *Other suggested means of assistance contained in replies received from respondents*

(*a*) There were numerous respondents who suggested that it be compulsory that a separate document be given to a tenant before signing his lease. This document would contain a summary and an explanation, in layman's terms, of each clause contained in the lease with examples wherever necessary.

(*b*) It was also suggested that it be compulsory for each party to keep a list, approved by both landlord and tenant, with respect to defects in the leased premises existing before the tenant moved in, so that, on the termination of the lease, a proper apportionment could be made of the responsibility for making repairs.

(*c*) Some of the respondents considered that a glossary of legal terms appended to the lease would be helpful.

(*d*) Other respondents thought that it was essential that tenants should have their leases explained to them by someone with legal training, which would exclude building superintendents who are agents of the landlord and who, in any event, would not qualify. The study also revealed that many tenants who had their leases explained to them relied solely on the explanation and interpretation given to them by the party explaining the lease, whether he was competent to do so or not.

(*e*) Some suggestion was made that the lease should be signed in front of a third party (for example, a lawyer, a justice of the peace) whose duty it would be to explain the lease to the tenant and who would also be in a position to spot inequitable leases and potential areas of conflict and who, in such circumstances, could withhold his approval to a binding lease between parties being effected.

(*f*) It was finally suggested that a tenants' "ombudsman" be appointed by the government, who could exercise supervision over this area.

CHAPTER 3

THE VACATING OF THE PREMISES BEFORE EXPIRATION OF THE LEASE

The average number of tenants per area who have left their apartments before the lease expired:*

Area	%	Area	%	Area	%
1	16	6	6	11	6
2	0	7	0	12	13
3	10	8	15	13	16
4	3	9	7	14	9
5	17	10	13		

The average number of tenants sampled who have left their apartments before the lease expires: 9%.

Analysis of Questionnaire Responses

The object of question No. 3, in the tenant questionnaire, was to determine how many persons had either abandoned the premises or had otherwise broken their leases before the termination of period of the lease occurred by effluxion of time.

The analysis of the statistics indicates that only 9% of the total number of respondents sampled had ever terminated their leases before the expiration of the period by effluxion of time.

*The answers to this question revealed that approximately 62% of the respondents considered the question but did not want to answer it for some reason or other. The reason may be that the respondent felt challenged by the question; if so, the response averages to this question may be unreliable.

Question No. 3 also enquired as to the reasons for the premature termination of the lease. The reasons listed are as follows:

1. The most frequent reason given for the breaking of leases was that the tenant had been transferred to another city by his employer. In the case of job transfers those persons involved had four alternatives. These alternatives are listed in order of frequency of use.

(*a*) *Firstly*: the tenants were allowed to vacate upon (i) paying one month's rent from the date they wished to vacate and (ii) forfeiting their security deposit.

(*b*) *Secondly*: vacating tenants had to pay the entire amount due under their lease, to the end of the leased period.

(*c*) *Thirdly*: vacating tenants were required to pay the landlord's "cost" of preparing a new lease, plus two months' rent from the date they wished to vacate. These tenants were usually charged amounts averaging $35 for the drafting of a new lease to a new tenant.

(*d*) *Fourthly*: some tenants admitted that they often signed leases realizing that they could not stay the entire term because of frequent job transfers. The reason given for this practice was that it was difficult to find desirable apartment accommodation that did not have a lease and it was worth the loss of their security deposits to give notice and immediately move out without any further payments being required, the loss to the tenant, in these cases, being only their security deposit which our statistics indicate amounts to one month's rent in most cases.

2. The *second* most commonly used explanation for breaking the lease related to the conduct of the superintendent.

(*a*) In many of these cases the superintendent had, prior to the signing of the lease, assured the tenant that permission to vacate before expiry of the leased period would not be withheld if there was a reasonable cause for doing so and that there would be no extra charges in such case. However, this assurance was later denied by both the superintendent and the landlord in the following cases:

(i) Tenant had purchased a new home which was ready for immediate occupancy.

(ii) Tenant's husband died and she could no longer afford the apartment and was forced to immediately seek less expensive accommodation.

(iii) Tenant required more space because of an increase in the size of his family.

(iv) Tenant was frightened by the superintendent who constantly entered her apartment and made advances.

(v) Some superintendents made unreasonable demands of tenants, for example, some forced tenants to remove their overshoes and boots before entering the buildings; charged tenants for cleaning up of any dirt that may be tracked in to the common areas regardless of weather conditions; prevented the children of tenants from using the apartment elevators or using the main door of the apartment building, and in some cases refused tenants' guests the right to enter the apartment building.

3. The *third* most common explanation for breaking a lease was due to poor health standards, the most common of which are as follows:

(*a*) either too much heat or too little heat in the tenant's apartment, as a result of broken or malfunctioning heating equipment which the superintendent refused to repair;

(*b*) too much noise caused by other tenants in adjacent and overhead apartments, which the superintendent ignored;

(*c*) unsanitary conditions caused by filthy common areas, such as hallways and laundry facilities, garbage odours seeping into the apartments caused by the garbage not being regularly collected or caused by poor garbage disposal units, and pests such as rats, cockroaches and silver-fish in the plumbing.

CHAPTER 4

SUBLETTING AND ASSIGNMENT

The average number of tenants per area who have tried to sublet or assign:

Area	Lease	Area	Lease	Area	Lease
	%		%		%
1	13	6	6	11	9
2	4	7	0	12	13
3	8	8	10	13	31
4	9	9	17	14	0
5	13	10	13		

The average number of tenants sampled who have tried to sublet or assign: lease 10%.

The average number of tenants per area who had problems with respect to subletting or assignment:*

Area	Lease	Area	Lease	Area	Lease
	%		%		%
1	40	6	50	11	0
2	4	7	0	12	10
3	29	8	4	13	3
4	4	9	0	14	0
5	38	10	13		

The average number of tenants sampled who had problems with respect to subletting or assignment: lease 14%.

*Problems here mean problems of any type.

The average number of tenants per area who had to pay higher rent because of apartment "subletting" or "assignment":*

Area	Lease	Area	Lease	Area	Lease
	%		%		%
1	10	6	0	11	3
2	10	7	0	12	10
3	15	8	0	13	3
4	1	9	0	14	0
5	0	10	7		

The average number of tenants sampled who had to pay a higher rent because of apartment "subletting" or "assignment": lease 5%.

*This question refers to those persons who had to pay higher rent than the previous tenant because the landlord was letting the premises instead of the previous tenant.

This part of the question was badly answered as there may have been some doubt on the part of the respondent as to the meaning of the question. On the basis of phone calls received and generalizing from the questionnaires these averages would appear to be too low.

The statistics indicate that only 10% of the total number of tenants sampled had been involved in subletting, or assignment and of this 10% only 11% had encountered any difficulty in doing so.

The questionnaire information also points out that only 4% of the total number of tenants sampled were required by the landlord to pay a higher rent for the premises they occupied than was paid by the previous tenant. However, this question may not have been fully understood by the respondents and therefore may be inaccurate. It has been indicated that if there is any inaccuracy here it is perhaps that the figures are too low. This conclusion is based upon the overall processing of the questionnaires as well as the telephone conversations received by the Commission with respect to tenants' problems.

There are some apparent abuses, in this area, which take the form of, (i) excessive charges levied against the tenant by the landlord for such matters as the drawing up of a new lease, where the superintendent had assured the tenant that there would be no charge or other impediment involved in subletting or assigning, the assurance being subsequently denied; (ii) a penalty for breaking the lease, in the sense that the tenant is exercising his subletting rights under the lease which the landlord interprets as a tenant's default under the lease; (iii) the charging of a finder's fee by the landlord for obtaining a substitute tenant for the tenant; (iv) a charge for cleaning and sometimes redecorating the apartment which cleaning and decorating is rarely performed; and (v) the forfeiting of the tenant's safety deposit.

Although the conclusions based on the statistics compiled from the processing of the questionnaire would indicate that there are few problems encountered by the landlord or tenant in the area of subletting, and assignment, it must be pointed out that there is some uncertainty concerning these statistics, in which case the percentages may be too low. However, it must also be pointed out that the statistics may be accurate and it would therefore be reasonable to assume that they are, in light of the great demand for apartments, the landlord thus having little problem in obtaining suitable substitute tenants.

CHAPTER 5

USE OF SELF-HELP BY LANDLORDS IN GAINING RE-POSSESSION AND RE-ENTRY

The average number of tenants per area who knowingly had their apartments entered without their permission:

Area	Lease	No Lease	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	10	9	6	11	5	11	6	0
2	15	5	7	25	0	12	16	0
3	14	9	8	8	9	13	13	0
4	10	7	9	0	0	14	5	29
5	21	. .	10	0	0			

The average number of tenants sampled who knowingly had their apartments entered without their permission: lease 11%

no lease 5%

total average 8%

The average number of tenants per area who have had their furniture distrained upon by their landlord:

Area	Lease	No Lease	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	0	0	6	0	0	11	0	0
2	2	0	7	0	0	12	0	0
3	1	0	8	0	0	13	0	0
4	0	0	9	0	0	14	0	0
5	0	0	10	0	0			

The average number of tenants sampled who have had their furniture distrained upon by their landlord: lease 0.2%

no lease 0%

total average 0.1%

The average number of tenants per area who have been locked out of their apartment by their landlord:

Area	Lease[1]	No Lease[2]	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	0	0	6	0	0	11	0	0
2	0	0	7	0	0	12	0	0
3	0	0	8	4	0	13	0	0
4	0	0	9	0	0	14	0	0
5	0	0	10	0	0			

The average number of tenants sampled who have been locked out of their apartment by their landlord: lease 0.3%

no lease 0%

total average 0.2%

[1]Lease—written lease.
[2]No lease—oral lease.

The questionnaire reveals that only 9% of the tenants who responded knowingly had had their apartments entered either by the landlord or his representative without their permission. It should be pointed out that the replies, with little exception, indicated that apartments may have been entered, by the landlord, without the tenant's knowledge.

There were many examples given where the superintendent entered the tenant's apartment without the tenant's permission in order to perform repairs. In very few of such cases was notice given beforehand.

There were an equal number of tenants who indicated that the superintendent had been caught entering the tenant's apartment and upon being apprehended, explained that he was merely checking for matters requiring repair.

The respondents also indicated that the superintendent had, on occasion, entered their apartment to show it to prospective tenants, without having first notified the occupying tenants.

There were also complaints of blatant abuses, such as the superintendent entering the tenant's apartment while the tenant was on vacation, using his television set. These occurrences were few in number.

The statistics also revealed that the landlord's right to distrain upon a tenant's furniture for non-payment of rent is little exercised. The practice of locking a tenant out of his apartment is also stated to be rarely resorted to.

It must be pointed out that there is a possibility that these latter figures relating to forceful possession may be too low, the reason for this being that there is a general tendency on the part of those answering questions not to respond to questions which reflect upon their honesty or integrity, as this question may do since it requires the respondent to admit that he may not have lived up to the terms of his lease.

CHAPTER 6

NOTICE TO QUIT AND EVICTION

Notice*

The average number of tenants per area who have ever received notice to quit (written or oral):

Area	Lease[1]	No Lease[2]	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	3	0	6	3	0	11	9	6
2	5	0	7	0	5	12	6	0
3	5	2	8	10	0	13	6	0
4	0	0	9	9	0	14	0	0
5	3	..	10	14	7			

*The percentages as shown may be invalid as it is well known that there is a general tendency not to answer questions which may challenge the respondent's honesty, pride or which he feels may cause him to be held in disregard. This question was badly answered.

[1]Lease—written lease.

[2]No lease—oral lease.

The average number of tenants sampled who have ever received notice to quit (written or oral): lease 5%

no lease 2%

total average 4%

The number who have received *written* notice to quit out of the average number of tenants per area who have ever received notice:

Area	Lease	No Lease	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	100	—	6	50	—	11	60	100
2	50	—	7	—	100	12	100	—
3	100	100	8	100	—	13	100	—
4	—	—	9	100	—	14	—	—
5	100	—	10	100	100			

The number who have received *written* notice out of the average number of tenants sampled who have ever received notice:

written lease 87%

no written lease 100%

total average 94%

The average length of time given to quit the premises after the tenants had received notice was consistent throughout all areas and was at least one month for those who paid on a monthly basis or at least one month before the end of the lease for those who had written leases.

Eviction

The average number of tenants per area who have been evicted:

Area	Lease	No Lease	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	0	0	6	0	0	11	0	6
2	20	0	7	0	0	12	6	0
3	0	0	8	4	0	13	0	0
4	0	0	9	0	0	14	0	0
5	2	0	10	20	7			

The average number of tenants sampled who have been evicted:

written lease 4%

no written lease 0.9%

Total average 3%

Notice to Quit

The results indicate that of the total average number of tenants sampled only 4% had ever received notice and that of this 4%, 94% received written notice.

Results also indicate that, with little exception, all those who received notice were given notice within the required time.

The reasons why these tenants were given notice to quit vary but may be summarized as follows: (i) tenants were behind in their rent, (ii) tenants were too noisy, and (iii) tenants had children while living in apartments where the landlord had restrictions against leasing to tenants with children.

It was also found that landlords gave a conditional notice on occasion; for example, conditional notices were used to notify the tenant of an increase in rent and if the tenant did not wish to pay that increase then he was to consider the notice as a notice to quit the premises.

Eviction

The statistical information reveals that of the total average number of tenants sampled only 3% had ever been evicted.

This figure may be inaccurate in that the answer to this question reflects upon the respondent's integrity. As previously mentioned, there is a general tendency for the respondent to place himself in the most favourable light and to answer accordingly.

CHAPTER 7

BAILIFFS

The average number of tenants per area who have had a bailiff sent to their apartment by the landlord:

Area	Lease	No Lease	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	0	0	6	0	0	11	0	6
2	3	0	7	0	0	12	6	0
3	0	0	8	0	0	13	6	0
4	0	0	9	0	0	14	0	0
5	5	—	10	0	0			

The average number of tenants sampled who have had a bailiff sent to their apartment: written lease 1.4%

no written lease 0.5%

total average 1%

The responses indicate that the respondent believes that the bailiff, in most cases, is sent by the superintendent: 80%.

The statistical information indicates that bailiffs are seldom employed and when they are, they are sent by the superintendent who uses them as a threat in order to collect rent.

Even though private bailiffs are not often employed, when they are, they tend to bully the tenant who does not know his legal rights. As a result, unfortunate tenants feel they are often required to pay their arrears of rent plus excessive bailiffs' expenses. If the tenant does not do so it is stated to be common practice for these bailiffs to *force* their way into the tenant's apartment to effect a distress.

CHAPTER 8

DAMAGE CLAIMS AGAINST TENANTS BY LANDLORDS

The average number of tenants per area who have had to pay for damage done to their apartment:

Area	Lease	No Lease	Area	Lease	No Lease	Area	Lease	No Lease
	%	%		%	%		%	%
1	3	3	6	6	0	11	9	0
2	4	0	7	0	11	12	10	0
3	8	1	8	4	0	13	3	0
4	0	0	9	0	0	14	0	0
5	11	—	10	20	7			

The average number of tenants sampled who have ever had to pay for damage done to their apartment: written lease 6%

no written lease 2%

total average 4%

DAMAGES

The question from which this statistical information was obtained was directed to damage done to the tenant's apartment, whether he was responsible for it or not. However, it may have been interpreted by the respondents as damage done by him directly; these figures may therefore be inaccurate. From the information received, it would appear that actual payment for damage done to apartments is not a problem area. From the response we received, the majority of the respondents felt that the landlord was justified in charging them for damage which they had caused. However, they indicated that the assessment of charges for damage caused was usually levied by the superintendent and was exaggerated by him. The problem of levying a fair charge for damage done to the apartment is fully discussed under the topic of security deposits.

CHAPTER 9

REPAIRS

Apartments in Need of Repair

Written Lease

	Area													
Area	1	2	3	4	5	6	7	8	9*	10	11	12*	13	14
Apartments in Need of Repair	26%	28%	28%	24%	30%	28%	17%	30%	..	27%	36%	..	38%	20%

*Not enough returns for statistically valid results.

Average need of Repair—28%

INCIDENCE OF LISTED REPAIRS PER AREA

WRITTEN LEASE

TYPE	AREA													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Painting and Decorating	% 7	% 18	% 28	% 32	% 5	% 20	% 40	% . .	% 6	% 20	% 32	% 15	% 12	% 21
Plastering	12	10	3	10	15	14	10	14	22	16	. .	. .	12	28
Faulty Locks	. .	5	. .	12	5	. .	. .	. .	10	6	9	15	11	5
Floor	. .	10	. .	. .	. .	. .	. .	. .	. .	6	. .	. .	7	. .
Electrical Wiring	. .	10	. .	6	. .	. .	. .	. .	3	5	. .	3	2	5
Appliances	. .	5	. .	5	. .	. .	. .	. .	5	3	5	3	5	. .
Other Improvements	10	5	. .	. .	5	. .	. .	. .	17	13	. .	3	16	5
General Maintenance	17	20	43	5	52	50	40	33	15	9	15	21	7	10
Replacements	. .	. .	. .	2	. .	. .	. .	. .	. .	3	. .	1	. .	. .
Plumbing	23	7	12	20	13	20	. .	33	11	18	26	20	15	6

TOTAL—100%

Apartments in Need of Repair

No Written Lease

	Area													
Area	1	2	3	4	5*	6	7	8*	9	10	11	12*	13	14
Apartments in need of Repair	34%	60%	40%	61%	..	32%	18%	..	40%	27%	55%	..	33%	75%

*Not enough returns for statistically valid results.

Average need of repair—43%

Incidence of Listed Repairs Per Area

No Written Lease

Type	Area													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Painting and Decorating	22	20	24	30	..	38	20	..	20	20	20	20	15	30
Plastering	9	10	18	15	..	..	15	..	15	10	10	10	10	10
Faulty Locks	..	5	..	5	..	..	..	..	10	5	5	..	5	5
Floor	..	5	..	2	..	..	..	..	..	..	5	..	..	..
Electrical Wiring	..	10	..	4	..	..	..	..	20	5	5	5	5	5
Appliances	..	..	..	..	..	..	..	..	..	10	5	..	..	..
Other Improvements	9	5	..	23	..	..	5	10	10	10	10	5	15	10
General Maintenance	22	17	24	9	..	23	50	50	5	15	20	20	20	5
Replacements	..	8	..	5	..	..	..	..	..	10	..	20	10	5
Plumbing	22	10	12	10	..	31	..	40	10	10	10	10	10	5

Total—100%

SAMPLE

Explanation of reasons why repair is not made:

	Written Lease	No Written Lease
Area I	71%—landlords ignore or refuse repair.	77%—landlords ignore or refuse repair.
	12%—cannot be fixed.	7%—repairs too expensive.
	5%—repairs too expensive.	8%—tenants have not complained.
	12%—tenants have not complained.	8%—rent will be increased.
Area III	80%—landlords ignore or refuse to repair.	88%—landlords ignore or refuse to repair.
	7%—cannot be fixed.	6%—cannot be fixed.
	13%—rent would be increased.	6%—repairs too expensive.
Area V	77%—landlords ignore or refuse to repair.	There are no "no-lease" returns for Area V in the sample.
	7%—repairs too expensive.	
	16%—tenants have not complained.	
Area VI	86%—landlords ignore or refuse to repair.	66%—landlords ignore or refuse to repair.
	14%—rent would be increased.	34%—repairs too expensive.

The answers to question twelve of the questionnaire revealed that 28% of the apartments rented under a lease are in need of repair. This figure is substantially higher for apartments rented under a short term lease at 43%. The results of the returns from tenants with written leases are close to a mean of 28%. Returns from respondents without written leases have a greater standard deviation from the mean of 43%, ranging from a low figure of 18% to a high figure of 75%. This is probably due to the small size of the sample of tenants without written leases in relation to the sample of tenants with written leases. General maintenance repairs, painting and decorating, plumbing and plastering, are by far the most frequent repairs required in the apartment sample. There is no appreciable difference between the apartment tenants with a written lease and those without a written lease, in regard to the type of repairs required. About 75 to 80% of all tenants, in the sample, replied that their landlord completely ignored any complaint or request for needed repairs. If there is a reply from the landlord, he will usually threaten to increase the rent if the repairs are insisted upon or he will simply tell the tenant to move if he does not like the present condition of the apartment. Many tenants indicated that they have given up their attempts to have the landlord effect necessary repairs in order to preserve his good will and to protect themselves from retaliatory rent increases.

Repairs undertaken by the landlord are usually performed by the superintendents of the apartments. They are usually executed in an unworkmanlike manner, because of failure to use proper materials and tools, and because the superintendent usually lacks the necessary trade skills.

Explanation of Results

The lower average need of repair for the apartments subject to written leases reflects the fact that the majority of these are newer and consequently are apt to be in a better state of repair.

Repairs required are identical for apartments subject and not subject to written leases, in both type and order of frequency. This fact establishes fairly conclusively that the landlord and tenant disputes, as to repairs, are concerned, almost exclusively, with general maintenance, painting and decorating, plumbing and plastering, in that order.

An explanation for the relatively high need of repair in apartments must be found in the financial and market conditions of the apartment industry and in the peculiar sociological makeup of the tenants.

CHAPTER 10

REDUCTION OF SERVICES

Written Lease

Area														
Area	1	2	3	4	5	6	7*	8	9	10	11	12	13	14
	16%	24%	30%	9%	13%	11%	..	18%	25%	36%	17%	28%	14%	30%

*Not enough returns for statistically valid results.

Average Reduction—20%

Incidence of Reduction of Services

No Written Lease

	Area													
Area	1	2	3	4	5	6	7*	8*	9*	10	11	12*	13	14
Hot Water	% 47	% 43	% 38	% 40	% 11	% 66	% . .	% . .	% . .	% 50	% 43	% . .	% 16	% 33
Heat	32	33	42	55	46	33	. .	. .	. .	25	43	. .	28	45
Elevators	11	20	15	5	38	. .	. .	. .	. .	25	14	. .	20	11
Others		3	5	. .	5	. .	. .	. .	. .	. .	. .	. .	28	11

*Not enough returns for statistically valid results.

REDUCTION OF SERVICES

NO WRITTEN LEASE

AREA														
Area	1	2	3	4	5*	6	7	8	9	10	11	12*	13	14
	22%	33%	9%	20%	. .	14%	11%	9%	14%	36%	21%	. .	13%	22%

*Not enough returns for statistically valid results.

Average Reduction—19%

INCIDENCE OF REDUCTION OF SERVICES

NO WRITTEN LEASE

AREA														
Area	1	2	3	4	5*	6	7*	8*	9*	10	11	12*	13*	14*
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Hot Water	33	33	50	33	. .	66	. .	. .	. .	. .	75	. .	. .	. .
Heat	41	51	25	33	. .	33	. .	. .	. .	100	25	. .	. .	. .
Elevators	17	16	. .	. .	. .	17	. .	. .	. .	. .	. .	. .	. .	. .
Others	18	. .	25	33	. .	. .	. .	. .	. .	. .	. .	. .	. .	. .

*Not enough returns for statistically valid results.

SAMPLE

Reasons why services were reduced:

	Written Lease	No Written Lease
Area I	39%—repair to equipment. 54%—breakdown of equipment due to poor maintenance. 75%—other.	25%—repair to equipment. 75%—breakdown of equipment due to poor maintenance.
Area III	20%—repair to equipment. 53%—breakdown of equipment due to poor maintenance. 27%—other.	50%—repair to equipment. 25%—breakdown of equipment due to poor maintenance. 25%—other.
Area V	30%—repair to equipment. 70%—breakdown of equipment due to poor maintenance.	There are no "no written lease" returns in this area in the sample.
Area VI	50%—repair to equipment. 50%—breakdown of equipment due to poor maintenance.	40%—repair to equipment. 60%—breakdown of equipment due to poor maintenance.

The results of the questionnaire indicate that 20% of the tenants in the sample suffered reduction in the services which they were entitled to. No appreciable difference was found between tenancies based on the existence or absence of a written lease. The results, in the case of non-written leases, were surprising in view of the 43% alleging needed repairs in the non-written lease sample. On closer analysis, an explanation was found in the fact that the repairs required to maintain the essential services of hot water, heat and elevators were equal for both samples, and the higher figure for the non-written lease apartments resulted from a greater incidence of complaints in the area of painting and decorating and similar repairs. Reduction in the supply of hot water was the most prevalent complaint followed by the reduction in heat and elevator service. Other reductions complained of are small in number compared with the incidence of the above.

Explanation of Results

Some landlords, in order to increase their profit, will neglect necessary maintenance and will only repair when a breakdown is imminent or has happened. This submission is reflected in the results obtained which show that over 50% of the reductions in services are incurred because of improper maintenance of equipment providing such services. The landlord can only increase his potential profit, aside from keeping his units fully occupied at all times, by reducing his expenses for maintenance in

services. Substantial savings can be effected by starting the boilers supplying heat late in the fall and turning them off early in the spring. Many tenants complained of this occurrence, and also of reductions during the heating period, which were blamed on repairs and on the difficulty of obtaining replacement parts.

The incidence of these occurrences is lessened considerably when tenants make determined complaints or approach the relevant public authorities. Other complaints include limitation on access to laundry facilities; children's facilities advertised in advertisements and promised prior to signing of the lease but never made available to the tenant; swimming pools constructed and available to the tenants just after the opening of a newly constructed apartment house which develop malfunctions which necessitate temporary shutdown, which often becomes permanent.

Elevators are reported to have a high incidence of malfunction. The present legislation does not provide adequate sanctions against landlords who fail to properly maintain this service. The Elevator Inspection Branch is unable to do anything about inadequate service contracts entered into for a minimal sum. Such contracts are said to be used by some landlords to reduce blame directed against them in the event of a breakdown or malfunction in service and in order to induce the Elevator Inspection Branch to grant additional time for repairs to be made.

CHAPTER 11

OTHER COMMON COMPLAINTS

Question twenty-six of the tenant questionnaire gave the tenant an opportunity to express any other dissatisfactions he felt in relation to his tenancy. About sixty-five per cent of the people returning the questionnaire took the opportunity to set out, in some detail, the additional complaints they might have.

Approximately 48% of the people living in apartments subject to written leases had such complaints, compared to approximately 40% of those living in apartments not subject to a written lease.

Most people complained about poor maintenance and the ineffectual response to complaints made to the landlord. The second most frequent complaint was about high rents; followed by complaints about noise, insufficient heat and hot water, in that order.

Explanation of Results

The results obtained were somewhat surprising because it had been established that the non-written lease apartments were generally older, and offered fewer amenities than the written lease apartments, but the

results might indicate that the people renting the apartments subject to a written lease expect a higher standard commensurate with the higher rent paid by them and object more strenuously when this standard is not maintained.

An attempt was made to categorize the specific complaints registered by tenants, but this attempt was abandoned when it became clear that the results were too fragmentary to yield specific results and therefore the results were collected under the headings indicated above.

Although 35% of the people returning the questionnaire did not answer this question (26), it is felt that the figures indicating the incidence of complaints are fairly accurate because people who have no complaints found the question superfluous and indicated their response by not listing any complaints.

CHAPTER 12

RESTRICTIONS

(BEFORE MOVING IN)

Area	1		2		3		4		5*		6		7		8		9*		10		11		12*		13		14*	
	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.	L.	NL.
Newspapers	No Restrictions Found																											
Milk	% 8	% 5	% 6	% 4	% 8	% 0	% 11	% 6	% 13	% ..	% 8	% 0	% 17	% 11	% 8	% 0	% 0	% ..	% 8	% 0	% 15	% 0	% 11	% ..	% 11	% ..	% 19	% ..
Visitors	2	0	1	0	3	0	2	6	3	..	0	0	0	0	4	9	0	..	3	0	9	0	4	..	0	..	0	..
Noise	32	16	11	11	25	16	12	22	17	..	11	5	25	16	25	9	10	..	5	2	11	10	2	..	8	8	0	..
Children	25	8	9	8	17	17	17	22	22	..	28	11	0	11	25	9	7	..	4	4	7	4	4	..	6	3	9	..
No Pets	10	8	3	0	5	0	4	0	8	..	0	0	0	0	0	9	0	..	0	..	0	0	0	..	3	0	3	..
Others	3	0	3	6	7	10	0	0	3	..	1	5	2	0	4	0	0	..	0	2	0	0	0	..	0	3	0	..

*Not enough no written lease returns for statistically valid results.

L.—Written Lease.
NL.—No Written Lease.

The results obtained from the questionnaire show that 34% of people with written leases had restrictions placed upon them before moving into the apartment. In the case of people with no written leases, only 15% had restrictions placed upon them before moving into their apartment; 16% of people with written leases had restrictions placed upon them after moving into an apartment. No statistically valid results were obtained from people with no written leases for restrictions imposed upon them after they moved in; the common restrictions in the incidence are outlined on the chart supplied.

Explanation of Results

The results of restrictions imposed before moving in, as outlined on the graph, appear to be too low. It is felt that only those people who: (i) experience a restriction; (ii) read the lease thoroughly; or (iii) were instructed specifically as to the restrictions, were aware of such restrictions. It may fairly be assumed that the figures in the graph are the absolute minimum and are very likely, in fact, substantially higher.

Restrictions on tenant noise are most prevalent, closely followed by restrictions on children or the number of children. Landlords also restrict the number of milkmen, cleaners, and other service personnel who have access to the apartment building. The surprisingly low figure on restrictions on pets is probably a reflection of the fact that very few people living in an apartment ever attempt to keep pets. Most people do not read their lease thoroughly, and assume that pets are not allowed in apartments and therefore they seldom experience a restriction against keeping pets.

Restrictions seem to centre around those stated in the graph as indicated by the very low percentages listed under the heading of "Others".

In view of the common newspaper reports of the widespread imposition of restrictions on tenants, the results seem surprising as to the low incidence of these restrictions, especially in view of the fact that the results were obtained from tenants in a position to list anything which they felt was a restriction regardless of whether they felt it was reasonable or not.

Restrictions on tenant noise were most frequent, and are considered necessary in an environment where many people live in close proximity. Very few respondents took exception to these restrictions. Restrictions on visitors were relatively rare, and few complaints were received, since the restriction is basically directed against visitors who intend to move into the apartment permanently without there being a commensurate increase in rent. Restrictions as to children will be treated fully in a subsequent chapter.

CHAPTER 13

RESTRICTIONS AGAINST CHILDREN

Written Lease

Area	1	2	3	4	5	6	7*	8	9	10	11	12*	13	14
% of tenants having children	9%	13%	24%	34%	30%	14%	..	33%	33%	34%	25%	..	48%	63%

*Not enough returns for statistically valid results.

Average no. of tenants having children—33%

No Written Lease

Area	1	2	3	4	5*	6	7	8	9*	10	11	12*	13	14
% of tenants having children	8%	5%	32%	5%	..	16%	11%	27%	..	46%	16%	..	37%	66%

*Not enough returns for statistically valid results.

Average no. of tenants having children—25%

WRITTEN LEASE

Area	1	2	3	4	5	6	7*	8	9	10	11	12	13*	14
% of tenants refused rental because of having young children	71%	56%	33%	20%	53%	80%	. .	66%	33%	67%	29%	67%	. .	37%

*Not enough returns for statistically valid results.

Average no. of tenants refused rental because of having young children: 52%

NO WRITTEN LEASE

Area	1*	2	3	4	5*	6	7	8*	9	10	11	12*	13	14*
% of tenants refused rental because of having young children	. .	33%	30%	5%	. .	17%	11%	. .	60%	17%	59%	. .	33%	. .

*Not enough returns for statistically valid results.

Average no. of tenants refused rental because of having young children: 29%

About 33% of all tenants in apartments subject to a written lease have young children. This figure is about 8% lower in no written lease apartments. The breakdown into areas indicates that the incidence of children is higher in the peripheral areas and lower in the downtown or central areas. It may be speculated that because demand at present is greater than supply, the landlords can afford to create adult buildings only, the result of which compounds problems as families with young children have only one solution and that is to accept sub-standard accommodation.

It was observed that about 52% of parents of young children have been refused rental because of having young children. This figure is substantially lower for no written lease apartments (about 25%). Approximately 21% of parents with young children in apartments subject to written leases had to pay a higher rent because they had young children. Approximately 14% of parents with young children had to pay a higher rent in the no written lease apartments. This would indicate that there is a greater percentage of tenants with young children being accommodated in premises where there is no written lease and as may be seen in the chapter on rent, rentals for such apartments are substantially less. The reason for this situation may be ascribed to lower standards of maintenance, older buildings and fewer services or "luxuries".

These figures would appear to include tenants with young families who have been refused rentals by buildings restricted to adults as well as those apartments having an active policy which limits rentals to tenants having young children to a certain size of family, i.e. to families with only one or two children. This means larger families of three or more suffer a greater handicap because of the increased difficulty in finding apartment accommodation.

The figures indicate that approximately every third apartment is occupied by a family having young children.

The results show that about 51% of all parents with young children have been refused rental in apartments where written leases are required. This figure is not surprising in view of the fact that the children cause more damage to apartments, especially to elevators, halls and other non-supervised areas than do adult occupants. The landlord who is trying to maximize his profits, in a relatively tight apartment market, will naturally avoid renting to families with children. If he does rent to such families he will demand a higher rent, as evidenced by the 21% figure of parents with young children who had to pay a higher rent merely because of having young children.

An additional amount of rent will, in some cases, overcome the reluctance of landlords to rent to families with young children. This holds true as long as there are only one or two children. As the number of children increases more parents will be faced with an even greater resistance in their attempts to find rental accommodation. Few landlords will rent to large families unless these families are prepared to rent three and four bedroom apartments which, in view of the results obtained

under topic one, as mentioned above, are almost prohibitive in cost to the great majority of such families faced with this problem. Unless such families can afford the higher rents for larger apartments or are able to buy a house, which is seldom the case, they will be forced to accept substandard accommodation from a landlord who is willing to rent to them at rents far in excess of the real market value for the particular apartment.

Landlords either refuse to rent to families with children or increase the rent payable by such tenants. As a result families with young children are unable to obtain a standard of accommodation that could be obtained if cognizance were taken by planners, developers and architects of the increasing number of families with young children in need of apartments.

The problem of forcing these families to accept substandard accommodation results in increased interparental frustrations as well as the curtailing of a necessary and healthy development of our youngsters, the adverse result of which could be seen in the future as affecting the educational levels of such children, the productivity, their potential crime rates and all other accompanying consequences.

Some Observations

The Moss Park Development in Metropolitan Toronto provides two and three bedroom apartment units in a two storey arrangement, the first two storeys being occupied by these two and three bedroom apartments which are restricted to families with children. Each apartment unit is accessible through private entrances enabling mothers to supervise their children. The children never enter the main apartment building, ride the elevators or traverse the halls. This arrangement effectively curtails most of the objections landlords have against renting to families with young children.

Many of the restrictive conditions against families with young children might be removed by appropriate architectural design. Landlords should be encouraged by appropriate incentives to build such units through the institution of special mortgage rates or land subsidies but in no case should they be punished by way of restrictive legislation for charging higher rents, as there is no alternative to these higher rents unless government in some way participates or reduces the expense involved in maintaining family apartments.

CHAPTER 14

SECURITY OR SAFETY DEPOSITS

There is a substantial difference between the written lease and no written lease apartments in the area of security deposit requirements. Eighty per cent of all apartments rented with a written lease require a security deposit of about ($123.00) one hundred and twenty three dollars while only about 48% of the no written lease apartments require a security deposit of about ($89.00) eighty nine dollars.

It is open to speculation that the reason for requiring of security deposits is not so much for the protection of the landlord against potential damage caused by tenants but rather for some other reason, for example, the accumulation of a large fund of interest free capital which could be profitably employed in short term investments and that this purpose is frustrated in the no written lease apartments because:

(*a*) the landlord is not assured of any specific amount for a specified length of time due to the frequency or potential frequency with which monthly tenancies may be severed by either party, thus requiring reimbursement to the tenant of his deposit thereby causing uncertainty with respect to accumulation of such a fund.

(*b*) the landlords who rent on a no written lease basis tend to be smaller than those landlords who operate on a written lease basis. Thus the smaller landlords would not find it as profitable to seek safety deposits in order to build an investment fund as would the larger landlords who control numerous apartment units.

(*c*) small landlords are not as sophisticated as their larger counterparts and therefore are not aware of all the methods of tenant exploitation.

It may also be speculated that the reason fewer safety deposits are required in no written lease tenancies is because the landlords who offer no written lease tenancies repair less frequently because of the greater frequency with which their units change tenants. However, doubt may be cast upon this assumption because of the fact that those landlords who require safety deposits often attempt to levy charges against vacating tenants for what they refer to as damage done to the apartment, which in fact is often normal wear and tear and make a further profit as this is also deducted as depreciation with respect to the building. This amount may or may not be used to redecorate the apartment but in either case represents a profit to the landlord. The size of the security deposit is usually equal to a monthly rental payment and consequently the security deposit on an expensive apartment is greater than a deposit on a cheaper apartment.

Tenants are told that their deposits will be returned upon leaving the apartment at the expiration of the lease but in reality only about 50% of the tenants responding to the questionnaire receive their full deposit back at the end of the lease. This figure is approximately the same for written lease and no written lease apartments being 54% and 48% respectively. About 32% of written lease tenants received part of the deposit back after the lease expired. Insufficient returns were received from no written lease tenants to make accurate projections as to the size of the deposit that was returned. Indications are that the proportion of no deposit at all being returned is higher than the figure obtained from an apartment with a written lease.

Only about 20% of all tenants who answered this question had been in a position to have a safety deposit returned to them. The remaining 80% never had to pay a safety deposit until now or had just moved into an apartment of the first time.

Explanation of Results

The greater proportion of security deposits required in apartments subject to written leases reflects the policy of the larger development and rental companies to impose such deposits on their tenants. The small landlord in Metro has a tendency to rent his units without a written lease and also without imposing a security deposit. There are indications that the small landlord is following the pattern established by the larger companies and is starting to impose security deposits with greater frequency.

The abuses complained of concerning security deposits show the same frequency of complaints for written lease and no written lease apartments. The most frequent complaint by tenants concerns the attempt by landlords to retain as much as possible of the deposit by claiming fictitious or superficial damage to the apartment. Much of the claimed damage is alleged to be pre-existing. At the time of leaving, this pre-existing damage was charged against the tenants' security deposit. This complaint is alleged rather frequently and may be due to the lack of repair records evidencing the state of repair that the apartment was in at the time occupancy was taken. The high turnover of apartment superintendents may also contribute to the situation rather than a calculated attempt by the landlord to deprive the tenant of his security deposit.

The landlord's constant need for liquidity, the lack of controls affecting the taking and keeping of security deposits combine to militate against the return of the deposit monies to a tenant who has delivered up a well kept apartment unit to the landlord. As the landlord very often employs the deposit monies in his business ventures, he will often attempt to prolong or postpone the return of the deposit and in many cases, will simply refuse to return it for rather superficial reasons. A few of the most cited reasons for deducting money from the deposit are claims up to ($30.00) thirty dollars to plaster over nail holes, substantial sums for alleged redecorating, or unauthorized decorating done by the tenant, burnt counter tops and sloppy cleaning, when vacating apartments.

CHAPTER 15

OTHER MONETARY ASSESSMENTS MADE BY LANDLORDS AGAINST TENANTS

This topic may be conveniently divided into three sections. Penalty payments, fines and charges.

Penalty payments: From the statistics obtained it was found that the number of tenants who complained of having paid penalties for alleged violation of their lease covenants amount to approximately 5%. This matter was not pursued in detail in questioning the respondents and therefore little information is available as to what the particular respondent meant when he referred to penalty payments.

Fines: There were a number of questions in the questionnaire relating to fines (questions 19, 20 and 23 in particular). From these questions it was determined that approximately 4% of those persons having a written lease complained of receiving a fine in relation to that lease. Out of the total number of respondents questioned it was determined that approximately 2% of those persons holding written leases had been fined whereas approximately 1% of those persons not holding written leases had been fined.

Charges: Charges have been levied against tenants for many reasons too numerous to list. From the statistics it has been determined that the majority of tenants were subject to charges in some form with respect to repairs and/or services which they required in their particular apartment unit. Of those respondents questioned it was determined that approximately 10% of those respondents who held written leases had been charged with respect to these services or repairs, whereas approximately 6% of those persons who did not have written leases had been charged with respect to repairs or services.

There may have been some discrepancy in the understanding of what these particular questions meant and therefore it may be assumed that the respondents considered fines, penalty payments and charges as one and the same thing and therefore these charges are treated as charges in general.

About 6% of tenants with written leases had their rent raised during the term of the lease without being given a new lease.

The landlord sometimes ignores the terms of the lease and notifies the tenant, during the duration of the lease, of an increase in rent. This frequently takes place when the landlord has just bought the property from the previous owner and finds himself bound by existing leases. He usually notifies tenants that he is the new owner and that he is setting new rental rates and that he will not be bound by the rental rates under

the old leases. He often justifies the increases by citing tax increases and higher mortgage interest rates. The survey shows that most tenants submit to his demand for a rent increase during the term of the lease and neglect to take advantage of the rights vested in them under the lease. This is probably due to ignorance concerning their legal rights; the desire not to displease the landlords; and the high cost of moving into another apartment. Very few tenants stated that they consulted a lawyer and many tenants indicated that they thought this to be very costly and fraught with uncertainty.

CHAPTER 16

PERSONS WITH FIXED INCOMES

There was no opportunity to fully research the implications inherent in the topic heading, however, there are certain aspects which it is necessary to advert to.

The average cost for a person wishing to move from one apartment to another in the city of Toronto, is approximately one hundred and thirty dollars ($130.00). This amount represents a considerable expense to those persons who are on fixed incomes such as pensioners and elderly persons.

With the tendency on the part of landlords to increase the rent payable by a tenant on the termination of his lease, the rent charged for the apartment is eventually put out of the reach of the persons on fixed incomes. The result is that the tenant must move from that apartment, thus suffering the additional cost of moving in addition to being placed in the difficult position of obtaining alternative rental accommodation.

A further result is that many of these persons are being forced to live in conditions which they have not been accustomed to and suffer even further and greater hardships in doing so because of their age and state of health.

In order to maintain the standard of living to which they are accustomed, many of these people cut down on other expenses such as heat, light, clothing, entertainment and, most important, food expenses, with the result of potential danger to their physical well-being.

Many of these people are also unable to cope with the increasing pressures which accompany renting and they are often quite unable to afford the premises within which they are living and are also unable to afford the cost of moving.

Elderly people go out of their way not to cause any confusion, strife or apprehensions among the people with whom they deal. As a result, they suffer more than other tenants do with respect to their apartment

conditions because they are not forceful in their demands but rather suggest that repairs or redecorating are needed and they seldom persist in making these suggestions. For example, a questionnaire was filled out by a lady of 87 years who had lived for twenty years in the same apartment, where the wallpaper was falling off the walls and which was badly in need of other repairs which the landlord refused to effect. Nor had any repairs been made for the twenty-year period. This lady was fearful that, if she pursued her demands, it would aggravate the landlord and she would be given a notice to quit.

Such people are often taken advantage of in many other ways, such as excessive charges being levied on them for such things as repairs, redecoration and other apartment services.

PART II — THE LANDLORD STUDY

CHAPTER 1

STATISTICAL INFORMATION

TOTAL RESPONSE

ANSWERS TO LANDLORD STUDY

A total of 118 landlords replied
representing a total of 69,624 units

Most tenants are:

(*a*) careful	— 40%
(*b*) indifferent	— 60%
(*c*) destructive	— 6%

Most damage done by:

(*a*) tenants	— 56%
(*b*) children of tenants	— 50%
(*c*) outsiders	— 21%
(*d*) children of outsiders	— 10%

Increased police protection:

(*a*) will reduce damage	— 50%
(*b*) will not reduce damage	— 50%

Present standard of police protection:

(*a*) satisfactory	— 65%
(*b*) not satisfactory	— 36%

NOTE: Where the total is greater than 100% it is because some landlords made more than one choice.

RESPONSE FROM LARGE DEVELOPERS

ANSWERS TO LANDLORD STUDY

Large developers or management firms in Metro
representing a total of 40,133 units

Most tenants are:

(*a*) careful	— 41%
(*b*) indifferent	— 56%
(*c*) destructive	— 3%

Most damage done by:

(*a*) tenants	— 44%
(*b*) children of tenants	— 53%
(*c*) outsiders	— 3%
(*d*) children of outsiders	— 6%

Increased police protection:

(*a*) will reduce damage	— 77%
(*b*) will not reduce damage	— 23%

Present standard of police protection:

(*a*) satisfactory	— 33%
(*b*) not satisfactory	— 67%

NOTE: Where the total is greater than 100% it is because some landlords made more than one choice.

TOTAL RESPONSE

Rent to families with young children:

(*a*) Yes	— 76%
(*b*) No	— 25%
(*c*) continue renting to families with children	— 70%
(*d*) will not continue renting to families with children	— 4%

Safety deposits:

(*a*) not important	— 11%
(*b*) convenient	— 4%
(*c*) vital	— 84%

Interest payment on safety deposits:

(*a*) necessary	— 6%
(*b*) fair	— 56%
(*c*) unnecessary	— 32%

Government controlled body for arbitrating disputes re safety deposits:

(*a*) favour	— 14%
(*b*) do not favour	— 80%

Distress:

(*a*) favour retention	— 88%
(*b*) do not favour retention	— 7%
(*c*) resort to use often	— 6%
(*d*) seldom resort to use	— 66%
(*e*) never resort to use	— 20%

RESPONSE FROM LARGE DEVELOPERS

Rent to families with young children:

(*a*) Yes	— 95%
(*b*) No	— 3%
(*c*) continue renting to families with children	— 51%
(*d*) will not continue renting to families with children	— 12%

Safety deposits:

(*a*) not important	— 3%
(*b*) convenient	— 3%
(*c*) vital	— 95%

Interest payment on safety deposits:

(*a*) necessary	— 3%
(*b*) fair	— 77%
(*c*) unnecessary	— 18%

Government controlled body for arbitrating disputes re safety deposits:

(*a*) favour	— 12%
(*b*) do not favour	— 90%

Distress:

(*a*) favour retention	— 93%
(*b*) do not favour retention	— 6%
(*c*) resort to use often	— 18%
(*d*) seldom resort to use	— 75%
(*e*) never resort to use	— 6%

TOTAL RESPONSE

Lease:

(*a*)	provide lease for tenant	— 92%
(*b*)	do not provide lease	— 3%
(*c*)	sometimes provide lease	— 3%
(*d*)	present lease fair to tenant	— 90%
(*e*)	present lease not fair	— 3%
(*f*)	protection against destructive tenants	— 50%
(*g*)	no protection	— 42%
(*h*)	charge a premium for lease	— —
(*i*)	do not charge a premium	— 91%
(*j*)	provide tenant with copy of lease	— 90%
(*k*)	do not provide tenant with copy of lease	— 1%
(*l*)	favour government approved lease	— 36%
(*m*)	do not favour such lease	— 58%

RESPONSE FROM LARGE DEVELOPERS

Lease:

(*a*)	provide lease for tenant	— 98%
(*b*)	do not provide lease	— —
(*c*)	sometimes provide lease	— —
(*d*)	present lease fair to tenant	— 90%
(*e*)	present lease not fair	— 3%
(*f*)	protection against destructive tenants	— 47%
(*g*)	no protection	— 53%
(*h*)	charge a premium for lease	— —
(*i*)	do not charge a premium	—100%
(*j*)	provide tenant with copy of lease	— 98%
(*k*)	do not provide tenant with copy of lease	— —
(*l*)	favour government approved lease	— 27%
(*m*)	do not favour such lease	— 70%

TOTAL RESPONSE

Returns on investment:

Apartment built before 1960—

(*a*) insufficient	— 21%
(*b*) sufficient	— 46%
(*c*) good	— 5%
(*d*) very good	— —

Apartment built 1960–1965—

(*a*) insufficient	— 24%
(*b*) sufficient	— 36%
(*c*) good	— 8%
(*d*) very good	— —

Apartment built 1965–1968—

(*a*) insufficient	— 25%
(*b*) sufficient	— 28%
(*c*) good	— 3%
(*d*) very good	— 1%

Complaints of high rents by tenants:

(*a*) justified	— 25%
(*b*) not justified	— 69%

RESPONSE FROM LARGE DEVELOPERS

Returns on investment:

Apartment built before 1960—

(*a*) insufficient	— 27%
(*b*) sufficient	— 38%
(*c*) good	— 12%
(*d*) very good	— —

Apartment built 1960–1965—

(*a*) insufficient	— 30%
(*b*) sufficient	— 35%
(*c*) good	— 6%
(*d*) very good	— —

Apartment built 1965–1968—

(*a*) insufficient	— 38%
(*b*) sufficient	— 44%
(*c*) good	— 3%
(*d*) very good	— —

Complaints of high rents by tenants:

(*a*) justified	— 27%
(*b*) not justified	— 62%

TOTAL RESPONSE

Sublet:

(*a*) levy extra charge	— 48%
(*b*) do not levy extra charge	— 48%

Landlord association:

(*a*) belong	— 26%
(*b*) do not belong to any	— 70%

Tradesmen:

(*a*) restrict	— 46%
(*b*) do not restrict	— 46%

Rent review by government controlled body:

(*a*) unacceptable	— 66%
(*b*) acceptable if only on landlords with high return	— 13%
(*c*) necessary	— —
(*d*) in the best interests of landlord and tenant	— 16%

NOTE: Where the total is greater than 100% it is because some landlords made more than one choice.

RESPONSE FROM LARGE DEVELOPERS

Sublet:

(*a*) levy extra charge	— 83%
(*b*) do not levy extra charge	— 12%

Landlord association:

(*a*) belong	— 65%
(*b*) do not belong to any	— 35%

Tradesmen:

(*a*) restrict	— 80%
(*b*) do not restrict	— 18%

Rent review by government controlled body:

(*a*) unacceptable	— 75%
(*b*) acceptable if only on landlords with high return	— 3%
(*c*) necessary	— —
(*d*) in the best interests of landlord and tenant	— 18%

NOTE: Where the total is greater than 100% it is because some landlords made more than one choice.

CHAPTER 2

EXPLANATION OF RESULTS

(1) The returns obtained for this survey comprised 106 identifiable forms in areas 1 to 14 inclusive and 12 forms which are not referable to any single area but cross area boundaries. The 106 forms received represented 106 different landlords who owned approximately 150 apartments. In addition the 12 returns assignable to more than one area represented large landlords representing a total of 17,927 apartment units.

(2) The total units owned or managed by the respondents amounted to 69,624 units.

PART III — GENERAL METHODOLOGY OF SURVEY

GENERAL METHODOLOGY OF TENANT SURVEY

Design of the Studies

The design model used to study the nature of tenant complaints was intended to elicit responses from tenants through the use of questionnaires which were sent to tenants selected at random.

It was the initial intention of the investigators to explore the area by way of a general questionnaire and then to proceed to obtain more detailed results through the use of a secondary series of questionnaires constructed to explore those specific areas which the general questionnaire indicated as problem areas.

Due to the lack of time and facilities, the two stages were combined. The questionnaire, as prepared, explored both generally and specifically the major areas of tenant concern. By way of caution it is noted that there are bound to be some discrepancies, as this represents an exploratory study.

This study though mainly exploratory is also descriptive. Past research in such studies has pointed out the usefulness of the "grass-roots" approach which must be taken in order to find out what *really* happens rather than what is *thought* to happen or *speculated* to have happened. The exploratory or formative study was chosen because of the need to adopt an open approach to the research question. The exploratory method allows flexibility in the design, the main concern being an exploration of primary legal areas of the subject being investigated.

Such a design offers not only a good deal of flexibility but permits an emphasis on discovery, reduces the need for rigid sampling procedures and eliminates the narrow frame-work required by the experimental approach for the control of variables. This design also allows the investigator to modify the focus of his investigation in light of new ideas where unexpected leads arise during the investigation. For example, the soliciting of briefs from various organizations and those persons familiar with the topics involved as well as the carrying out of telephone enquiries. The overall purpose and value of this exploratory study is that it provides a clear ranking of research priorities within the area of landlord and tenant law reform, including practical information which will be of assistance in future investigations.

Data Collection Method — Tenant Study

The first step in the exploratory study was to select the method of data collection. Because of the large population involved (Metropolitan Toronto), it was impossible to personally interview each tenant without the aid of a large research force. Therefore the questionnaire method or area sample, as it is sometimes referred to, was selected. Questionnaires were designed to obtain information from each group of persons who were felt to be mainly associated with the landlord and tenant relationship, hence the divisions—landlord study and tenant study.

Questionnaires were similarly constructed for the landlord study.

Pretesting, a very important part of the questionnaire method, is a useful means of testing ideas, creating new categories, restructuring questions so as to be assured that each person sampled fully understands its meaning, regardless of his or her educational background. It is also useful to determine the length of time required to answer the questionnaire, and in this way the forms might be altered so as to prevent the sampled persons from failing to respond, due to the length of time required to answer the questions.

The questionnaire was pre-tested and, as a result, the questions were substantially revised, from the original form, because of the failure of some persons to understand the meaning of some questions. For example, distress, improvements or alterations and such other language caused many of the respondents difficulty.

Ideally, a questionnaire should have been constructed for each area so as to be certain that each person received a questionnaire which he could understand. As circumstances did not permit this procedure being followed several of the questionnaires were not well answered.

Poorly answered questions might be ascribed to two factors:

Firstly, as described above, a lack of understanding as to the meaning of a particular question and,

Secondly, it is well known that persons who respond to questions, which pertain to their honesty and integrity, have a tendency to respond in a fashion which will reflect most favourably upon them.

Landlord Study

The landlord study was substantially the same in that it was a questionnaire study from which responses were elicited and processed. There was, however, not the same need to run a pretest on these questionnaires, as they were to be sent to persons who would not likely experience conceptual difficulties.

Selection of the Sample—Tenant Study

The next step was to select a sample of potential respondents.

The population for this study, as mentioned, is defined as generally all tenants in Metropolitan Toronto. It was obvious that all tenants could not be contacted due to time and staff limitations. Therefore a method of random sample was chosen.

The initial stage was to acquire an up-to-date list of all apartments in Metropolitan Toronto. Such a list was made available to us by the Metropolitan Toronto Planning Department. From this list a selection of addresses of 1,121 apartments was made at random. This figure represents approximately one-quarter of the number of existing apartment buildings in Metropolitan Toronto and therefore one out of every four apartment buildings was placed on our list.

Note that the above list of addresses was placed according to the planning area divisions or districts of Metropolitan Toronto.

The next step was to estimate the approximate number of apartment units for each planning district. From this break-down an estimate was made of the maximum approximate number of returns that would be required from each planning district.

It was ascertained that a minimum number of 1,000 returns was required in order to make the study reliable for the data which we wished to receive.

The appropriate number of questionnaires to be sent into each planning district was calculated by firstly ascertaining the number of apartment units in each metro planning district. From an apartment study published by the Metro Planning Board in 1967, a total of 3,222 questionnaires was mailed and each planning district received a proportion of this total commensurate to its apartment unit population. For example, planning district no. 4 had 30,470 apartment units which was about 20% of the apartment unit population of Metropolitan Toronto in 1967 and consequently 20% of the total number of questionnaires which was about 640 was allocated to planning district no. 4.

The final step was to consult the Might's directory for the names of tenants occupying units of the apartments at the addresses obtained from the Metropolitan Planning Department for the apartments that had been selected.

From the listing of tenants at the above addresses, 3,222 were selected at random. The method of selection was to choose every twentieth person in large buildings and every tenth person in medium sized buildings and every third person in small apartment buildings.

There are a number of difficulties involved in the use of such a directory. For example, the latest directory is not entirely accurate in that the frequency of apartment vacating is high, especially in a city the size of Toronto, with the result that the number of persons sampled is reduced accordingly.

Selection of the Sample—Landlord Study

With the co-operation of the Urban Development Institute a complete list of their members was obtained. The names and addresses of the other landlords were obtained from the records of the Licensing Branch of the Department of Labour who keep an up-to-date list of addresses of the owners of all apartment buildings that have elevators. The difficulty with this list is that only those owners appear whose apartments have elevators and therefore the landlords with smaller apartment buildings which do not require elevators do not appear on the list. To this extent the landlord sample is not representative. However, it is felt that the pattern shown, with respect to the questionnaire responses received from these landlords, is indicative of all landlords.

PART IV — APPENDICES

PLEASE RETURN WITHIN 10 DAYS

INSTRUCTIONS

Use a tick [√] where you see a bracket to indicate the correct answer. Where you see the word "explain" or "why", write clearly all the details which you think are important. Add more paper if not enough space is given and number the answer the same as the question; use the back of the question sheets if you wish.

1. How much is your rent? ....

   How many rooms has your apartment? ....
   (not including bathrooms or kitchen)

   How many live there? ....

   Do you have any complaints about the premises?
   (If yes, explain on back of page).

2. Do you have a lease? ☐ yes ☐ no. If the answer is "no", do not answer Questions 2, 3 and 10.

   Is your lease written? ☐ yes ☐ no

   Did you get a copy? ☐ yes ☐ no

   Did you read the lease before signing it? ☐ yes ☐ no

   Did you understand it? ☐ yes ☐ no

   Did anyone explain it to you? ☐ yes ☐ no

   If yes, who? ....

   Have you ever had any trouble with a lease? ☐ yes ☐ no

   If yes, explain what the trouble was and what the final result was.

3. If you have ever left your apartment before your lease expired, explain why and what was the final result?

4. Have you ever tried to sublet? ☐ yes ☐ no

   If your answer is "yes", have you ever had any problems with your landlord in doing so? ☐ yes ☐ no

   If "yes", did you have to pay a higher rent? ☐ yes ☐ no

   If your answer is "yes" to any of the above, explain what happened and why.

5. Has your landlord ever entered your apartment without your permission? ☐ yes ☐ no

   Taken your furniture? ☐ yes ☐ no

   Locked you out of your apartment without your permission? ☐ yes ☐ no

   If your answer has been "yes", to any of the above questions, explain what happened in each case and why.

6. Have you ever been evicted from your apartment? ☐ yes ☐ no

   If your answer is "yes", explain why.

7. Was notice ever given to you? ☐ yes ☐ no

   If your answer is "yes", how long before you were asked to leave? ....

   Was the notice written? ☐ yes ☐ no

   If notice was given to you, explain what happened and why.

8. Has the bailiff ever been sent to your apartment? ☐ yes ☐ no

   By whom? ....

   If the answer is "yes", explain why.

9. Have you ever made any repairs to your apartment? ☐ yes ☐ no

   If your answer is "yes", what were they? ......

   ....

   Who paid for them and why?

   Explain.

10. Was there a clause in your lease requiring you to make repairs? ☐ yes ☐ no

11. Have you ever had to pay for damages done to your apartment? ☐ yes ☐ no

    If your answer is "yes", what was the damage and do you feel that you should have had to pay? Explain.

12. Does your apartment need fixing in any way? ☐ yes ☐ no

If your answer is "yes", what needs fixing? ....

....

Why has it not been fixed? Explain.

13. Have you ever had any other complaints to make about your present premises? List them, describe what action you took and what the final result was.

14. Did your landlord or building superintendent ever reduce or stop any of the apartment services? (e.g. water ☐, elevator ☐, heat ☐, others ☐). Explain.

15. Did your landlord ever place restrictions on you *before* you moved into your apartment, for example, restrictions on:

(1) who you could buy your milk or newspapers or other services from? ☐ yes ☐ no

(2) times of the day when you were allowed guests? ☐ yes ☐ no

(3) noise? ☐ yes ☐ no

(4) children? ☐ yes ☐ no

(5) others? List.

or were such restrictions ever placed on you *after* you moved into your apartment? ☐ yes ☐ no

If your answer is "yes", list which ones.

If your answer to any of the above is "yes", explain each, telling what the final result was in each case.

16. Do you have young children? ☐ yes ☐ no

    Have you ever been refused rental because of having young children? ☐ yes ☐ no

    Did you ever have to pay a higher rent because of having young children? ☐ yes ☐ no

    If you have had other trouble renting because of having young children, explain.

17. Did you ever have to pay a safety deposit before entering an apartment? ☐ yes ☐ no

    How much? ....

    Were you told that it would be given back? ☐ yes ☐ no

    If your answer is "yes", when was it to be given back? ....

    How much of it was given back? ☐ all of it, ☐ part of it, ☐ none of it.

    When was it given back? ....

    If you have ever had any other trouble with deposits, explain.

18. Have you ever had to pay the entire amount due under the lease before the lease came to an end? ☐ yes ☐ no

    If the answer is "yes", explain why.

19. Did your landlord ever raise your rent after you signed the lease without giving you a new lease? ☐ yes ☐ no

    After you moved in? ☐ yes ☐ no

    If the answer is "yes", explain why.

20. If you have ever been evicted from your apartment, did you have to keep paying rent? ☐ yes ☐ no

    If the answer is "yes", explain why.

21. How do you pay rent? ☐ weekly, ☐ monthly, ☐ yearly.

22. Did you ever have to pay rent in advance in addition to a safety deposit? ☐ yes ☐ no

    If the answer is "yes", explain why.

23. Did your landlord ☐ or building superintendent ☐, or someone else ever fine you (make you pay more than usual rent for any reason?) ☐ yes ☐ no

    If the answer is "yes", explain why.

24. Did your landlord ☐ or building superintendent ☐ ever charge you for doing anything, such as for repairs or any other service? ☐ yes ☐ no

    If the answer is "yes", what did he charge you for? Explain.

25. Do you have difficulty in understanding your lease? ☐ yes ☐ no

    Do you think there should be a standard form of lease approved by the government which has to be used by everyone?

    Do you have any suggestions as to how the understanding of leases can be made simpler? Explain.

26. Are there any complaints that you have had about your landlord, your apartment, or about anything concerned with these? If there are, please list the complaints briefly and give details of what happened from start to finish.

PLEASE RETURN WITHIN 7 DAYS

INSTRUCTIONS

Use a tick [√] where you see a bracket to indicate the correct answer.

When you are asked to explain an answer, please indicate briefly all details which you think are important.

Additional notes and comments are welcome. Use the space provided.

1. Please indicate the number of apartment units you own. ....

2. In your opinion, are tenants *generally*
   - ☐ careful
   - ☐ indifferent
   - ☐ destructive

   towards the upkeep and maintenance of their rented premises?

3. Do you feel that most of the damage done to your apartment is caused by
   - ☐ tenants
   - ☐ children of tenants
   - ☐ outsiders
   - ☐ children of outsiders

4. Do you feel that increased police protection would reduce the damage done to your apartment house?
   - ☐ yes
   - ☐ no

5. Are you satisfied with the standard of police protection you have been receiving?
   - ☐ yes
   - ☐ no

6. (*a*) Do you rent to families with young children?
   - ☐ yes
   - ☐ no

   (*b*) What percentage of your total units do you make available to families with young children? ....

(*c*) If you do not rent 50% of your total number of units to families with young children, please explain why.

(*d*) If your answer to question 6*a* is yes, please indicate whether you will continue your policy.
☐ yes
☐ no

7. (*a*) Do you regard safety deposits as
☐ not important
☐ convenient
☐ vital
to the successful operation of your apartment rental business?

(*b*) Do you regard the payment of interest on safety deposits as
☐ necessary
☐ fair
☐ unreasonable

(*c*) Would you prefer a government controlled body arbitrating disputes between landlord and tenant to the present system of safety deposits?
☐ yes
☐ no

(*d*) If your answer is no, please explain why.

8. (*a*) Do you favour the retention of distress as a remedy against delinquent tenants?
☐ yes
☐ no

(*b*) Do you resort to the remedy of distress
☐ often
☐ seldom
☐ never

9. (*a*) Do you provide a lease for your tenants?
☐ yes
☐ no
☐ sometimes

If your answer to question 9 is no, please omit questions 9*b*, 9*c*, 9*d*, and 9*e*.

(*b*) In your opinion, is your present lease fair to the tenants?

- ☐ yes
- ☐ no

(*c*) In your opinion, does your present lease offer enough protection against destructive or undesirable tenants?

- ☐ yes
- ☐ no

(*d*) Do you charge a premium for providing a lease?

- ☐ yes
- ☐ no

(*e*) Do you provide a copy of the lease for your tenants?

- ☐ yes
- ☐ no

10. (*a*) Do you favour a compulsory government approved lease?

- ☐ yes
- ☐ no

(*b*) If your answer is no, please explain why.

11. (*a*) In your opinion, are the returns on your investment in apartments built before 1960

- ☐ completely insufficient
- ☐ sufficient
- ☐ good
- ☐ very good

(*b*) In your opinion, are the returns on your investment in apartments built from 1960 to 1965

- ☐ completely insufficient
- ☐ sufficient
- ☐ good
- ☐ very good

(*c*) In your opinion, are the returns on your investment in apartments built from 1965 to 1968

- ☐ completely insufficient
- ☐ sufficient
- ☐ good
- ☐ very good

12. (*a*) Do you feel that the general complaint of high rents by tenants is justified? ☐ yes ☐ no

    (*b*) Please explain your answer.

13. (*a*) Do you levy an extra charge if a tenant desires to sublet his apartment? ☐ yes ☐ no

    (*b*) If your answer is yes, please indicate the amount you normally charge. ....

    (*c*) Do you belong to an apartment developers or landlord association? ☐ yes ☐ no

    (*d*) If you do, please indicate which one. ....

14. (*a*) Do you impose any limitations as to the number of tradesmen admitted to your apartment.—e.g. milk delivery from one dairy only? ☐ yes ☐ no

    (*b*) If your answer is yes, please indicate your reasons.

15. Do you regard rent review by a government controlled body as
    - ☐ completely unacceptable
    - ☐ acceptable only when applied to landlords with a high return on their investment
    - ☐ necessary
    - ☐ in the best interest of landlord and tenant

16. Are there any other complaints that you have about your tenants, their children, guests, outsiders, or the present state of the law of Landlord and Tenant?

ONTARIO LAW REFORM COMMISSION

COMMISSIONERS
H. ALLAN LEAL, Q.C., LL.M., LL.D.
CHAIRMAN
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HONOURABLE RICHARD A. BELL, P.C., Q.C.
W. GIBSON GRAY, Q.C.
WILLIAM R. POOLE, Q.C.

COUNSEL
RICHARD GOSSE, LL.B., D.PHIL.
SECRETARY
MISS A. F. CHUTE

PARLIAMENT BUILDINGS
TORONTO 2

Re: Research study on
Landlord and Tenant Law

Dear Madam,

The Ontario Law Reform Commission has undertaken a study of the law governing landlord and tenant relations with a view to making recommendations for the reform of that law where desirable and necessary.

The enclosed questionnaire is directed towards finding out the nature and frequency of the problems existing in this area. We request your co-operation in completing the questionnaire. It is important that you answer each question and return the form as soon as possible in the envelope provided.

Please feel free to give any additional information which you judge will be helpful to our enquiry. The identity of those replying to the questionnaire will not be disclosed.

If you have any questions concerning the completion of the form, please phone 365-4761 and request to speak to Mr. Boeckle or Mr. Campbell.

Yours very sincerely,

H. Allan Leal

H. Allan Leal
Chairman

ONTARIO LAW REFORM COMMISSION

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COUNSEL
RICHARD GOSSE, LL.B., D.PHIL.
SECRETARY
MISS A. F. CHUTE

PARLIAMENT BUILDINGS
TORONTO 2

Re: Research study on
Landlord and Tenant Law

Dear Sir:

The Ontario Law Reform Commission has undertaken a study of the law governing landlord and tenant relations with a view to making recommendations for the reform of that law where desirable and necessary.

The enclosed questionnaire is directed towards finding out the nature and frequency of the problems landlords are faced with in the Metropolitan Toronto area and your reaction to suggested changes in the field of Landlord and Tenant Law. We request your co-operation in completing the questionnaire. It is important that you answer each question and return the form as soon as possible in the envelope provided.

Please feel free to give any additional information which you judge will be helpful to our enquiry. The identity of those replying to the questionnaire will not be disclosed.

If you have any questions concerning the completion of the form, please phone 365-4761 and request to speak to Mr. Boeckle or Mr. Campbell.

Yours very sincerely,

H. Allan Leal
Chairman

URBAN DEVELOPMENT INSTITUTE

ONTARIO DIVISION

SUITE 24, OFFICE MEZZANINE, KING EDWARD SHERATON HOTEL
TORONTO 1, ONTARIO, CANADA
TELEPHONE 363-0155

July 11th, 1968

TO ALL UDI APARTMENT DEVELOPER MEMBERS:

This is to acknowledge that we have been contacted by the Ontario Law Reform Commission, have examined their proposed questionnaire, and give full approval to their project.

It is urged that all members complete this questionnaire fully and return it as soon as possible in the enclosed self-addressed envelope.

Yours sincerely,
URBAN DEVELOPMENT INSTITUTE,

L. F. Berryman

Lloyd F. Berryman,
Executive Director.

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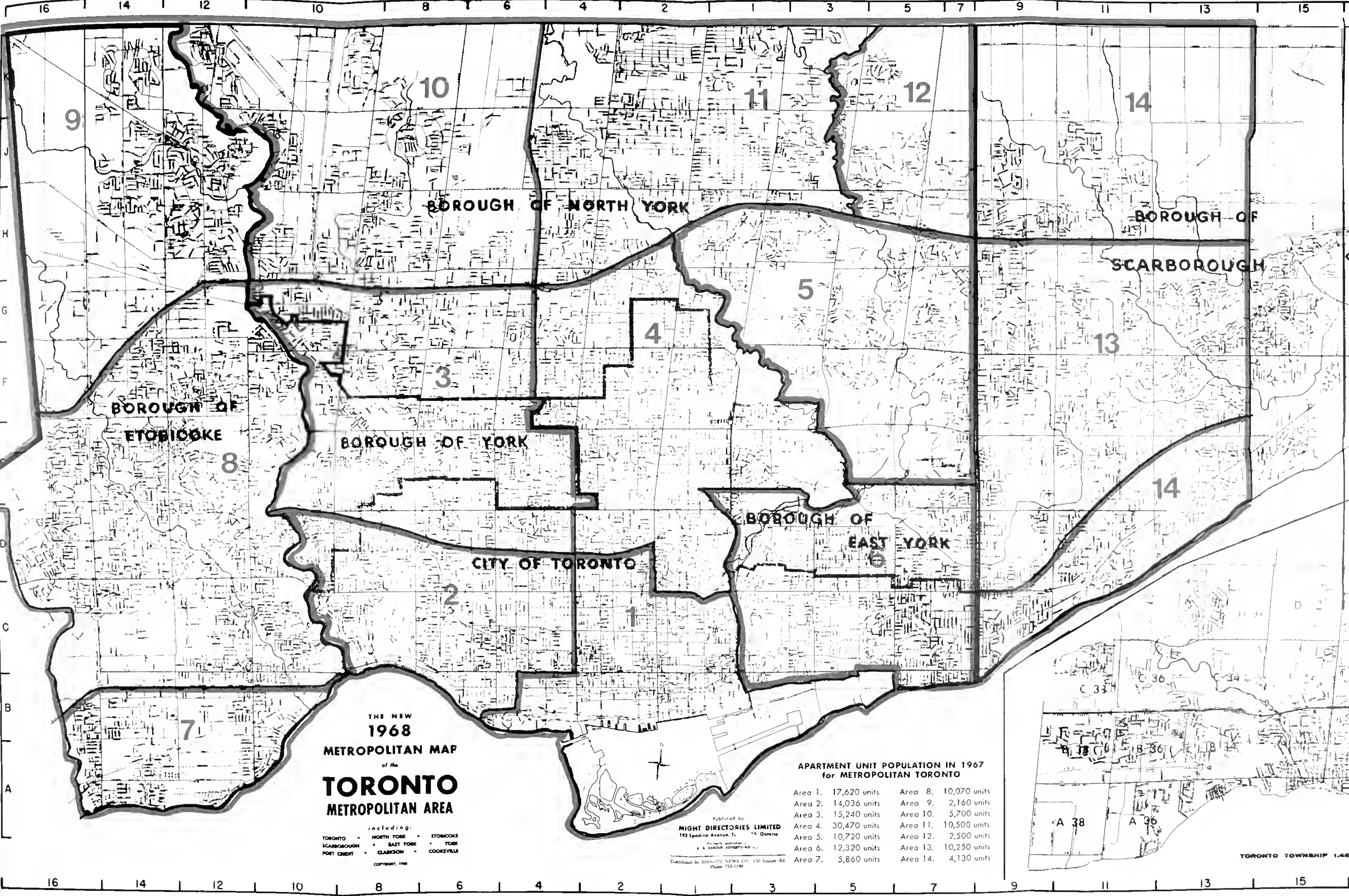
BOROUGH OF NORTH YORK
BOROUGH OF SCARBOROUGH
BOROUGH OF ETOBICOKE
BOROUGH OF YORK
BOROUGH OF EAST YORK
CITY OF TORONTO
1
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14
14
THE NEW
1968
METROPOLITAN MAP
of the
TORONTO
METROPOLITAN AREA
including:
TORONTO • NORTH YORK • ETOBICOKE
SCARBOROUGH • EAST YORK • YORK
PORT CREDIT • CLARKSON • COOKSVILLE
Published by
MIGHT DIRECTORIES LIMITED
APARTMENT UNIT POPULATION IN 1967
for METROPOLITAN TORONTO
Area 1. 17,620 units
Area 2. 14,036 units
Area 3. 15,240 units
Area 4. 30,470 units
Area 5. 10,720 units
Area 6. 12,320 units
Area 7. 5,860 units
Area 8. 10,070 units
Area 9. 2,160 units
Area 10. 5,700 units
Area 11. 10,500 units
Area 12. 2,500 units
Area 13. 10,250 units
Area 14. 4,130 units
TORONTO TOWNSHIP

APPENDIX B

By-Law No. 100–64

A BY-LAW TO ESTABLISH A MINIMUM STANDARD FOR EXISTING HOUSING IN THE CITY OF OTTAWA

The Council of the Corporation of the City of Ottawa enacts as follows:

Definitions

1. In this by-law,

(*a*) "Accessory building" means a detached subordinate building on the same lot as the main building.

(*b*) "Bathroom" means a room containing a bathtub or shower with or without a water closet and basin.

(*c*) "Chief of the Fire Department" means Chief of the Fire Department of the Corporation of the City of Ottawa.

(*d*) "Corporation" means The Corporation of the City of Ottawa.

(*e*) "Dwelling" means a building or structure or part of a building or structure occupied or capable of being occupied in whole or in part for the purposes of human habitation and includes the land and premises appurtenant thereto and all outbuildings, fences or erections thereon or therein.

(*f*) "Dwelling Unit" means one or more rooms connected together as a separate unit in the same structure and constituting an independent housekeeping unit for residential occupancy by humans for living and sleeping purposes.

(*g*) "Fire Resistance Rating" means time in hours or parts thereof that a material construction or assembly will withstand fire exposure, as determined in a fire test made in conformity with generally accepted standards, or as determined by extension or interpretation of information derived therefrom.

(*h*) "Habitable room" means any room in a dwelling unit used or intended to be used for living, sleeping, cooking or eating purposes.

(*i*) "Inspectors" means all inspectors set out in subsection *a* of section 37.

(*j*) "Medical Officer of Health" means the Ottawa-Carleton Regional Medical Officer of Health.

(*k*) "Multiple Dwelling" means a building containing three or more dwelling units.

(*l*) "Non-habitable Room" means any room in a dwelling or dwelling unit other than a habitable room, and includes bathroom, toilet room, laundry, pantry, lobby, communicating corridor, stairway, closet, basement, boiler room or other space for service and maintenance of the dwelling for public use, and for access to, and vertical travel between storeys.

(*m*) "Owner" includes the person for the time being managing or receiving the rent of or paying the municipal taxes on the land or premises in connection with which the word is used whether on his own account or as agent or trustee of any other person or who would so receive the rent if such land and premises were let.

(*n*) "Rooming House" means a dwelling where there are eight or more persons who obtain lodging with or without meals.

(*o*) "Sewerage system" means the city sanitary sewerage system or a private sewage disposal system approved by the Medical Officer of Health.

(*p*) "Standards" means the standards set out in Parts 1 and 2 of this by-law.

(*q*) "Standards Officer" means a Standards Officer appointed by the Council of the Corporation to administer and enforce this by-law.

(*r*) "Toilet Room" means a room containing a water closet and wash basin.

(*s*) "Yard" means the land other than publicly owned land around the appurtenant to the whole or any part of a dwelling and used or intended to be used, or capable of being used in connection with the dwelling.

Part 1—Maintenance of Yards and Accessory Building

Yard to be Kept clean

2. Yard

(*a*) A yard shall be kept clean and free from rubbish or other debris and from objects or conditions that might create a health, fire or accident hazard.

(*b*) Heavy undergrowth and noxious plants, such as ragweed, poison ivy, poison oak, and poison sumac shall be eliminated from the yard.

(*c*) A yard shall be cultivated or protected by suitable ground cover which prevents the erosion of the soil.

(*d*) Any vehicle, including a trailer, which is in a wrecked, discarded, dismantled, inoperative or abandoned condition shall not be parked, stored or left in a yard.

(*e*) Areas used for vehicular traffic and parking shall be paved with bituminous or concrete surfacing or crushed stone of no more than 5/8" diameter stone and shall be kept in good repair.

Sewage and Drainage

3. (*a*) Sewage or organic waste shall be discharged into a sewerage system.

(*b*) Inadequately treated sewage shall not be discharged on to the surface of the ground whether into a natural or artificial drainage system or otherwise.

(*c*) No roof drainage shall be discharged on sidewalks, stairs or neighbouring property.

(*d*) Storm water shall be drained from the yard so as to prevent recurrent ponding or the entrance of water into a basement or cellar.

Walks

4. There shall be a surfaced walk leading from the entrances of every dwelling to the street.

Safe Passage

5. Steps, walks, driveways, parking spaces, and similar areas of a yard shall be maintained so as to afford safe passage under normal use and weather conditions.

Fences

6. Fences around or on a dwelling shall be kept in good repair, free from accident hazards and protected by paint, preservative or other weather-resistant material.

Accessory Buildings

7. An accessory building shall be kept in good repair and free from health, fire and accident hazards.

Garbage Disposal

8. (*a*) Every dwelling and every dwelling unit within the dwelling shall be provided with sufficient receptacles to contain all garbage, rubbish, and ashes.

(*b*) Receptacles shall be,

(i) made of water-tight construction,

(ii) provided with a tight-fitting cover, and

(iii) maintained in a clean state.

(*c*) Garbage, rubbish, and ashes shall be promptly stored in receptacles and made available for removal in accordance with By-law Number 407–62 of the Corporation and all amendments thereto.

PART 2—MAINTENANCE OF DWELLINGS AND DWELLING UNITS

Pest Prevention

9. (*a*) A dwelling shall be kept free of rodents, vermin, and insects at all times and methods used for exterminating rodents or insects or both shall be in accordance with the provisions of *The Pesticides Act*, R.S.O. 1960, Chapter 293, and all regulations passed pursuant thereto.

(*b*) Basement or cellar windows used or required for ventilation, and any other opening in a basement or cellar, including a floor drain, that might permit the entry of rodents, shall be screened with wire mesh, metal grill or other durable material which will effectively exclude rodents.

Basement Floors

10. (*a*) Basement, cellar or crawl spaces which are not served by a stairway leading from the dwelling or from outside the dwelling may have a dirt floor provided it is covered with a moisture proof covering.

(*b*) Basements or cellars which are served by a stairway leading from the dwelling or from outside the dwelling shall have a concrete floor, and where required, with a floor drain located at the lowest point of the said floor and connected to a sewerage system.

Foundations

11. (*a*) The foundation walls and the basement, cellar or crawl space floor shall be maintained in good repair and structurally sound and where necessary shall be so maintained by shoring of the walls, installing of subsoil drains at the footing, grouting masonry cracks, parging and waterproofing the walls or floors.

(*b*) Every dwelling unless of the slab-on-grade type shall be supported by foundation walls or piers which extend below the frost line or to solid rock and all footings, foundation walls, piers, slabs-on-grade shall be of masonry or other suitable material.

(*c*) Subsection *b* does not apply to accessory buildings.

12.(*a*) Every part of a dwelling shall be maintained in a structurally sound condition so as to be capable of sustaining safely its own weight and any load to which it may be subject. Materials which have been damaged or show evidence of rot or other deterioration shall be repaired or replaced.

Structurally Sound

(*b*) The exterior walls, roofs and other parts of the dwelling shall be free from loose, rotted, warped and broken materials and objects. Such materials and objects shall be removed, repaired or replaced.

(*c*) All exterior surfaces shall be of materials which provide adequate protection from the weather.

13. The exterior walls and their components shall be maintained so as to prevent their deterioration due to weather and insects, and shall be so maintained by the painting, restoring or repairing of the walls, coping or flashing, by the waterproofing of joints and of the walls themselves, by the installing or repairing of termite shields and by the treating of the soil with poison.

Exterior Walls

14. A roof including the facia board, soffit and cornice shall be maintained in a watertight condition so as to prevent leakage of water into the dwelling.

Roof

15. The interior floors, ceilings and walls shall be kept free from dampness arising from the entrance of moisture through an exterior wall or a roof, or through a cellar, basement or crawl space floor.

Dampness

16.(*a*) Windows, exterior doors, and basement or cellar hatchways shall be installed and maintained in good repair so as to prevent the entrance of wind or rain into the dwelling.

Doors and Windows

(*b*) Rotted or damaged doors, door frames, window frames, sashes and casings weather-strippings, broken glass, and defective door and window hardware shall be repaired or replaced.

(*c*) All entrance doors in a dwelling unit shall have hardware so as to be capable of being locked from both inside and outside the dwelling unit.

(*d*) All windows intended to be opened shall have hardware so as to be capable of being locked or otherwise secured from inside the dwelling unit.

17. An inside or outside stair and any porch appurtenant to it shall be maintained so as to be free of holes, cracks and other defects which may constitute possible accident hazards

Stairs and Porches

and all treads or risers that show excessive wear or are broken, warped or loose and all supporting structural members that are rotted or deteriorated shall be repaired or replaced.

Egress

18.(*a*) Every dwelling unit shall have a separate access so as to provide a safe continuous and unobstructed exit from the interior of the building to the exterior at street or grade level.

(*b*) Every dwelling unit located on other than the ground floor level shall have a secondary means of egress approved by the Chief of the Fire Department.

(*c*) All exits, halls, stairways and porches shall afford safe passage at all times.

Balustrades and Handrails

19.(*a*) A balustrade shall be installed and maintained in good repair on the open side of a balcony, porch, landing, stairwell and stairway with a rise of 5 feet or more, except for basement stairways.

(*b*) A handrail shall be installed and maintained in good repair in all stairways with three or more risers.

Walls and Ceilings

20.(*a*) Every wall and ceiling cladding shall be maintained so as to be easily cleaned and shall be free of holes, cracks, loose coverings or other defects which would permit flame or excessive heat to enter the concealed space.

(*b*) Where dwelling units are separated vertically, the dividing walls shall be continued in the basement from the top of the footings to the underside of the finished first floor surface, and in the attic from the top of the finished ceiling surface to the underside of the finished roof surface and such walls shall consist of two half-inch layers of gypsum wallboard or material of equivalent fire resistance rating and all cracks or openings shall be tightly sealed with caulking of mineral wool or similar noncombustible material.

Floors

21.(*a*) Every floor shall be smooth and level and be maintained so as to be free of all loose, warped, protruding, broken or rotted boards that might cause an accident or allow dirt to accumulate and all defective floor boards shall be repaired.

(*b*) Where floor boards have been covered with linoleum or some other covering that has become worn or torn so that it retains dirt or might cause an accident, the linoleum or other covering shall be repaired, replaced or removed.

(*c*) Every bathroom, toilet room, and shower room shall have a floor of water repellent construction with a water resistant base moulding, except at the door opening, at least two inches in height.

22. Every floor, wall, ceiling, fixture and appliance in a dwelling shall be maintained in a clean and sanitary condition and the dwelling shall be kept free from rubbish or other debris. Cleanliness

23. Every dwelling shall be provided with an adequate supply of potable running water from a source approved by the Medical Officer of Health. Every sink, wash basin, bathtub, or shower required by this by-law shall have an adequate supply of hot and cold running water. All hot water shall be supplied at a minimum temperature of 120° Fahrenheit. Adequate running water shall be supplied to every water closet. Water

24. All dwellings shall have the waste pipes connected to the sewerage system or a system approved by the Medical Officer of Health. Sewage System

25. All plumbing, drain pipes, water pipes and plumbing fixtures in every dwelling and every connecting line to the sewerage system shall be maintained in good working order and free from leaks and defects and all water pipes and appurtenances thereto shall be protected from freezing. All waste pipes shall be connected to the sewerage system through water seal traps. Plumbing

26.(*a*) Every dwelling (except otherwise provided in subsection *b*) shall contain plumbing fixtures consisting of at least, Toilet, Kitchen and Bathroom Facilities

(i) a water closet,

(ii) a kitchen sink,

(iii) a wash basin,

(iv) a bathtub or shower.

(*b*) The occupants of not more than two dwelling units may share a water closet, wash basin and bathtub or shower, provided,

(i) not more than a total of eight persons occupy both dwelling units,

(ii) access to the fixtures can be gained without going through rooms of another dwelling unit or outside the dwelling.

(*c*) In a rooming house there shall be a water closet, wash basin and bathtub or shower for every eight persons or portion thereof and the facilities shall be located on the same storey as, or on the next storey up or down from the storey on which the room or dwelling unit is located.

Bathroom and Toilet Room

27.(*a*) All bathrooms and toilet rooms shall be located within and accessible from within the dwelling.

(*b*) All bathrooms and toilet rooms shall be fully enclosed and with a door capable of being locked so as to provide privacy for the occupant.

(*c*) A wash basin shall be located in the same room as the water closet, and where this is not possible, a wash basin shall be located in a room conveniently adjacent to the room containing the water closet.

Kitchens

28.(*a*) The splash back and counter top around the kitchen sink shall have an impervious surface.

(*b*) Every kitchen shall have provided an adequate and approved gas or electrical supply.

(*c*) All combustible materials immediately underneath or within one foot of any cooking apparatus shall be fire retarded or covered with fire resistive material, except where such apparatus is installed in accordance with the requirements. There shall always be at least twenty-four inches clear space above any exposed cooking surface of such apparatus.

Heating Systems

29.(*a*) Every dwelling shall be provided with a heating system capable of maintaining a room temperature of 70 degrees Fahrenheit at five feet above floor level and three feet from exterior walls in all habitable rooms, bathrooms and toilet rooms.

(*b*) The heating system required by subsection *a* shall be maintained in good working condition so as to be capable of heating the dwelling safely to the required standard.

(*c*) No room heater shall be placed so as to cause a fire hazard to walls, curtains, and furniture, nor to impede the free movement of persons within the room where the heater is located.

(*d*) Rigid connections shall be kept between all heating, including cooking, equipment burning any fuel and a chimney or flue.

(*e*) Rigid connections shall be kept between such equipment burning gaseous fuel and the supply line, except that an approved flexible connection not more than 24 inches long, may be installed to permit cleaning behind a stove used for cooking.

(*f*) A fuel burning central heating system in a multiple dwelling shall be located in a separate room having walls, ceiling and doors with a fire resistance rating of not less than one hour.

(*g*) A space that contains a heating system shall have natural or mechanical means of supplying the required combustion air approved by the Chief of the Fire Department.

(*h*) Where a heating system or part of it or any auxiliary heating system burns solid or liquid fuel a place or receptacle for the storage of the fuel shall be provided and maintained in a convenient location and properly constructed so as to be free from fire or accident hazards.

(*i*) Fuel burning equipment shall be properly vented to a duct leading to an adequate chimney or a vent flue approved by the Chief of the Fire Department.

(*j*) Every chimney, smoke pipe and flue shall be maintained so as to prevent gases from leaking into the dwelling.

(*k*) All flues shall be kept clear of obstructions, all open joints shall be sealed and all broken and loose masonry shall be repaired.

(*l*) Chimneys, flues, and gas vents shall be installed and maintained so that under conditions of use, the temperature of any combustible material adjacent thereto, insulated therefrom, or in contact therewith, does not exceed a temperature of 160° F.

(*m*) Fireplaces and similar construction used or intended to be used for burning fuels in open fires shall be connected to approved chimneys and shall be installed so that nearby or adjacent combustible material and structural members shall not be heated so as to exceed a temperature of 160° F.

Electrical Service

30.(*a*) Every dwelling shall be wired for electricity and lighting equipment shall be installed throughout to provide illumination.

(*b*) Every habitable room, except for a kitchen, shall contain at least one electrical duplex convenience outlet where the floor area does not exceed 120 square feet. For each additional 100 square feet of floor area, one additional outlet shall be provided.

(*c*) Every kitchen shall have at least two electrical duplex convenience outlets which shall be on separate circuits.

(*d*) Fuses or overload devices shall not exceed limits set by the Hydro Electric Power Commission of Ontario.

(*e*) An electrical light fixture shall be installed in every bathroom, toilet room, laundry room, furnace room, kitchen and hall.

(*f*) Extension cords which are not part of a fixture shall not be permitted on a semi-permanent or permanent basis.

(*g*) The electrical wiring and all electrical fixtures located or used in a dwelling shall be installed and maintained in good working order and in conformity with the regulations of The Hydro Electric Power Commission of Ontario.

Light

31.(*a*) Every habitable room except for a kitchen shall have a window or windows, skylights or translucent panels that face directly to the outside at least six inches above the adjoining finished grade with an unobstructed light transmitting area of not less than ten per cent of the floor area of such rooms. The glass area of a sash door may be considered as a portion of the required window area.

(*b*) Whenever walls or other portions of structures are located on the outside less than three feet from a window, such a window shall not be deemed to face directly to the outside and shall not be included as contributing to the required minimum window area of the room.

(*c*) Whenever window wells are used, only that part of the window which is above a 45° line projected downwards from the top of the window well shall be used in calculating the required light transmitting area.

(*d*) All public halls and stairs in multiple dwellings shall be lighted at all times by the owner.

Ventilation

32.(*a*) Every habitable room shall have an opening or openings for natural ventilation and such opening or openings shall have a minimum aggregate unobstructed free flow area of three square feet, and shall be located in the exterior walls or through openable parts of skylights.

(*b*) An opening for natural ventilation may be omitted from a kitchen, living-room or living-dining room if mechanical ventilation is provided, which changes the air once each hour.

(*c*) Every bathroom or room containing a water closet, shall be provided with an opening or openings for natural ventilation located in an exterior wall or through openable parts of skylights and all such openings shall have a minimum aggregate unobstructed free flow area of one square foot.

(*d*) An opening for natural ventilation may be omitted from a bathroom or toilet room where a system of mechanical ventilation has been provided, such as an electric fan with a duct leading to outside the dwelling, and which operates whenever the light is turned on in the bathroom or toilet room.

(*e*) All systems of mechanical ventilation or air conditioning shall be maintained in good working order.

Basement or Unheated crawl space

33. Every basement and unheated crawl space shall be adequately vented to the outside air by means of screened windows which can be opened or by louvers with screened openings, the area of which shall not be less than one per cent of the floor area.

Occupancy Standards

34.(*a*) No person shall use or permit the use of a non-habitable room in a dwelling for a habitable room purpose.

(*b*) The maximum number of occupants in a dwelling unit shall not exceed one person per 100 square feet of habitable room floor area.

(*c*) For the purpose of computing the maximum number of occupants in subsection *b* any child under one year of age shall not be counted, and any child of more than one year of age but under twelve years of age shall be deemed one-half person.

(*d*) For the purpose of computing the habitable room floor space in subsection *b* the floor area under a ceiling which is less than seven feet high shall not be counted.

(*e*) No room in any dwelling shall be used for sleeping purposes unless there is a minimum width of six feet and a minimum floor area of 60 square feet. At least one-half of the required minimum floor area shall have a ceiling height of seven feet, and no floor area with a ceiling height of less than five feet shall be counted.

Occupancy of Basement Spaces

35. No basement or cellar space shall be used as a habitable room unless, in addition to section 34, it meets the following requirements:

(*a*) Floor and walls are constructed so as to be impervious to leakage of underground and surface run-off water and treated against dampness.

(*b*) The habitable room meets all requirements for light, ventilation, and ceiling height set out in this by-law.

(*c*) Each habitable room shall be separated from the heating equipment, or other equally hazardous equipment by a partition having a fire resistance rating of at least one hour.

(*d*) Access to each habitable room shall be gained without passage through a furnace or boiler room.

Responsibilities of Tenant

36. Subject to the provisions of any lease occupants of dwellings shall:

(*a*) Limit occupancy of that part of the premises which he occupies or controls to the maximum permitted by this by-law.

(*b*) Maintain that part of the premises which he occupies or controls in a clean, sanitary and safe condition.

(*c*) Maintain all plumbing, cooking and refrigeration fixtures and appliances as well as other building equipment and storage facilities in that part of the premises which he occupies or controls in a clean and sanitary condition, and provide reasonable care in the operation and use thereof.

(*d*) Keep exits from his dwelling clean and unencumbered.

(*e*) Dispose of garbage and refuse into provided facilities in a clean and sanitary manner, in accordance with the provisions of by-law 407–62 of the Corporation.

(*f*) Exterminate insects, rodents or other pests within his dwelling.

(*g*) Maintain yards in a clean, sanitary and safe condition and free from infestation insofar as said occupant occupies or controls said yards and any parts thereof.

(*h*) Keep his domestic animals and pets in an appropriate manner and under control.

Officers and Inspectors

37. For the purpose of the administration and enforcement of this by-law,

(*a*) The Corporation may from time to time appoint Standards Officers and inspectors for the purpose of administering and enforcing this by-law.

(*b*) Each Standards Officer is hereby appointed as a tribunal.

Right to Enter and Inspect

38. All inspectors and the Standards Officers shall have the same right to enter, inspect and examine any dwelling or premises as an inspector under section 84 of *The Public Health Act*, R.S.O. 1960, Chapter 321, and the provisions of sections 84, 114, 115, subsections 2 and 3 of section 116 and 117 of the said Act shall, *mutatis mutandis*, apply.

Notice of Hearing

39.(*a*) When a Standards Officer has reason to believe that any dwelling is not in conformity with the standards, a Standards Officer shall send to the owner at his last known address by prepaid registered mail a notice specifying wherein the dwelling fails to conform to the standards, stating the date, time and place of a hearing to be held by a Standards Officer to determine what action must be taken with respect to the dwelling and informing the owner that he or his representative may appear at the said hearing and make such representations and lead such evidence as he so desires and that in the event that he does not appear at the said hearing an order may be made by a Standards Officer in his absence.

(*b*) The said Notice may also contain an outline of what action may be taken to make the dwelling conform to the standards and any other information that a Standards Officer deems necessary.

Time of Hearing

40. The hearing referred to in subsection *a* of section 39 shall take place not sooner than seven days and not later than thirty days after the mailing of the said Notice to the owner.

Orders

41. Within a reasonable time after the said hearing a Standards Officer may make an Order or Orders,

(*a*) requiring the owner or occupant to make the dwelling conform to the standards within a period of time not to exceed ninety days;

(*b*) prohibiting the use of the dwelling;

(*c*) directing the placarding of the dwelling as provided in section 45;

(*d*) requiring the owner to demolish the dwelling within a period of time not to exceed ninety days; and

(*e*) causing the registration of a caution on the title to the property as provided in section 46.

Responsibilities of Lessee

42.(*a*) Where an Order of a Standards Officer is directed to an owner under the provisions of subsections *a* or *d* of section 41 and the dwelling affected is used or occupied by a person or persons holding such dwelling under the provisions of a lease, oral or written, the person or persons in the use or occupancy of the affected dwelling shall afford entry to the owner or his agent at all reasonable times so that the owner or his agent may carry out the required repairs or demolition.

(*b*) Where an Order of a Standards Officer is directed to an owner under the provisions of subsections *a* or *d* of section 41 and the dwelling affected is used or occupied by a person or persons holding such dwelling under the provisions of a lease, oral or written, a Standards Officer may order the said person or persons to vacate the affected dwelling within a period of time not to exceed ninety days.

(*c*) The occupant of any dwelling to the extent that he is made responsible by the lease or agreement under which he occupies the dwelling shall be required to repair and maintain the dwelling in accordance with the standards or demolish the whole or any part of the dwelling.

Right of Owner to Enter

Every owner shall have the right to enter and repair any dwelling pursuant to an Order, notwithstanding anything contained in or resulting from a lease or agreement pursuant to which possession of the dwelling has been given to another person.

Extensions

43. A Standards Officer may also make an Order extending the time for compliance with any Order given by him pursuant to the provisions of subsections *a* or *d* of section 41

provided there is evidence of intent to comply with any such Order and that reasonable conditions exist which prevent immediate compliance.

44. Any Order or Orders made pursuant to section 41 shall be sent by a Standards Officer by prepaid registered mail to the owner at his last known address and where an Order is made pursuant to subsection *b* of section 41 such Order may also be sent to the occupant or occupants of the dwelling. Mailing of Order

45. A Standards Officer may cause to be placed in a prominent position on the exterior of any dwelling which does not conform to the standards a placard in the form set out in Schedule "A" to this by-law and no person shall pull down or deface any such placard. Placarding

46.(*a*) Where an Order of a Standards Officer is directed to an owner under the provisions of subsections *a* or *d* of section 41 the Order may be registered in the proper Registry Office or registered as a Caution in the proper Land Titles Office, and, when so registered all conveyances, mortgages, leases or other dispositions of the land to which the Order applies and all interests acquired under any such conveyances, mortgages, leases, or other dispositions shall be subject to such Order as confirmed or modified, and such Order shall be an encumbrance on the land. Registration of Caution

(*b*) When the requirements of the Order have been satisfied a certificate shall be delivered to any interested person that the Order has been so satisfied, and such certificate may be registered in the same manner as the Order and shall operate as a discharge thereof.

47. Where an Order of a Standards Officer is directed to an owner under the provisions of subsections *a* or *d* of section 41. no person shall sell, mortgage or lease or agree to sell, mortgage or lease any dwelling in respect of which such an Order has been served without first having furnished any proposed purchaser, mortgagee or lessee with a true copy of such Order. Issuance of Copy of Order

48. Any person who fails to obey an Order of a Standards Officer given pursuant to the provisions of this by-law is guilty of an offence. Failure to Comply

49. When an owner has failed to repair or demolish all or part of a building, a Standards Officer may cause the repairs or demolition to be done and the cost of the work shall be added to the Collector's Roll of Taxes for the current year and shall be collected as taxes. Right to Repair or Demolish

Obstruction

50. Any person who obstructs or interferes with any of the inspectors or a Standards Officer in the performance of their duties under this by-law is guilty of an offence.

Penalties

51. Any person who contravenes any of the provisions of this by-law shall, upon conviction thereof, forfeit and pay a penalty of not less than $50.00 and not more than $300.00 for the first offence, and not less than $150.00 and not more than $300.00 for a second or subsequent offence, exclusive of costs.

Enforcement as under The Municipal Act

The provisions of this by-law shall be enforceable in the same manner as a by-law passed under the authority of *The Municipal Act*, R.S.O. 1960, Chapter 249.

GIVEN under the Corporate Seal of the Corporation of the City of Ottawa this day of , 19 .

....

City Clerk *Mayor*

APPENDIX C

Act No. 286
Public Acts of 1968
Approved by Governor
July 1, 1968

STATE OF MICHIGAN
74TH LEGISLATURE
REGULAR SESSION OF 1968

Introduced by Reps. White, Mrs. Elliott, Heinze, Bradley, Vaughn, Ziegler, Holmes, Mrs. Ferguson, Del Rio, Hood, Edwards and Brown

ENROLLED HOUSE BILL No. 3188

AN ACT to amend Act No. 167 of the Public Acts of 1917, entitled "An act to promote the health, safety and welfare of the people by regulating the light and ventilation, sanitation, fire protection, maintenance, alteration and improvement of dwellings; to define the classes of dwellings affected by the act, to establish administrative requirements and to establish remedies and fix penalties for the violation thereof," as amended, being sections 125.401 to 125.519 of the Compiled Laws of 1948, by adding a new section 2a and a new article 7; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Act No. 167 of the Public Acts of 1917, as amended, being sections 125.401 to 125.519 of the Compiled Laws of 1948, is amended by adding a new section 2a and a new article 7 to read as follows:

ARTICLE 1

GENERAL PROVISIONS

Sec. 2a. As used in this act:

"Enforcing agency" means the designated officer or agency charged with responsibility for administration and enforcement of this act.

ARTICLE 7

ENFORCEMENT

Sec. 121. Before construction or alteration of a dwelling, or alteration or conversion of a building for use as a dwelling is commenced and before construction or alteration of a building or structure on the same lot with a dwelling, the owner, or his agent or architect, shall submit to the health officer or other appropriate public official as the mayor

may designate, on forms to be furnished by them, a detailed statement in writing, verified by the affidavit of the person making it, of the specifications for the dwelling or building, and full and complete copies of the plans of such work. With the statement there shall be submitted a plan of the lot showing the dimensions, the location of the proposed building and all other buildings on the lot. The statement shall give in full the name and residence, by street and number, of the owner or owners of such dwelling or building and the purposes for which such dwelling or building will be used. If the construction, alteration or conversion is proposed to be made by a person other than the owner of the land in fee, the statement shall contain the full name and residence, by street and number, not only of the owner of the land but of every person interested in the dwelling, either as owner, lessee or in any representative capacity. The affidavit shall allege that the specifications and plans are true and contain a correct description of the dwelling, building, structure, lot and proposed work. The statements and affidavits may be made by the owner, his agent or architect, or by the person who proposes to make the construction, alteration or conversion or by the agent or architect of such person. No one, however, shall be recognized as the agent of the owner or of such person unless he files with the health officers or such other appropriate public official as the mayor may designate, a written instrument signed by the owner or person, designating him as such agent. False swearing in a material point in an affidavit is perjury. The specifications, plans and statements shall be filed in the health department and be public records, but no specifications, plans or statements shall be removed from the health department.

Sec. 122. (1) The health officer or such other appropriate public official as the mayor may designate, shall cause such plans and specifications to be examined. If the plans and specifications conform to the provisions of this act, the health officer or such other appropriate public official as the mayor may designate, or his duly authorized assistant, shall approve them and a written certificate to that effect shall be issued by him to the person submitting them. The health officer or such other appropriate public official as the mayor may designate may approve changes in plans and specifications previously approved by him, if the plans and specifications when so changed are in conformity with law. The construction, alteration or conversion of a dwelling, building or structure, or any part thereof, shall not be commenced until the filing and approval of the specifications, plans and statements. A permit shall not be granted and no plan approved by the department of buildings, where such exists, for the construction or alteration of a dwelling or for the alteration or conversion of any building for use as a dwelling until there has been filed in the office of the department of buildings a certificate of the health officer or such other appropriate public official as the mayor may designate, to the effect that the dwelling conforms to the provisions of this act. The construction, alteration or conversion of a dwelling, building or structure shall be in accordance with the approved specifications and plans.

(2) A permit or approval which may be issued by the health officer or such other appropriate public official as the mayor may designate, but under which no work has been done above the foundation walls

within 1 year from the time of the issuance of the permit or approval shall expire by limitation. The health officer or such other appropriate public official as the mayor may designate or his duly authorized assistant may revoke or cancel a permit or approval in case of failure or neglect to comply with any provision of this act, or in case any false statement or representation is made in specifications, plans or statements submitted or filed for such permit or approval.

Sec. 123. The governing body of a municipality to which this act by its terms applies, or the governing body of a municipality which adopts the provisions of this act by reference, shall designate a local officer or agency which shall administer the provisions of the act, and if no such officer or agency is designated then the local governing body shall be responsible for administration of the act. Municipalities may provide, by agreement, for the joint administration and enforcement of this act where such joint enforcement is practicable.

Sec. 125. (1) A registry of owners and premises shall be maintained by the enforcing agency.

(2) The owners of a multiple dwelling or rooming house containing units which will be offered to let, or to hire, for more than 6 months of a calendar year, shall register their names and places of residence or usual places of business and the location of the premises regulated by this act with the enforcing agency. The owners shall register within 60 days following the day on which any part of the premises is offered for occupancy. Owners of multiple dwellings or rooming houses containing units which are occupied or offered for occupancy at the time this act becomes effective shall register within 90 days after the effective date of this Article.

(3) If the premises are managed or operated by an agent, the agent's name and place of business shall be placed with the name of the owner in the registry.

Sec. 126. (1) The enforcing agency shall inspect, on a periodic basis, multiple dwellings and rooming houses regulated by this act. In no event shall the period between inspections be longer than 2 years. All other dwellings regulated by this act may be inspected at reasonable intervals.

(2) An inspection shall be conducted in the manner best calculated to secure compliance with the act and appropriate to the needs of the community. Inspections may be on 1 of the following bases:

(a) An area basis, such that all the regulated premises in a predetermined geographical area will be inspected simultaneously, or within a short period of time.

(b) A complaint basis, such that complaints of violations will be inspected within a reasonable time.

(c) A recurrent violation basis, such that those premises which are found to have a high incidence of recurrent or uncorrected violations will be inspected more frequently.

(3) An inspection shall be carried out by the enforcing agency, or by the enforcing agency and such representatives of other agencies as may form a team to undertake an inspection under this and other applicable acts.

(4) An inspector, or team of inspectors, may request permission to enter all premises regulated by this act at reasonable hours to undertake an inspection. Upon an emergency, as defined under rules promulgated by the enforcing agency, the inspector or team of inspectors shall have the right to enter at any time.

(5) The enforcing agency may establish and charge a reasonable fee for inspections conducted under this act.

Sec. 127. (1) In a nonemergency situation where the owner or occupant demands a warrant for inspection of the premises, the enforcing agency shall obtain a warrant from a court of competent jurisdiction. The enforcing agency shall prepare the warrant, stating the address of the building to be inspected, the nature of the inspection, as defined in this or other applicable acts, and the reasons for the inspection. It shall be appropriate and sufficient to set forth the basis for inspection (e.g. complaint, area or recurrent violation basis) established in this section, in other applicable acts or in rules or regulations. The warrant shall also state that it is issued pursuant to this section, and that it is for the purposes set forth in this and other acts which require that inspections be conducted.

(2) If the court finds that the warrant is in proper form and in accord with this section, it shall be issued forthwith.

(3) In the event of an emergency no warrant shall be required.

Sec. 128. (1) It is the policy of this state that the inspection procedures set forth in this article are established in the public interest, to secure the health and safety of the occupants of dwellings and of the general public.

(2) The enforcing agency shall keep a record of all inspections.

(3) The enforcing agency shall make available to the general public a checklist of commonly recurring violations for use in examining premises offered for occupancy.

Sec. 129. (1) Units in multiple dwellings or rooming houses shall not be occupied unless a certificate of compliance has been issued by the enforcing agency. The certificates shall be issued only upon an inspection of the premises by the enforcing agency, except as provided in section 131. The certificate shall be issued within 15 days after written application therefor if the dwelling at the date of the application is entitled thereto.

(2) A violation of this act shall not prevent the issuance of a certificate, but the enforcing agency shall not issue a certificate when the existing conditions constitute a hazard to the health or safety of those who may occupy the premises.

(3) Inspections shall be made prior to first occupancy of multiple dwellings and rooming houses, if the construction or alteration is completed and first occupancy will occur after the effective date of this article. Where first occupancy will occur before the effective date of this article, inspection shall be made within 1 year after the effective date of this article. Upon a finding that there is no condition that would constitute a hazard to the health and safety of the occupants, and that the premises are otherwise fit for occupancy, the certificate shall be issued. If the finding is of a condition that would constitute a hazard to health or safety, no certificate shall be issued, and an order to comply with the act shall be issued immediately and served upon the owner in accordance with section 132. On reinspection and proof of compliance, the order shall be rescinded and a certificate issued.

Sec. 130. (1) When a certificate is withheld pending compliance, no premises which have not been occupied for dwelling or rooming purposes shall be so occupied, and those premises which have been or are occupied for dwelling or rooming purposes may be ordered vacated until reinspection and proof of compliance in the discretion of the enforcing agency.

(2) A certificate of compliance shall be issued on condition that the premises remain in safe, healthful and fit condition for occupancy. If upon reinspection the enforcing agency determines that conditions exist which constitute a hazard to health or safety, the certificate shall be immediately suspended as to affected areas, and the areas may be vacated as provided in subsection (1).

(3) The duty to pay rent in accordance with the terms of any lease or agreement or under the provisions of any statute shall be suspended and the suspended rentals shall be paid into an escrow account as provided in subsection (4), during that period when the premises have not been issued a certificate of compliance, or when such certificate, once issued, has been suspended. This subsection does not apply until the owner has had a reasonable time after the effective date of this article or after notice of violations to make application for a temporary certificate, as provided in section 131. Nor does this subsection apply where the owner establishes that the conditions which constitute a hazard to health or safety were caused by the occupant or occupants. The rent, once suspended, shall again become due in accordance with the terms of the lease or agreement or statute from and after the time of reinstatement of the certificate, or where a temporary certificate has been issued, as provided in section 131.

(4) Rents due for the period during which rent is suspended shall be paid into an escrow account established by the enforcing officer or agency, to be paid thereafter to the landlord or any other party authorized

to make repairs, to defray the cost of correcting the violations. The enforcing agency shall return any unexpended part of sums paid under this section, attributable to the unexpired portion of the rental period, where the occupant terminates his tenancy or right to occupy prior to the undertaking to repair.

(5) When the certificate of compliance has been suspended, or has not been issued, and the rents thereafter withheld are not paid into the escrow account, actions for rent and for possession of the premises for nonpayment of rent may be maintained, subject to such defences as the tenant or occupant may have upon the lease or contract.

Sec. 131. (1) An owner shall apply for a certificate of compliance. Inspection and issuance of certificates shall be in accordance with the requirements of this act and with procedures established by the enforcing agency. The enforcing agency may authorize the issuance of temporary certificates without inspection for those premises in which there are no violations of record as of the effective date of this article, and shall issue such temporary certificates upon application in cases where inspections are not conducted within a reasonable time. Temporary certificates shall also be issued for premises with violations of record, whether existing before or after the effective date of this article, when the owner can show proof of having undertaken to correct such conditions, or when the municipality has been authorized to make repairs, or when a receiver has been appointed, or when an owner rehabilitation plan has been accepted by the court.

(2) An application for a certificate shall be made when the owners, or any of them, enroll in the registry of owners and premises. If the owner fails to register, any occupant of unregistered or uncertified premises may make application.

(3) A fee of $10.00 shall be paid by the applicant at the time the certificate is issued.

Sec. 132. (1) If, upon inspection, the premises or any part thereof are found to be in violation of any provision of this act, the violation shall be recorded by the enforcing agency in the registry of owners and premises.

(2) The owner, and in the discretion of the enforcing agency the occupant, shall be notified in writing of the existence of the violation. The notice shall state the date of the inspection, the name of the inspector, the nature of the violation and the time within which the correction shall be completed.

(3) A violation which is determined by the inspector to constitute a hazard to the health or safety of the occupants, under circumstances where the premises cannot be vacated, shall be ordered corrected within the shortest reasonable time and notice of having begun compliance shall be given the enforcing agency by the owner within 3 days. All other violations shall be corrected within a reasonable time.

(4) The enforcing agency shall reinspect after such reasonable time for the purpose of ascertaining whether the violations have been corrected.

Sec. 133. (1) The owner of premises regulated by this act shall comply with all applicable provisions of the act.

(2) The occupant of premises regulated by this act shall comply with provisions of the act specifically applicable to him.

Sec. 134. (1) If the owner or occupant fails to comply with the order contained in the notice of violation, the enforcing agency may bring an action to enforce the provisions of this act and to abate or enjoin the violation.

(2) An owner or occupant of the premises upon which any violation exists may bring an action to enforce the provisions of this act in his own name. Upon application by the enforcing agency, or upon motion of the party filing the complaint, the local enforcing agency may be substituted for, or joined with, the complainant in the discretion of the court.

(3) When the violation is uncorrected and creates an imminent danger to the health and safety of the occupants of the premises, the enforcing agency shall file a motion for a preliminary injunction or other temporary relief appropriate to remove such danger during the pendency of the action.

(4) Owners and lienholders of record or who are found by the complainant upon the exercise of reasonable diligence shall be served with a copy of the complaint and a summons. The complainant shall also file a notice of the pendency of the suit in the office of the register of deeds for the county in which the premises are located.

(5) The court, having obtained jurisdiction, shall make such orders and determinations as are consistent with the objectives of this act. The court may enjoin the maintenance of any unsafe, unhealthy or unsanitary condition, or any violations of this act, and may order the defendant to make repairs or corrections necessary to abate the conditions. The court may authorize the enforcing agency to make repairs or to remove the structure. When an occupant is not the cause of any unsafe, unhealthy or unsanitary condition, or any violation of this act, and is the complainant, the court may authorize the occupant to correct the violation and deduct the cost thereof from the rent upon such terms as the court determines to be just. Whenever the court shall find that said occupant is the cause of any unsafe, unhealthy or unsanitary condition, or any violation of this act, then the court may authorize the owner to correct the violation and assess the cost thereof against the occupant or his security deposit.

(6) No building shall be removed unless the cost of repair of the building will be greater than the state equalized value of the building.

(7) When the expenses of repair or removal are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The order may establish the priority of the lien and may provide that it shall be a lien senior to all other liens, except taxes and assessments; except that a mortgage of record having a recording date prior to all other liens of record shall retain its first priority if, at the time of recording such mortgage or at any time subsequent thereto, a certificate of compliance as provided for in this article is in effect on the subject property. The order may also specify the time and manner for foreclosure of the lien if not satisfied. A true copy of the order shall be filed in the office of the register of deeds for the county where the real property is located within 10 days after entry thereof in order to perfect the lien granted in the order.

Sec. 135. (1) When a suit has been brought to enforce this act against the owner the court may appoint a receiver of the premises.

(2) When the court finds that there are adequate grounds for the appointment of a receiver, it shall appoint the municipality or a proper local agency or officer, or any competent person, as receiver. In the discretion of the court no bond need be required. The receivership shall terminate at the discretion of the court.

(3) The purpose of a receivership shall be to repair, renovate and rehabilitate the premises as needed to make the building comply with the provisions of this act, and where ordered by the court, to remove a building. The receiver shall promptly comply with the charge upon him in his official capacity and restore the premises to a safe, decent and sanitary condition, or remove the building.

(4) Subject to the control of the court the receiver shall have full and complete powers necessary to make the building comply with the provisions of this act. He may collect rents, and other revenue, hold them against the claim of prior assignees of such rents, and other revenue, and apply them to the expenses of making the building comply with the provisions of this act. He may manage and let rental units, issue receivership certificates, contract for all construction and rehabilitation as needed to make the building comply with the provisions of this act, and exercise other powers the court deems proper to the effective administration of the receivership.

(5) When expenses of the receivership are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The provisions of subsection (7) of section 134 as to the contents and filing of an order are applicable to the order herein provided for.

Sec. 136. (1) When the owner of a dwelling regulated by this act permits unsafe, unsanitary or unhealthful conditions to exist unabated in any portion of the dwelling, whether a portion designated for the exclusive use and occupation of residents or a part of the common areas,

where such condition exists in violation of this act, any occupant, after notice to the owner and a failure thereafter to make the necessary corrections, shall have an action against the owner for such damages he has actually suffered as a consequence of the condition. When the condition is a continuing interference with the use and occupation of the premises, the occupant shall also have injunctive and other relief appropriate to the abatement of the condition.

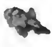
(2) Remedies under this section shall be in addition to such other relief as may be obtained by seeking enforcement of the section authorizing suits by a local enforcement agency. The remedies shall be concurrent. When several remedies are available hereunder, the court may order any relief not inconsistent with the objectives of this act, and calculated to achieve compliance with it.

Sec. 137. The enumeration of rights of action under this article shall not limit or derogate rights of action at common law.

Section 2. Sections 98 to 119 of Act No. 167 of the Public Acts of 1917, as amended, being sections 125.498 to 125.519 of the Compiled Laws of 1948, are repealed.

Section 3. All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this amendatory act takes effect are saved and such proceedings may be consummated according to the law in force at the time the proceedings were commenced. This amendatory act shall not be construed to alter, affect or abate any pending prosecution, or prevent prosecution hereafter instituted under such repealed sections for offenses committed prior to the effective date of this amendatory act. All prosecutions instituted after the effective date of this amendatory act for offences committed prior to the effective date of this amendatory act may be continued or instituted in accordance with the provisions of the law in force at the time of the commission of the offense.

....
Clerk of the House of Representatives.



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Secretary of the Senate.

Approved...........................

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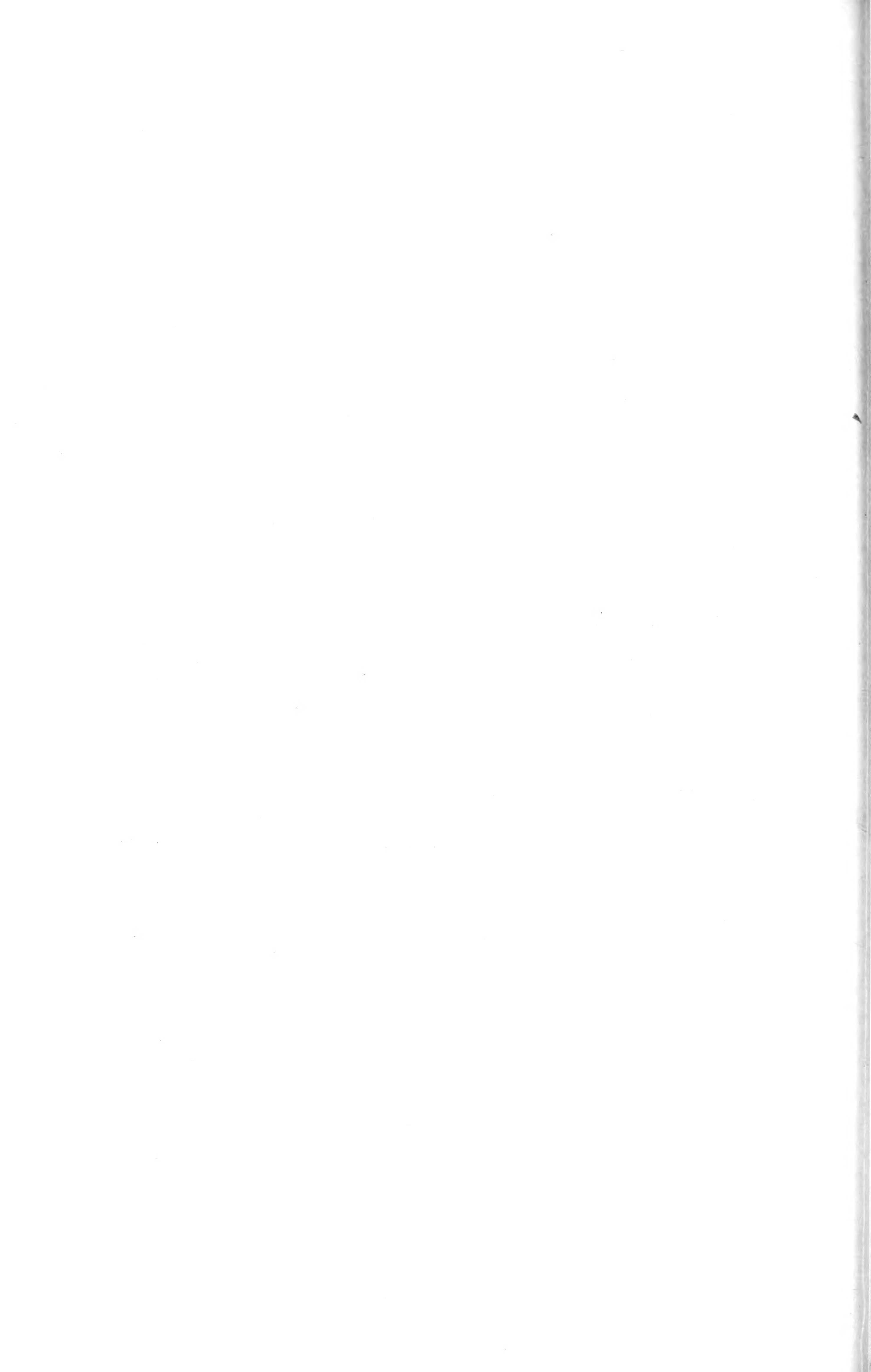
Governor.



APPENDIX D

"The Changing Nature of Landlord-Tenant Relationship: The Medium and a Message," an unpublished study prepared by Joseph M. Hassett (pp. 24-35 and footnotes pp. 47-51).

VII

Thus far this paper has borne out Edgar May's observation that, "the traditional villain is the slumlord; he is to housing what the butler is to the detective story, except that he rarely gets in at the end".[1] As this paper approaches its end, the landlord must have his day in court.

Suppose the tenant succeeds in compelling the landlord to make the necessary repairs. Will he face an immediate increase in rent? Should he? Where the landlord is the villain he should bear the cost of putting his building into tenantable condition. Where the landlord is not garnering an excessive profit the repairs should nevertheless be made but devices for spreading the cost must be developed. Finally, how shall we distinguish between the villains and the good guys?

Unfortunately, landlords are not given to publishing financial statements and it is very difficult to determine if, in fact, slum landlords are milking their tenants for an exorbitant return. There are, however, some indications that at least some landlords are doing so. A study of one block in Boston's West End[2] attempted to compute the annual return on each unit by deducting estimated expenses from rent.[3] A comparison of this return with the most recent recorded purchase price showed annual returns on investment ranging from 12.3%to 35.2% and averaging 18.3%.[4]

In the same vein, a New Jersey legislative committee reported evidence of a 20% return and concluded,

> Landlords consistently refuse to maintain minimum standards of decency and health. Unquestionably some specialize in buying slum properties at cheap prices and rent them exclusively to welfare clients at exorbitant rates.[5]

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[1]E. May, The Wasted Americans 130 (1964). It is interesting to note the reversal of roles as a legal device develops through centuries of use. Originally the lessee, who used the lease as a means of avoiding prescriptions against usury, was the villain. Cf. Plucknett, A Concise History of the Common Law 541 (4th ed. 1948) for the statement that lessors were generally poor or improvident and lessees were placed in popular literature in the company of "scoundrels who prey upon society".

[2]A. Nakagawa, The Economics of Slum Housing from the Property Owner's Point of View, January, 1956 (unpublished thesis in Robinson Library).

[3]The author recognizes the danger lurking in the fact that the rent figures were based on the word of owners who knew that an appraisal was being made for condemnation purposes. Cf. *Id.* p. 55. Cf. also p. 64 on other limitations.

[4]*Id.* at p. 63.

[5]Welfare Investigating Committee of the New Jersey Legislature, Report on the Aid to Dependent Children Program, 64 (1963). Similar findings were made in Illinois and New York.

Landlords making even a fraction of the more exorbitant returns could well be expected to bear the cost of improving their properties. Furthermore, all landlords would be able to share the cost with the federal government by deducting the cost of improvement (I.R.C. sec. 163 or 212) or, if capital, adding it to basis [I.R.C. sec. 1016 (*a*) (1)] and making it available for the landlord's favorite, the sec. 267 depreciation deduction. The tax advantages of this deduction for landlords of slum property are especially appetizing since a deduction is available for depreciation which did not in fact occur.[6]

Suppose, however, that some landlords of slum property can validly object that they cannot make the necessary repairs without increasing rents to a level that their tenants cannot afford. This may occur in a number of different situations and for a variety of reasons. For example: (1) repairs may be so numerous and of such major proportions that the capital outlay appears prohibitive; or (2) even though only relatively moderate amounts must be expended, landlords fail to make the repairs because (*a*) they lack appropriate sources of financing; or (*b*) such sources are available but landlords are unaware of them; or (*c*) landlords feel overburdened by property taxes or fear increased taxes as a result of improvements; or (*d*) landlords would be willing and able to repair but are not ready to act because of the fear that such improvements would put them at a competitive disadvantage in relation to owners who have not repaired.

Cost spreading and other devices of equal variety can be developed on both the landlord and tenant side of the coin to meet these situations. Wise planning requires that the housing market in question be carefully analyzed so that the remedy may be aptly fashioned to fit the disease. A nicely packaged prescription for all of Boston's housing ills cannot be attempted in a paper of this scope. Nevertheless, each of the typical situations set forth above will be briefly analyzed and some possible cures suggested.

A disheartening example of the first situation (large outlay for major rehabilitation) is the experience of a non-profit organization with an "old law" tenement on New York's Lower East Side.[7] The building, a six-storey walk-up built around 1880, was acquired for $15,500 by the Citizens Housing and Planning Council from Lawrence Rockefeller, who also donated $250,000 to the Council. "In all, $115,000 was spent putting in new kitchens and bathrooms . . . replacing all electrical wiring and plumbing, replastering the public areas and patching and painting the apartment walls."[8] Even though rents were increased from $23 a

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[6]I.R.C. 1250 is so qualified as not to be a major obstacle to this practice but does remove some of the attractiveness of frequent changes in ownership, with owners taking accelerated depreciation deductions and then selling for a capital gain. I.R.C. 1250 requires the owner to recognize gain as ordinary income to the extent he has taken accelerated depreciation since 1964. However, this amount is reduced by one per cent for each month the owner has held the building in excess of 20 months. Therefore, no depreciation is recaptured from a 10-year owner.

[7]New York Times, Mar. 9, 1967, at 1, col. 6 (City ed.).

[8]*Id.* at 38, col. 5.

month per apartment to $65, the building's first year of operation showed a net loss of $565.07 without depreciation and $4,461.86 counting depreciation. The main reasons for the deficit, according to the group's executive director, "were vandalism, the high costs of maintenance and materials, and the inability to charge rents, that would meet these costs."[9]

It is relevant to ask whether vandalism would have been such a prohibitive cost if the tenants themselves had innovated the rehabilitation program. Even where the immediately affected tenants do not participate in the program, a milieu in which tenants are aware that the law is moving with an even hand on both landlords and tenants may result in greatly reduced vandalism costs.[10]

The second cause cited for the deficit (high cost of rehabilitation) need not be inexorable. Jason R. Nathan, New York's Administrator of Housing and Development, stressed that, "the more sophisticated technology that is being developed would cut costs and make rehabilitation more profitable."[11] Mr. Nathan offered no prediction as to when such technology would proceed beyond the development stage. Certainly more activity in this highly underdeveloped area is long overdue.

The final reason given for the deficit (inability to charge higher rents) may be a relevant factor in many rehabilitation situations and rent supplements must be a reality where private financing cannot provide a solution.[12] The Housing and Urban Development Act of 1965[12a] authorized a dual system of rent supplements. The 12 USC 1701 s (Supp. I, 1965) program applies to limited dividend corporations and 221 (*d*) (3) co-operatives. The program contained in 42 USC 1402, 1416 (Supp. I, 1965) provides an excellent vehicle for utilizing existing housing stock. Owners who brought their buildings up to standard might look forward to participation in such a program. Local housing agencies may compile a list of "decent, safe and sanitary" dwellings where families of low income could be housed as efficiently as in public housing. Participating owners would negotiate the rental agreement with the housing agency. The rent split between the agency and the low income tenant would be achieved on the same basis as if the tenant lived in a federally aided public project.

[9]*Id.* Members of the seminar may derive some consolation from the inference that the "Hawthorne effect" is not an ubiquitous one.

[10]The council attributed the more successful operation of a second building in the "East Village" to decreased vandalism costs. The tenants of this building, many of whom are students and artists, "have a completely different attitude". New York Times, *supra* n. 8.

[11]*Id.* Mr. Nathan also noted that rehabilitation is more feasible "if done over a large area, and not just on scattered buildings". *Id.* cf. text at n. 38 *infra* on this point. Tenant involvement at the neighbourhood level might be expected to affect the costly 80% annual turnover rate in the first building.

[12]Rehabilitation which cannot be paid for can be expected to be followed by a lack of maintenance expenditures, thus starting the cycle in motion again.

[12a]Pub. L. 89-117, 79 Stat. 451, 457 (Aug. 10, 1965).

Unfortunately, appropriations for such supplements have been scant. An eventual Vietnam settlement must be accompanied by an escalation in funding or the objectives of the National Housing Act dismissed as campaign oratory.

It must be remembered that not all sub-standard housing requires such major improvements as those effected in the New York experiment. Indeed, the largest category (19,576) of Boston's sub-standard rental housing consisted of units which contained adequate plumbing facilities and were characterized by only "intermediate" defects.[13] The next largest group (13,457) lacked adequate plumbing but were otherwise sound.[14] Therefore, remedies appropriate to the other four situations set forth above may be expected to achieve satisfactory results in Boston.

First, lack of appropriate financing. Methods of financing the acquisition of slum properties can be expected to shed some light on potential sources of rehabilitation financing. Sternlieb's study of three slum areas in Newark indicated that the availability of conventional lending sources was in inverse proportion to the degree of housing decay.[15] As footnote 15 indicates, 50% of the mortgages in Area 1, the worst area, were privately written while banks and savings and loan companies accounted for 28%. In Area 3, the best area, banks and savings and loan companies climbed to 61% while private sources dropped to 24.5%. The typical mortgage in all areas was for only an eight to ten year period[16] and carried a 3–7% discount off the face amount with interest at 6%.[17]

Given this gloomy picture of initial financing, it is not surprising to find that owners were hesitant to invest in rehabilitation[18] and pessimistic about the possibility of securing additional financing.[19] The sur-

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[13]Cf. U.S. Bureau of the Census, U.S. Census of Housing: 1960 Vol. I States and Small Areas Mass. Final Report HC(1)-23.

[14]*Id.*

[15]Area 1 contained tracts with the percentage of sound housing ranging from 2.3% to 17.7%. The range in Area 2 was from 26.7% to 46.6% and from 50.2% to 66.8% sound in Area 3. The percentages of 1960-1965 mortgages written by various sources were as follows:

	Area 1	Area 2	Area 3
Savings & Loan Co...	28	38.8	59
Private.............	50	26.5	24.5
Mortgage Co........	8	22.4	10.2
Bank...............	..	4.1	2

G. Sternlieb, The Tenement Landlord 41, 108-110 (1966).

[16]*Id.* at 113.

[17]*Id.* at 114.

[18]*Id.* at 118.

[19]*Id.* at 192.

vey of owner expectations introduced the additional and interesting element, that large landlords had the most realistic impression of the high cost and short term nature of available rehabilitation financing[20] but were more anxious than single parcel owners to take advantage of a hypothetical long term mortgage.[21]

Effective rehabilitation of an area such as that studied by Sternlieb calls for more accessible long term loans at market rates for large scale owners and shorter term but lower cost financing for single parcel owners.[22] A survey of the Boston market may indicate similar needs. Small owners in any market may require subsidies ranging from low-interest loans through no-interest loans to outright grants for rehabilitation purposes. This type of approach to small owners (and market rate but more accessible long term borrowing for larger owners) would involve some re-definition of the purposes of both the FHA and the Urban Renewal programs. To the extent that Urban Renewal programs are designed to rehabilitate existing housing facilities for low income families. the already noticeable shift in that program from its original emphasis on clearance projects (which tended to benefit higher income groups) would become more pronounced. Likewise, insofar as money is made available for low income housing rehabilitation through the FHA, that program becomes less of an underwriter of actuarial risks and more an instrument for effecting broader social policy.[23]

Recent legislative developments suggest a trend in this direction. For example, the Housing Act of 1964[24] amended sec. 203 (*k*) of the National Housing Act,[25] which provides for rehabilitation loans on buildings designed for occupancy by four or fewer families, to require that such loans be "an acceptable risk" in place of the more stringent previous requirement that the loan be "economically sound", thus

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[20]*Id.* Interviews with owners and FHA officials led Sternlieb to conclude "that the only significant source of rehabilitation money at the time of the interview was a Title I with its effective interest rate of ten per cent and effective maximum term of ten years". *Id.* Apparently the investment was too great a risk or the building too small to qualify for lower interest, longer term borrowing under Sec. 207 of the National Housing Act [12 U.S.C. 1701 ss. (1964)]. The absence of a renewal program may explain the unavailability of Sec. 220 or 220 (*h*) or 221 (*d*) (4) of the same Act

The Newark experience should be compared with Boston's success with refinancing rehabilitated properties with Sec. 200 mortgages at 5¼% interest. "A Boston Redevelopment Authority survey of Washington Park indicated that, of 570 mortgaged properties judged practical for rehabilitation, 40% would have their monthl mortgage payments lowered. Another 24% would remain level in monthly charge while only 36% would go up". W. McQuade, "Urban Renewal in Boston," in Urban Renewal, etc. (J. Q. Wilson ed., 1966) at 271. This was achieved with the help of Boston banks who pledged some $20 million toward new mortgages. For an example of municipal efforts to make rehabilitation funds available in Philadelphia see Note, *Enforcement of Municipal Housing Codes,* 78 Harv. L. Rev. 801 (1965) at 854.

[21]*Id.* at 201.

[22]These small owners were wary of long term debt. *Id.* at 201.

[23]Prudent management may call for separate funding and accounting for more liberal FHA credit programs.

[24]Pub. L. 88-560, 78 Stat. 769 (Sept. 2, 1964).

[25]12 U.S.C. 1709K (Supp. I, 1965), *amending* 12 U.S.C. 1709K (1964).

allowing FHA officials to insure greater risks. This same "acceptable risk" criterion is embodied in another 1964 enactment (sec. 312 of the Housing Act of 1964)[26] which authorizes direct rehabilitation loans to owners or tenants of property in an urban renewal area (or an area where a program of concentrated code enforcement is being carried out)[27] if the applicant is unable to secure funds from other sources on comparable terms and conditions.[28] This statute casts more light on the meaning of "acceptable risk". It permits the administrator to consider not only the applicant's ability to repay and the available security but the "need for rehabilitation" as well.[29] To the extent that this last factor is emphasized, this statute can be an effective aid to rehabilitation of housing for low income families.

Most recently, the Housing and Urban Development Act of 1965[30] added sec. 115 to the Housing Act of 1949.[31] Sec. 115 authorizes a direct grant of up to $1500 for rehabilitation of an owner-occupied structure in an urban renewal area. The owner must have an income of less than $3000. If his income is more than $3000, a grant is authorized to the extent that the cost cannot be amortized under any available loan without causing his housing expense to exceed 25% of his income. Although the direct impact of sec. 115 is limited to low income owner-occupants (who may have a tenant), it is significant in that it indicates a continuing trend toward more easily accessible funds for rehabilitation of existing housing stock. It is not unlikely that future years will witness more widespread availability of other federal sources such as those mentioned in footnote 20 *supra*.

The second inhibitor of rehabilitation listed above was the owner's ignorance of available sources of financing. Whatever governmental aids are available, Sternlieb's study indicates that greater efforts must be expended to inform owners, especially smaller ones, of these opportunities.[32] In addition to more conventional pedagogical methods, the possibility of a tenant's action or the non-payment of rent may stimulate the landlord to quaff of the Pierian spring.

Third, real property taxes. One of the least surprising findings of the Sternlieb study was that all owners listed heavy real property taxes as a major reason for low levels of maintenance and the fear of re-assessment as a large-scale inhibitor of rehabilitation.[33] An interesting subgroup of findings, however, showed that these factors were more burden-

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[26]Pub. L. 88-560, 78 Stat. 769 (Sept. 2, 1964), 42 U.S.C. 1452 b (Supp. I, 1965), amending 42 U.S.C. 1452 b (1964).

[27]Cf. 42 U.S.C. 1468 (1964).

[28]Comparable terms would be quite liberal since the statute authorizes loans for up to twenty years at a maximum interest of 3% per year on the declining balance. 42 U.S.C. 1452 b (1964).

[29]*Id.*

[30]Pub. L. 89-117, 79 Stat. 451, 457 (Aug. 10, 1965).

[31]42 U.S.C. 1466 (Supp. I, 1965).

[32]G. Sternlieb, *supra* n. 15, at 187, 189.

[33]*Id.* at 212-214.

some to smaller owners while landlords with larger holdings viewed the tenantry as their major problem in maintenance and improvement.[34] This latter factor seems directly traceable to the feelings of isolation or hostility which characterize tenant's attitudes towards large-scale landlords, again emphasizing the need for expanded tenant rights, albeit tempered with appropriate tax policies.

There are a variety of possible changes in the tax structure which could operate both to free more funds for improvement expenses and remove the fear of increased taxes as a result of improvement. For example, N.Y. Real Prop. Tax 489 authorizes cities to exempt from real property tax the increase in assessed value which results from improvements eliminating dangerous or unsanitary conditions. Cities may also provide for the abatement of taxes on such property, including the land, by an amount equal to 8⅓% of the cost of the improvements. Both the exemption and the abatement may be extended for twelve years.[35]

Another approach which adheres more closely to proportional assessment would be to tax the land component of real estate relatively heavily and the building component comparatively lightly, thus eliminating the penalty for improvement of the building.[36] Finally, the special Boston problem of already boasting the nation's highest real property tax makes serious consideration of property taxation on a metropolitan basis a must. The justification for this approach lies in the fact that Boston provides a good number of services for suburbanites (many of these arising out of the 42% of Boston's real estate which is tax exempt) and accommodates more than its share of the region's low income families who often require more in services than they pay in taxes.[37]

Finally, otherwise able landlords may hesitate to make repairs because they fear competitive disadvantage, either because even a modest increase in rent would drive tenants to neighboring owners who have not repaired, or because, even without any shifting of tenants, neighboring owners might benefit from neighborhood improvement without bearing any of the cost. Owner attitudes surveyed by Sternlieb[38] bear out the interesting game theory elucidation of this notion by Davis and Whinston.[39] Active tenant groups with effective legal rights would considerably simplify the landlord's decision-making process.

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[34]*Id.* at 212. The smaller owner's fear was matched by his ignorance of the difference between re-assessable and non re-assessable improvements, indicating another area where landlord education is appropriate.

[35]For difficulties which may be presented with regard to such a proposal by Mass. Constitution pt. II, C. 1, Sec. 1, Art 4 (conferring power on the General Court "to impose and levy proportional and reasonable assessments, rates and taxes") cf. e.g. *Opinion of the Justices* 334 Mass. 769, 126 N.E. 2d 795 (1955).

[36]Cf. M. Meyerson and E. Banfield, Boston: The Job Ahead, 68 (1966) at 29, 73.

[37]Cf. *Id.* at 21-30.

[38]G. Sternlieb, *supra* n. 15, at 155, 223.

[39]O. Davis and A. Whinston, "The Economics of Urban Renewal," in Urban Renewal: the Record and the Controversy (J. Q. Wilson ed., 1966).

Once the repairs have been made, what should be the effect on rent? This is the final (and thorny) question of distinguishing between cases where improvements operate only to give the tenant what he has already been paying for and those in which they justify a higher rent. What of the Meyerson-Banfield thesis that a free economy can market housing in the same way that it markets ice cream cones?[40] It may well be that, to the extent that the law of landlord and tenant can be used to increase the supply of standard housing and strengthen the tenant's bargaining position, and to the extent that collective negotiation of leases further strengthens the tenant's hand,[41] market factors alone will sort out the properties which can command a higher rent from those which cannot. The market could be expected to fulfill this role in an area such as that studied by Sternlieb in Newark where high vacancy rates made landlords wary of rent increases.[42]

Nevertheless it is not without significance that New York, the city which has the most stringent laws designed to result in landlord repair and maintenance, also has a system of rent control.[43] Rent control is often assailed as an inhibitor of investment in the housing market for both construction of new units and rehabilitation of old ones.[44] However, Rodwin's comparison of Boston's housing experience with a free market in one post-war period and rent control in another casts doubt on these arguments.[45] Even so, whether full scale rent control is a necessary adjunct of adequate housing for low income tenants is certainly questionable. Market forces alone may provide adequate protection in many areas and these forces may be augmented by limited controls such as a recent New Jersey statute which imposes rent control only when the owner has failed to comply with an order to bring his building up to minimum standards.[46] Another limited approach is available in N.Y. Real Prop. Tax 489 which authorizes cities using the tax incentives described in the text at n. 35 *supra* to deny such benefits where rents exceed a uniform stated amount per room per month as fixed by the local legislative body.

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[40]M. Myerson and E. Banfield, *supra* N. 36.

[41]A type of publicly enforced collective bargaining is available in New York Social Welfare Law 143 b which permits welfare officials to withhold rent from a recipient's landlord when there is outstanding any violation of law in respect of the recipient's housing accommodations which is dangerous, hazardous or detrimental to life or health. This provision has been found unconstitutional by one trial court and constitutional by two trial courts. *Trozze* v. *Drooney*, 35 Misc. 2d 1060, 232 N.Y.S. 2d 139 (1962) (unconstitutional). *Schaeffer* v. *Montes*, 37 Misc. 2d 347, 240 N.Y.S. 2d 859 (1962) and *Milchman* v. *Rivera*, 39 Misc. 2d 347, 240 N.Y.S. 2d 859, appeal dismissed, 13 N.Y. 2d 1123, 247 N.Y.S. 2d 122, 196 N.E. 2d 555 (1964), (constitutional).

[42]G. Sternlieb, *supra* n. 15, at 155, 223. Although the 1960 census standard vacancy rate for Newark was 4.1 (*Id.* at 88) Sternlieb found an actual rate of 9.5% in the area studied (*Id.* at 47).

[43]However, the need for rent control in New York City may be attributed not to more stringent laws but to the city's housing shortage. New York's 1960 standard vacancy rate was a low 2%.

[44]Cf. e.g. New York Times, Mar. 16, 1967 at 1, col. 4 (City ed.).

[45]L. Rodwin, Housing and Economic Progress (1961). Cf. esp. pp. 6, 148-157. Rodwin recognizes that ceilings must not be so low as to inhibit repair and maintenance. *Id.* at 153.

[46]N.J. Stat. Ann. ch. 42, sec. 74-84.

In sum, the name of the techniques for financing the rehabilitation of our urban housing is legion. If the moral imperative to, and social and economic benefits of, reform of the law of landlord and tenant be accepted as valid, then the conclusion for bench, bar and legislative should be to proceed along these lines suggested in sections V and VI, confident that the appropriate financing techniques can be developed.

The public expenditure required for any of these financing devices is small cost indeed for the resultant benefits of the proposed changes in private law. The significant contribution which reform of landlord-tenant law could make to the problem of providing adequate housing for the nation's low-income urban dwellers would alone justify the expense. Furthermore, it is submitted that such reform is a worthy (and long overdue) end in itself. Finally, this self-purification of the law would offer a ready medium for alleviating that sense of isolation and despair which is the hallmark of cyclic poverty. Here, in a bit of reverse McLuhanese, the message is the medium. The message of hope through participation in an even handed legal system could well be a most effective medium of social change.

APPENDIX E

1964

CHAPTER 43

An Act respecting the Termination of Tenancies

(Assented to April 15, 1964)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

Short title

1. This Act may be cited as "*The Landlord and Tenant Act*".

Mineral leases exempt

2. This Act does not apply to minerals held separately from the surface of land or any dealings in minerals.

Notice of termination of tenancy

3.—(1) A weekly or monthly or year to year tenancy may be terminated by either the landlord or the tenant upon notice to the other and, unless otherwise agreed upon, the notice,

(*a*) shall meet the requirements of section 4,

(*b*) shall be given in the manner prescribed by section 5, and

(*c*) shall be given in sufficient time to give the period of notice required by section 6, 7 or 8, as the case may be.

(2) Any other kind of tenancy determinable on notice may, unless otherwise agreed upon, be terminated as provided by sections 4 and 5.

Form of notice

4.—(1) A landlord or a tenant may give notice either orally or in writing, but a notice by a landlord to a tenant is not enforceable under sections 10 to 14 unless it is in writing.

(2) A notice in writing,

(*a*) shall be signed by the person giving the notice, or his agent,

(*b*) shall identify the premises in respect of which the notice is given, and

(*c*) shall state the date on which the tenancy is to terminate or that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice.

(3) A notice may state both,

(*a*) the date on which the tenancy is to terminate, and

(*b*) that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice,

and if it does state both and the date on which the tenancy is to terminate is incorrectly stated, the notice is nevertheless effective to terminate the tenancy on the last day of the period of the tenancy next following the giving of the notice.

(4) A notice need not be in any particular form, but a notice by a landlord to a tenant may be in Form A of the Schedule and a notice by a tenant to a landlord may be in Form B of the Schedule.

Manner of giving notice

5.—(1) Notice by a tenant to a landlord may be given personally to the landlord, or his agent, or may be sent to him by ordinary mail at the address where the rent is payable.

(2) Except as provided in this section, a notice by a landlord to a tenant shall be given personally to the tenant.

(3) Where the tenant cannot be given notice by reason of his absence from the premises, or by reason of his evading service, the notice may be given to the tenant,

(*a*) by giving it to any adult person who apparently resides with the tenant, or

(*b*) by posting it up in a conspicuous place upon some part of the premises, or

(*c*) by sending it by registered mail to the tenant at the address where he resides.

(4) Notwithstanding anything in this section, a notice to a corporation may be given in the manner permitted under section 270 of *The Companies Act*.

Notice to terminate weekly tenancy

6.—(1) A notice to terminate a weekly tenancy shall be given on or before the last day of one week of tenancy to be effective on the last day of the following week of the tenancy.

(2) For the purposes of this section, "week of the tenancy" means the weekly period on which the tenancy is based and not necessarily a calendar week and, unless otherwise specifically agreed upon, the week shall be deemed to begin on the day upon which rent is payable.

7.—(1) A notice to terminate a monthly tenancy shall be given on or before the last day of one month of the tenancy to be effective on the last day of the following month of the tenancy.

Notice to terminate monthly tenancy

(2) For the purposes of this section, "month of the tenancy" means the monthly period on which the tenancy is based and not necessarily a calendar month and, unless otherwise specifically agreed upon the month shall be deemed to begin on the day upon which rent is payable.

8.—(1) A notice to terminate a year to year tenancy shall be given on or before the sixtieth day before the last day of any year of the tenancy to be effective on the last day of that year of the tenancy.

Notice to terminate yearly tenancy

(2) For the purposes of this section, "year of the tenancy" means the yearly period on which the tenancy is based and not necessarily a calendar year, and unless otherwise agreed upon, the year shall be deemed to begin on the day, or the anniversary of the day, on which the tenant first became entitled to possession.

9.—(1) A landlord is entitled to compensation for the use and occupation of premises after the tenancy has expired or been terminated and the acceptance by a landlord of arrears of rent or compensation after the expiration of the tenancy or after notice of termination of a tenancy has been given does not operate as a waiver of the notice or as a reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree.

Compensation when premises not vacated

(2) The burden of proof that the notice has been waived or the tenancy has been reinstated or a new tenancy created is upon the person so claiming.

(3) A landlord's claim for arrears of rent or compensation for use and occupation by a tenant after the expiration or termination of the tenancy may be enforced by action or as provided in section 11.

10.—(1) Where a tenant, after his tenancy has expired or has been terminated, does not go out of possession of the premises held by him, the landlord may apply by originating notice of motion to the Supreme Court for an order for possession.

Application for order for possession

(2) The originating notice shall be served at least three days before the day named in the notice for hearing of the application.

(3) The application of the landlord shall be supported by an affidavit,

(*a*) setting forth the terms of the tenancy,

(*b*) proving the expiration or termination of the tenancy,

(*c*) stating the failure of the tenant to deliver up possession and the reasons given for the failure, if any were given, and

(*d*) stating any other relevant facts.

Claim for arrears in rent and compensation

11.—(1) The originating notice of motion of the landlord may also include a claim for arrears of rent and for compensation for use and occupation of the premises by the tenant after the expiration or termination of the tenancy.

(2) Where a claim is made under subsection (1) the affidavit in support of the motion shall also show,

(*a*) where a claim is made for rent, the amount of rent in arrear and the time during which it has been in arrear, and

(*b*) where a claim is made for compensation, particulars of the use made of the premises after the expiration or termination of the tenancy, so far as is known.

Hearing of application

12.—(1) Upon hearing the motion, or, where it is opposed, upon hearing and considering, in a summary way, the oral and affidavit evidence of the parties and their witnesses, the judge may,

(*a*) if he is satisfied that the tenancy has expired or has been terminated, give an order for possession,

(*b*) where a claim for rent is made, give judgment for the amount of rent proven to him to be in arrear,

(*c*) where a claim for compensation is made, give judgment in such amount as the judge may determine as compensation for the use and occupation of the premises after the expiration or termination of the tenancy, having regard to the nature of the use and occupation and the rent payable during the tenancy, and

(*d*) make such order as to costs as he thinks just.

(2) The judge may grant or dismiss the application in whole or in part and may direct the trial of an issue to determine any matter in dispute.

Effect of order for possession

13.—(1) An order under section 12 granting possession,

(*a*) shall direct the tenant to deliver up possession of the premises to the landlord by a specified date or within a specified time after service of the order on the tenant, and

(*b*) shall state that if the order is not obeyed by the specified date or within the specified time a writ of possession will issue without any further order.

(2) The order may be served in the same manner as a notice may be served on a tenant pursuant to section 5.

(3) Where the order is not obeyed by the specified date or within the specified time, the landlord is entitled, without any further order, to be issued a writ of possession on filing an affidavit showing service of the order and that it has not been obeyed.

Proceedings after tenant vacates

14. Proceedings in respect of a claim for arrears of rent or compensation may continue to judgment notwithstanding that the tenant delivers up possession of or vacates the premises after service upon him of the originating notice of motion.

Regulations

15. The Lieutenant Governor in Council may make regulations for the purpose of carrying out the intent of this Act and, without restricting the generality of the foregoing may,

(*a*) prescribe forms to be used in proceedings under this Act, and

(*b*) prescribe a tariff of court fees and solicitors' costs in connection with proceedings under this Act.

Coming into force

16. This Act comes into force on the first day of July, 1964.

SCHEDULE

FORM A

NOTICE TO TENANT

TO (Name of Tenant)

I hereby give you notice to deliver up possession of the premises

....
(*identify the premises*)

which you hold of me as tenant, on the..........day of................ next, or on the last day of the period of your tenancy next following the giving of this notice.

Dated this..........day of........................, 19....

....
(*Landlord*)

FORM B

NOTICE TO LANDLORD

TO (Name of Landlord)

I hereby give you notice that I am giving up possession of the premises

....
(*identify the premises*)

which I hold of you as tenant, on the..........day of.................. next, or on the last day of the period of my tenancy next following the giving of this notice.

Dated this..........day of........................, 19....

....
(*Tenant*)

APPENDIX F

Laskin, *Cases and Notes on Land Law*,
Revised edition 1964, p. 189

INTERESSE TERMINI AND POSSESSION

As pointed out in the Introductory Note to this chapter, at common law a lessee under a lease had no estate in the land before entry; hence he could not sue for breach of any covenants which envisaged an estate nor could he bring trespass against a third person unless there had been entry. Moreover, he himself was not liable until entry for mere use and occupation although he was liable, whether he entered or not (where entry was available), for rent reserved by his lease as by way of covenant to pay it: see *Edge v. Stafford* (1831), I C. & J. 391, 148 E.R. 1474 (Ex.); *Lowe v. Ross* (1850), 5 Ex. 553, 155 E.R. 242. Nonetheless, his *interesse termini* was assignable and inheritable. On the other hand, subject to any stipulation to the contrary, there was an implied obligation of the lessor that the premises, subject of the lease, would be open to actual entry by the lessee on the day specified in the lease: see *Coe v. Clay* (1829), 5 Bing. 440, 130 E.R. 1131 (C.P.); *Jinks v. Edwards* (1856), 11 Ex. 775, 156 E.R. 1045. In other terms, a person who agrees to let must be taken to promise that he has a good title to let, not necessarily a fee simple, but an interest sufficient to support the leasehold transaction: see *Stranks v. St. John* (1867), L.R. 2 C.P. 376, 36 L.C.J.P. 118.

If entry was denied, either because of the lessor's repudiation or because an overholding tenant was rightly or wrongly in possession, the lessee was entitled to damages and could withdraw from the lease: see *Reaume v. Lalonde*, [1939] O.W.N. 167 (where the measure of damages was governed by the rule in *Bain v. Fothergill* (1874), L.R. 7 H.L. 158); *Commercial Finance Corp. v. Dunlop Tire & Rubber Goods Co.*, [1942] O.R. 380, [1942] 3 D.L.R. 150 (C.A.); *Yakchuk v. Holgate*, [1951] O.W.N. 894. There is a line of cases in United States holding that it is sufficient if the lessor can give "legal" possession to the lessee, thus obliging the latter to sue a third person who may be wrongfully in possession, as by holding over at the expiration of his term; see 1 *American Law of Property*, s. 3.37. The preferable rule, followed by another line of United States cases, is that the lessee does not bargain for a lawsuit and hence is entitled to have the premises open to his possession at the time agreed upon.

The common law recognized the right of a lessee, who had not yet entered, to maintain ejectment against a third person wrongfully in possession, if the lessee chose thus to seek possession rather than go against his lessor for damages. In *Coe v. Clay* (1829), 5 Bing. 440, 130 E.R. 1131 (C.P.), it was urged on behalf of a lessor that because the lessee could bring ejectment against an occupier wrongly holding over he could not go against the lessor, but the argument was rejected. The remedies are thus alternative, and the only remaining question which has been a troublesome point in connection with *interesse termini* is whether a

lessee entitled to possession against his lessor may sue him for possession directly instead of relying on damages or on a claim to be relieved of his obligations. The dilemma which *interesse termini* created stemmed from the fact that a person who never had possession could not claim to recover it when he had no estate on which to found his claim. (Specific performance is inapplicable save to an agreement for a lease, but in such case the relief would be execution of a lease and hence the position is not advanced.) Yet there were dicta in a number of cases to the effect that, at least in the case of a lease to commence immediately, the lessee obtained an enforceable right to possession against the lessor: see *Doe d. Parsley v. Day* (1842), 2 Q.B. 147, 114 E.R. 58; *Ryan v. Clark* (1849), 14 Q.B. 65, 117 E.R. 26; *cf. Cole*, Ejectment (1857), pp. 72, 76.

It seems wrong today that even in the absence of legislation sweeping away *interesse termini* (as was done in England by the Law of Property Act, 1925 (Imp.), c. 20, s. 149 (1) (2)), there should be a refusal to enforce a claim to possession against a lessor where no outstanding rights of third persons would be affected: see *Note*, Is Interesse Termini Necessary?, (1918) 18 Col. L. Rev. 595. There are cases in the United States which so hold and they express a sensible position: see 51 *Corpus Juris Secundum*, p. 974. The best solution would, of course, be to abolish the doctrine.

[The need of physical entry to create a term of years was avoided where the leasehold took effect under the Statute of Uses, and this too points up the emptiness of *interesse termini* for modern purposes. A consequence of the doctrine not mentioned above was that since a lessor still retained his whole interest (before the lessee's entry), a purported release of his reversion as such accomplished nothing.

For a discussion of *interesse termini* in relation to liability for loss or destruction of the premises by fire or otherwise, see *Cole*, Interesse Termini and Risk of Loss, (1954) 19 Sask. Bar Rev. 4.]

[In *Miller v. Emcer Products Ltd.*, [1956] Ch. 304, [1956] 1 All E.R. 237 (C.A.), Romer L.J. said (at p. 321 Ch., 243 All E.R.): "I do not think there is any ground for implying the *Coe v. Clay* obligation in addition to the covenant for title and quiet enjoyment which is implicit in a formal instrument of demise or grant. By the very force of the liability which is imposed on a lessor under the covenant for quiet enjoyment, the tenant is entitled to be put into possession of the premises which are leased to him, at the outset of the tenancy and to remain quietly in possession thereof throughout the term". Does this mean that the covenant for quiet enjoyment is enforceable by the lessee before actual entry once the date for entry has arrived? Where does this leave *Wallis v. Hands*, [1893] 2 Ch. 75 (C.A.)? Note, however, the explanation of *Coe v. Clay* given in the *Emcer Products* case and the reference to the abolition of *interesse termini* in England.]

Damages on Failure or Inability of Lessor to Give Possession: Liability of Lessor and Holdover Tenant

If a person wrongfully holds over in the face of a new lease of the premises to another, or if the lessor simply refuses to give possession,

the lessee is, of course, entitled to sue the lessor for damages which would ordinarily be the difference between the rental value and the actual rent reserved. Indeed, he has a cause of action against the lessor even where an existing tenant is rightfully retaining possession (but subject to the rule in *Bain v. Fothergill* (1874) L.R. H.L. 158 as to damages.). Special damages, if any would also be recoverable where found to be within the contemplation of the parties to the lease.

The lessor himself may sue the overholding tenant, and in such an action he may recover the general damages which he may have been obliged to pay in a suit against him by his new lessee: see *Bramley v. Chesterton* (1857), 2 C.B.N.S. 590, 140 E.R. 548. The intimation in *Bramley v. Chesterton* is that the lessor could not recover from his overholding tenant any special damages which the lessor may have had to pay to the lessee by reason of the reletting having been for some special or extraordinary purpose. (Suppose, however, the existing tenant was made aware of the special nature of the re-letting before expiry of his term!) Ordinarily, a lessor suing his overholding tenant may recover as damages only the rental value of the premises, at least where the overholder is not made aware of any special use to which the lessor wishes to put the premises on the expiry of the existing term in the overholder: see *Cohen v. Godkin*, 55 O.L.R. 436, [1924] 4 D.L.R. 350 (App. Div.), noted (1925) 38 Harv. L. Rev. 1117. These damages would be recoverable either on a basis of assumpsit for use and occupation or as mesne profits for trespass on the case.