

EXPLANATORY NOTES

B I L L

No. 115

An Act to amend The Residential Tenancies Act, 2006

Clause of Bill

1 *The Residential Tenancies Amendment Act, 2017*

2 *The Residential Tenancies Act, 2006*

3 **Existing Provision**

Limits on landlord seizing tenant's personal property

12(1) A landlord must not:

- (a) seize any personal property of the tenant; or
- (b) prevent or interfere with the tenant's access to the tenant's personal property.

(2) Clause (1)(a) does not apply if:

- (a) the landlord has a court order authorizing the action; or
- (b) the landlord has an order respecting the tenant issued pursuant to section 85.

2006, c.R-22.0001, s.12.

Explanation

Subsections 85(4) to (6) will allow the landlord to dispose of tenant's property in certain circumstances.

4 **Existing Provision**

Right of landlord to impose rules

22.1(1) Subject to subsection (2), in addition to the obligations set out in a tenancy agreement, a landlord may establish and enforce rules about:

(a) the tenant's use, occupancy or maintenance of the rental unit or residential property; and

(b) the tenant's use of services and facilities.

(2) Subsection (1) applies if the rules are in writing, are made known to the tenant and are reasonable.

(3) If an application is made for an order pursuant to section 70 on the grounds that the rules imposed by a landlord pursuant to subsection (1) are not reasonable, a hearing officer may make any order that the hearing officer considers just and equitable having regard to the circumstances.

2015, c.19, s.7.

Explanation

This amendment allows landlords to make rules prohibiting the possession, use, selling or distribution of cannabis or the growing or possession of cannabis in the rental unit.

There is a requirement that the prohibitions be demonstrably reasonable.

5 Existing Provision

Application to director

70(1) An application for an order respecting any residential tenancy dispute between a landlord and a tenant must be made in the form and manner that the director may direct.

(2) Subject to subsection (14) and *The Fee Waiver Act*, if an application is made pursuant to subsection (1) and the prescribed application fee is paid to the director:

(a) the director shall:

(i) select a hearing officer from the panel of hearing officers appointed pursuant to section 73 to hear the matter or determine that the director will be the hearing officer to hear the matter; and

(ii) issue to the applicant a written notice of the date, time, place and means of hearing

(6) After holding a hearing pursuant to this section, a hearing officer may make any order the hearing officer considers just and equitable in the circumstances, including all or any of the following:

- (a) an order directing any person found contravening or failing to comply with a tenancy agreement, this Act, the regulations or an order made pursuant to this Act to stop that contravention or failure and to so comply;
- (b) an order requiring a tenant to pay to the director all or any part of any instalment of rent otherwise payable to the landlord;
- (c) an order requiring the payment of damages;
- (d) subject to section 68, an order granting possession of a rental unit;
- (e) an order determining the disposition of a security deposit and any accrued interest pursuant to section 33;
- (f) an order determining the validity of a notice of rent increase pursuant to sections 53.1 or 54.

(14) The director may refuse to issue a written notice of hearing to, and a hearing officer may decline to make an order respecting, a landlord who:

- (a) is in contravention of an order made pursuant to this Act; or
- (b) has failed to forward a security deposit and any accrued interest to the director pursuant to section 33.

2006, c.R-22.0001, s.70; 2008, c.34, s.10;
2015, c.19, s.19; 2015, c.F-13.1001, s.13.

Explanation

Section 70 gives the hearing officers their powers when applications are made and hearings are held.

Subsection (6) is amended to make it abundantly clear that in awarding damages, hearing officers can include rent arrears.

The new subsection (14.1) gives hearing officers the reciprocal power to that in subsection (14), which allows refusal of an application from a landlord who is in contravention of an order made pursuant to the Act. The new subsection will

allow refusal of an application from a tenant who is in contravention of an order made pursuant to the Act.

6 Existing Provision

Appeals

72(1) Subject to subsection (1.1), any person who is aggrieved by a decision or order of a hearing officer or the director, whether or not the decision or order is made without notice, may appeal the decision or order on a question of law or of jurisdiction to the Court of Queen's Bench within 30 days after the date on which the decision or order is signed and dated by a hearing officer.

(1.3) Subject to the regulations, if a tenant is appealing from an order issuing a writ of possession pursuant to subsection 70(13) with respect to a failure to vacate a property in accordance with a notice served pursuant to subsection 57(1), the appellant shall deposit with the local registrar:

(a) the equivalent of one-half of one month's rent; or

(b) proof satisfactory to the local registrar that the tenant's rent is fully paid.

(1.4) At the conclusion of an appeal, the Court of Queen's Bench shall direct the disposition of the money deposited pursuant to subsection (1.3).

2006, c.R-22.0001, s.72; 2015, c.19, s.21.

Explanation

The amendment to section 72 prohibits tenants from appealing a decision of a hearing officer granting possession of a rental unit for rent arrears unless the tenant continues to pay the rent to the landlord as it becomes due for the duration of the appeal process.

7 Existing Provision

Director may order removal and disposition of abandoned, etc., goods

85(1) On application by a landlord, a hearing officer may make an order pursuant to this section if:

(a) the tenancy of a tenant has ended or the tenant has vacated or abandoned the rental unit formerly occupied by the tenant; and

(b) the tenant mentioned in clause (a) has left property in the rental unit.

(2) The hearing officer may make an order pursuant to subsection (1) without giving notice to the tenant or giving the tenant an opportunity to be heard.

(3) In the circumstances mentioned in subsection (1), the hearing officer may authorize the landlord to remove the property mentioned in clause (1)(b) from the rental unit and sell it or otherwise dispose of it if the hearing officer is satisfied that:

(a) the landlord has made reasonable efforts to determine the whereabouts of the tenant who left the property; and

(b) the tenant who left the property cannot be located or, if that tenant has been located, that tenant has not made reasonable arrangements for the disposition of the property.

(4) If a landlord removes, sells or otherwise disposes of property pursuant to this section in accordance with an order of the hearing officer, the landlord:

(a) may deduct from any proceeds of any sale or disposition any amount owing to the landlord pursuant to the tenancy agreement, this Act or the regulations; and

(b) shall pay any proceeds of sale or disposition that remain after the deductions mentioned in clause (a) to the director to the credit of the person who left the property.

(5) If the tenant who left the property does not claim the proceeds mentioned in clause (4)(b) within six months after the proceeds were paid to the director, the director shall forward the proceeds to the Minister of Finance for deposit in the general revenue fund.

(6) If a landlord removes, sells or otherwise disposes of property pursuant to this section in accordance with an order of a hearing officer, neither the landlord nor the hearing officer nor any person acting on behalf of the landlord or hearing officer is liable in any action taken by the tenant who left or owned the property respecting the removal, sale or disposition of the property.

Explanation

The new section 85 makes it clear that a landlord can dispose of abandoned property of a tenant without an order from the ORT if the value of the property is less than \$1500. The landlord continues to have the obligation to attempt to locate the tenant prior to disposing of the property.

In all other cases, the landlord remains obligated to obtain an order from ORT before disposing of the abandoned property.

The landlord is entitled to deduct the landlord's expenses from the proceeds of the disposal, and must pay the remainder to the ORT to hold for the tenant for six months. If the tenant has not claimed the funds within that time, they are paid to the Minister of Finance.

If the landlord disposes of property in accordance with this provision, the landlord is not responsible to the tenant or any other person for the removal, sale or disposition of the property.

8 Coming into force

Prepared by the Ministry of Justice