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TENANCIES OF MOBILE HOME SITES

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TABLE OF CONTENTS

	Page No.
PREFACE . . . . .	1
I. PRESENT SITUATION . . . . .	4
1. The Subject Matter of the Report . . . . .	4
2. The Common Law Position . . . . .	5
(1) The Nature of the Tenancy Agreement . . . . .	5
(2) Rules, Regulations and Covenants . . . . .	6
(a) Express Provisions . . . . .	6
(b) Implied Covenants . . . . .	7
3. Statutory Intervention . . . . .	9
4. Special Features of Tenancies of Mobile Home Sites . . . . .	10
(1) Entrance Fees . . . . .	11
(2) Exit Fees . . . . .	12
(3) Closed Parks . . . . .	12
(4) Transfer of the Tenant's Interests: Assignments, Subleases and Sale . . . . .	13
(5) Rules and Regulations . . . . .	14
(6) Fees, Charges and Assessments . . . . .	15
(7) Termination of a Mobile Home Site Tenancy . . . . .	15
II. TRENDS TOWARDS STATUTORY REGULATION . . . . .	17
III. THE SCOPE OF THE PROPOSED LEGISLATION . . . . .	18
1. Terminology of the Report: Landlord, Tenant and Tenancy Agreement . . . . .	18
2. Definitions . . . . .	20
3. Employees . . . . .	21
4. The Crown as Landlord . . . . .	21
5. Recommendations . . . . .	22
IV. THE TENANCY AGREEMENT . . . . .	24
1. Form of Tenancy Agreement . . . . .	24
2. Notification of Tenant's Rights . . . . .	25
3. Obligation to Deliver a Copy of the Tenancy Agreement . . . . .	26
V. OBLIGATIONS OF LANDLORD AND TENANT . . . . .	28
1. Landlord's Obligations . . . . .	28
(1) Covenant for Quiet Enjoyment . . . . .	28

	Page No.
(2) Covenant for Habitability and Repair	29
(3) Privacy . . . . .	33
(a) The Mobile Home Site . . . . .	33
(b) The Mobile Home . . . . .	35
(4) Retaliatory Eviction . . . . .	37
2. Tenant's Obligations . . . . .	38
(1) Rent . . . . .	38
(a) Obligation to Pay Rent . . . . .	38
(b) Increases in Rent . . . . .	38
(c) Acceleration Clauses . . . . .	41
(2) Use and Care of Premises . . . . .	42
(a) Disturbance of Possession and Enjoyment of Landlord and Other Tenants . . . . .	42
(b) Care of the Mobile Home Site . . . . .	42
(c) Tenant's Responsibility for Other Occupants and Visitors . . . . .	44
(d) Recommendations . . . . .	44
(3) Possession . . . . .	46
3. Transfer of Interests of Landlord and Tenant . . . . .	46
VI. REMEDIES . . . . .	47
1. Independence of Covenants . . . . .	47
2. Breach of Obligation . . . . .	47
(1) Breach of Obligation by Landlord . . . . .	48
(2) Breach of Obligation by Tenant . . . . .	48
3. Recommendations . . . . .	50
4. Frustration of Contract . . . . .	55
VII. FAILURE TO GIVE POSSESSION . . . . .	56
1. By Tenant . . . . .	56
2. By Landlord . . . . .	56
3. Overholding Tenant and New Tenant . . . . .	57
4. Recommendations . . . . .	58
VIII. TERMINATION OF TENANCIES . . . . .	61

1.	Termination at Common Law . . . . .	61
2.	Termination as Regulated by Statute . . . . .	61
3.	Proposals for Change . . . . .	62
	(1) Tenancies Inside Mobile Home Parks . . . . .	63
	(2) Tenancies Outside Mobile Home Parks . . . . .	68
	(3) The Effect of Assignments and Subleases . . . . .	69
4.	Recommendations . . . . .	70
5.	Termination for Breach of Obligation or Frustration of Contract . . . . .	76
6.	Periodic Tenancies Created by Implication of Law at the Termination of a Prior Tenancy, and Acceptance of Rent After Termination of a Tenancy . . . . .	77
IX.	SECURITY OF TENURE . . . . .	79
X.	SECURITY DEPOSITS . . . . .	83
XI.	DISPOSAL OF ABANDONED GOODS . . . . .	85
XII.	RESOLUTION OF DISPUTES . . . . .	88
XIII.	SERVICE AND DELIVERY OF NOTICES AND DOCUMENTS . . . . .	92
XIV.	SPECIAL FEATURES OF TENANCIES OF MOBILE HOME SITES . . . . .	93
	1. Entrance Fees . . . . .	93
	2. Exit Fees . . . . .	96
	3. Closed Parks . . . . .	96
	4. Transfer of Interests of Landlord and Tenant . . . . .	97
	(1) The Landlord's Interests . . . . .	97
	(2) The Tenant's Interests: Assignments and Subleases . . . . .	98
	(3) Restrictions on Sale of the Mobile Home on the Mobile Home Site . . . . .	100
	5. Obligations After Transfer . . . . .	105
	6. Rules and Regulations . . . . .	106
	7. Fees, Charges and Assessments . . . . .	110
XV.	CONTRACTING OUT . . . . .	112
XVI.	TRANSITIONAL PROVISIONS . . . . .	113

	Page No.
XVII. CONCLUSION . . . . .	114
APPENDIX A - Cross-Reference of Recommendations and Sections . . . . .	115
APPENDIX B - Tenancies of Mobile Home Sites Act . . .	117
APPENDIX C - Security of Tenure . . . . .	154
APPENDIX D - Recommendations Not Included in Proposed Act . . . . .	158
APPENDIX E - Landlord and Tenant Act . . . . .	159
APPENDIX F - Judicature Act, s. 36.1 . . . . .	171
APPENDIX G - Submissions . . . . .	173
APPENDIX H - Research Summary . . . . .	176
ACKNOWLEDGMENTS . . . . .	179

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## TENANCIES OF MOBILE HOME SITES

### PREFACE

In February 1974 the Institute undertook a study of the law relating to tenancies of residential premises, which in its view was the part of the law of landlord and tenant most urgently in need of reform. Report No. 22, Residential Tenancies, was the result of that study and was published in February, 1977. That report contains recommendations for changes in the law, including a proposed Part 2 of the Landlord and Tenant Act.

Tenancies of mobile home sites was originally part of the residential tenancies project and we had intended to deal with the subject in Report No. 22, but at a late stage we concluded as a result of our discussions that we needed further consultation with those who would be affected by any new legislation. Accordingly, tenancies of mobile home sites was left out of the report.

The nature and extent of the additional research is described more fully in Appendix H, but briefly our intention was to collect facts, opinions and comments from interested parties, including landlords of mobile home sites, mobile home park operators, mobile home manufacturers, dealers and agents, and particularly tenants of mobile home sites themselves. A memorandum for discussion was produced, and publicised and circulated as widely as possible, with requests for comments. In addition, we sought to obtain factual information relating to the subject by the distribution and return of questionnaires to tenants of mobile home sites and landlords of mobile home parks.

The information which we have received as a result of

these efforts, plus that obtained in meetings held with interested parties, (listed in Appendix G), and from the reports of other provinces, including British Columbia, Ontario and Nova Scotia, has enabled us to issue this final Report, which deals with the respective rights, duties and remedies of landlords and tenants of mobile home sites, as between themselves.

An important area of our study has been the subject of protection of the tenant of a mobile home site from termination of the tenancy without cause. Under a system of full "security of tenure" the landlord would no longer have the power to terminate a tenancy except for cause. In Report No. 22, Residential Tenancies, we gave detailed consideration to a plan which would provide for security of tenure, and included such a plan in the final report, but made no recommendation as to whether or not that plan should be adopted. Our reasons for so doing were that the plan raised serious social and economic questions which we were not equipped to answer, and that the implementation of the plan could have an effect on the supply of rental premises. We have repeated this course of action, for the same reasons, in this Report, and have put forward, without recommendation, the plan for security of tenure as it was devised in Report No. 22, with necessary amendments. However, although we have not felt able to give our support to a full security of tenure scheme, we have given much consideration to the effect on tenants of mobile home sites of termination of the tenancy without cause and upon short notice. As a result we have recommended the adoption of proposals which, if adopted, will do much to protect tenants from sudden termination without involving the drawbacks of complete security of tenure. We discuss these proposals in Section VIII of the Report.



We have attached as Appendix B of the Report our recommendations in the form of a proposed new statute. We have given thought to combining the recommendations made in this Report with the proposed Part 2 of the Landlord and Tenant Act, which was put forward in Report No. 22, but for a number of reasons have decided that a separate statute for tenancies of mobile home sites is more desirable. One reason for this decision is that amalgamation could not be achieved simply by the addition of a third part to the proposed Act (except with considerable repetition) and the resulting legislation would be complex. A related reason, and the one which we find most impressive, is that it is entirely appropriate that landlords and tenants of mobile home sites have a statute dealing exclusively with their concerns, rather than that their interests be amalgamated for statutory purposes with those of residential landlords and tenants, particularly as in several important respects the interests of the two are not identical. We also think that separate legislation will be more readily comprehensible.

This Report largely follows the form of Report No. 22, Residential Tenancies, and, since the problems, arguments and proposals discussed there are frequently applicable here also, we make frequent reference to the earlier Report.

I  
PRESENT SITUATION

1. The Subject Matter of the Report

This Report deals with the relationship between two parties. One is the owner of a mobile home who rents or leases a site for his mobile home. The other is the landlord who rents or leases the site to him. There is another common form of mobile home living, where both home and land are rented or leased from their owner, but this situation is directly analogous to an ordinary residential tenancy (e.g. the renting of an apartment) and is therefore covered by the proposals made in the Residential Tenancies Report.

In Alberta, tenancies of mobile home sites occur most frequently in mobile home parks. Nonetheless, we see no reason why the protection of the proposed legislation should not extend to tenants outside such parks, and we so recommend. We do, however, recognize that non-commercial landlords are unlikely to have the economic strength of landlords of mobile home parks, and are likely to have greater personal contact with their tenants, and therefore tenancies arising outside mobile home parks will be excluded from recommendations involving undue expense for the landlord or from recommendations which would tend to prolong the tenancy relationship against the wishes of the landlord.

Recommendation #1

*That the proposed Act apply to all mobile home site tenancies except where otherwise provided.*

## 2. The Common Law Position

### (1) The Nature of the Tenancy Agreement

At common law, the tenancy agreement may be for a fixed term, e.g. "for two years", or, and more commonly, it may be a periodic tenancy. In the latter case the length of the period is calculated with reference to the frequency of rental payments and the agreement is termed a weekly, monthly, or yearly tenancy.

A fixed term tenancy agreement will automatically terminate when the term expires, but a periodic tenancy does not. At common law a yearly tenancy may be determined by at least half a year's notice expiring at the end of a completed year of the tenancy, though that has been reduced to 60 days by the Landlord and Tenant Act. Termination of a shorter periodic tenancy is similar to that of a yearly tenancy, except that a full period of notice is required, expiring at the end of a completed period. Thus in the case of a monthly tenancy, which is usual in mobile home parks, a full month's notice, terminating at the end of a month of the tenancy, is required from either party. This is called a "clear month's notice". Alternatively, the parties can agree on different notice periods.

A necessary feature of a tenancy agreement is that it grants exclusive possession of the site to the tenant. If, as sometimes occurs, an agreement does not bestow exclusive possession of the land on the tenant, it is likely to be construed as creating a licence, not a tenancy. We return to this subject at pp. 20-21 of this Report.

## (2) Rules, Regulations and Covenants

### (a) Express Provisions

Once in a mobile home park, a tenant is usually required to comply with certain rules and regulations promulgated by the landlord. Rules and regulations as found in mobile home parks are intended when read together to form a code of conduct not only for tenants, but also for other residents of the mobile home park, and for guests and visitors, so far as the actions and behavior of the latter are within the control of residents. Theoretically, however, existing rules are covenants or conditions to which the tenant agrees upon assuming occupancy. There may also be express covenants in the tenancy agreement itself. Rules imposed or amended after the commencement of a tenancy cannot be termed covenants or conditions unless the landlord reserved for himself in the original agreement the right to amend or add rules, but this is frequently done.

If a tenant breaches a covenant, the landlord may have the right to terminate the tenancy and re-enter the property, but this right can only be exercised if it is expressly reserved in the lease, or is given by statute. If re-entry is unavailable then it is open to the landlord to sue for damages for the breach, or to obtain an injunction to restrain the breach. An undertaking by the tenant may, however, be a condition rather than a mere covenant and so give the right of re-entry automatically on breach, even if there is no forfeiture clause. The distinction between a covenant and a condition depends entirely upon the intention of the parties. A condition is a term of the agreement which shows a clear intention on the part of the landlord that the tenancy shall terminate if the condition is broken by the tenant, but a covenant is a lesser undertaking breach of

which does not give the landlord the automatic right to terminate the tenancy.

Tenancy agreements frequently do grant the landlord the right to re-entry for breach of covenants, including breach of mobile home park rules and regulations. This right may be limited to serious breaches such as non-payment of rent, but it may also extend to breaches of more trivial rules, such as those governing parking of vehicles and ownership of animals. However, at common law the existence or non-existence of a right of re-entry is often of only academic interest to a tenant since the landlord is able to give notice of termination of a periodic tenancy without cause, irrespective of breach of a covenant. From the viewpoint of the tenant, the only distinction between the various grounds for termination is that re-entry, if available, may be exercised immediately by the landlord, whereas if the landlord chooses to terminate on grounds other than breach of covenant or condition he must give such notice of his intention as is required, expressly or impliedly, by the tenancy agreement.

#### (b) Implied Covenants

In the majority of cases the rights and liabilities of a landlord and tenant are governed by the express covenants that are settled between the parties and incorporated in the tenancy agreement. However, a tenancy agreement may not deal with all matters and some of those not dealt with may become the subject of implied covenants, i.e., covenants which are considered to exist in law but which the parties did not themselves expressly include.

In ordinary landlord and tenant law there are four covenants which will be implied if the agreement does not

exclude them; two imposed on the landlord in favour of the tenant, and two imposed on the tenant in favour of the landlord.

Obligations of the landlord:

(a) that the tenant shall have quiet enjoyment of the premises. This entails that the tenant be put into possession of the premises and that he shall be entitled to recover damages if his possession is interfered with by the landlord or those acting under his authority. Strictly, it is the tenant's possession which is protected, not his enjoyment of the premises.

(b) that the landlord shall not derogate from his grant. This obligation is closely connected with the obligation to provide quiet enjoyment and means that the landlord must not make the premises unusable for the purposes for which they were let. For example, it was held in an English case that where an apartment is leased in a building which is clearly intended for residential tenants only, the landlord commits a breach of the covenant if he subsequently lets the greater part of the premises for business purposes.

Obligations of the tenant:

(a) to keep and to deliver up the premises in a tenant-like manner. The term 'tenant-like manner' is obscure. It has been interpreted to mean that the tenant must do such work as is necessary for his own reasonable enjoyment of the premises, or, perhaps, such repairs as are necessary to prevent the property from lapsing into a state of decay. Whichever is the correct statement of the obligation, it is evident that the tenant's duties are not great.

(b) to pay the agreed rent.

The covenants mentioned above are aspects of traditional landlord and tenant relationships, and, subject to the ambiguities mentioned above, it is clear how the covenants can apply to residential, commercial and agricultural tenancies. Presumably, the covenants apply also to tenancies of mobile home sites but the extent of their application is uncertain and they may be inappropriate in the circumstances. It seems reasonable to require of a tenant that he maintain the premises (i.e., the site) in a tenant-like manner if this means simply keeping the area reasonably tidy, free of weeds and rubbish. However, it may be that the obligation goes further than this, perhaps extending to the repair of damage caused by subsidence or flooding; this could be a considerable burden to the tenant and one which ought, perhaps, to be the responsibility of the landlord.

The law of implied covenants is clearly unsatisfactory in relation to tenancies of mobile home sites; clarification is certainly necessary and more substantial changes may possibly be required. We return to this subject, with specific proposals, in Section V of this Report.

### 3. Statutory Intervention

In Alberta, statutory regulation of residential tenancies falls at present under the Landlord and Tenant Act, R.S.A. 1970, c. 200, as amended. The Act is included in this Report as Appendix C. Tenancies of mobile home sites and of mobile homes themselves were included in the Act in 1971. The actual effect of this Act on tenancy relationships is very limited, affecting mainly the delivery to the tenant of a copy of a written tenancy agreement; notices of termination of a tenancy; security deposits; the landlord's right

of entry; notices of increase in rent or of conversion of the premises to condominium ownership, and, since 1975, recourse against retaliatory eviction of a tenant for pursuing rights under the Temporary Rent Regulation Measures Act, S.A. 1975, c. 84. Otherwise, the common law rules remain untouched.

It was because of the sometimes inappropriate and uncertain application of the common law rules to residential tenancies, and the limited effect of the statutory provisions, that the Institute issued Report No. 22, Residential Tenancies, proposing new legislation for the regulation of residential tenancies.

Tenancies of mobile home sites were excluded from Report No. 22 because of the need to consider the different problems affecting them and it is convenient to outline these special problems at this point.

#### 4. Special Features of Tenancies of Mobile Home Sites

The following discussion will for convenience be framed in terms of problems affecting tenants of mobile home sites within mobile home parks, because several of the problems are either exclusive to mobile home parks, or primarily associated with them.

As is the case with residential tenancies, the landlord and tenant of a mobile home site are in general free to regulate their relationship by contract, but in practice this freedom of contract usually works to the benefit of the landlord who is usually in a better position to dictate the terms of the tenancy agreement. When mobile home sites are in short supply the landlord can replace the tenant easily and with much less financial and emotional strain than the



tenant can replace the rented site. This imbalance of bargaining power prevents the tenant from using his freedom of contract to improve his position vis-à-vis the landlord and the latter is free to use his generally superior position, his economic strength and greater access to legal advice, to draft tenancy agreements which will generally protect him against tenants by neutralizing those common law rules which were adverse to his interests.

The following section indicates some of the practices which landlords, particularly landlords of mobile home parks, have been able to employ in their relationship with tenants, being at least partly the result of the superior bargaining position which they enjoy. Of course, not all landlords follow these practices and not all landlords are affluent and experienced and in a strong bargaining position. The legislation should however give the tenant of the oppressive landlord the security which the tenant of the reasonable landlord already enjoys, without causing undue problems for the reasonable landlord.

We will briefly describe these special features of mobile home site tenancies here and will return to them at greater length in Section XIV of this Report.

#### (1) Entrance Fees

A mobile home owner may be required to pay a non-refundable fee before he is granted a tenancy of a mobile home site. This fee is called an "entrance fee" and is payable to the landlord of the mobile home park. The term entrance fee does not have a fixed meaning: the fee may be required solely as a form of "key money", or it may be payment for actual services rendered, such as hook-up of facilities, special preparation of the mobile home site, or

administrative services connected with the acceptance of a new tenant.

Alternatively, a similar fee may be required by the mobile home dealer from whom the tenant buys his mobile home. This fee is also known commonly as an entrance fee and in this case it will be paid as part of the purchase price of the mobile home, then passed on in whole or in part to the landlord of a mobile home park, in return for the guarantee of a mobile home site tenancy in the park for the mobile home purchaser.

### (2) Exit Fees

A mobile home owner may be charged an exit fee when he removes his mobile home from a mobile home site and particularly from a mobile home park. We have no evidence that such fees are in fact charged in Alberta and we do not consider that legislation is required on the subject of exit fees.

### (3) Closed Parks

A "closed park" is a mobile home park to which entry is restricted to those who have purchased a mobile home from the park landlord or from a specified mobile home dealer. A specified dealer will often be one that is owned by a company associated with the park operator, or one that has some other financial arrangement with the park operator.

A common feature of closed parks is that tenants who wish to leave the park are not permitted to leave their mobile home on site and arrange for its sale to a third party who in turn becomes a tenant of the mobile home site under a new tenancy or under an assignment of the old

tenancy. The reason for this is that the landlord is in the business of selling mobile homes or is paid entrance fees when new mobile homes enter the park, so that a private sale on site amounts to a lost sale opportunity for him. For the same reason, the landlord of a closed park will benefit if he maintains a steady turnover of tenants and of mobile homes and this leads to a feeling of insecurity amongst park residents.

(4) Transfer of the Tenant's Interests: Assignments, Subleases and Sale

Assignment of the tenancy and sale of the mobile home on site are frequently closely connected or identical transactions. In the on-site sale of a tenant's mobile home the tenant transfers the ownership of the home to a third party and at the same time, formally or informally, assigns the benefit of the tenancy to the new mobile home owner. Alternatively, the tenant may rent his mobile home to a third party; in so doing, the tenant is subletting the site which the mobile home occupies.

Most tenancy agreements contain a provision prohibiting assignments and subleases either absolutely or without the landlord's consent. The sale of a mobile home which is to remain in a mobile home park may be prohibited as part of a general prohibition on assignments, or it may be restricted in one or more of the following common ways:

(a) The landlord may forbid entirely the sale of mobile homes within the park, either verbally by stating that he will refuse to approve a prospective buyer as a new tenant, or by means of a clause in the tenancy agreement that tenants must remove their mobile homes when they leave the park. The tenant will then be forced to remove his mobile home from

the park if the tenant himself wishes to leave the park.

(b) The park rules or tenancy agreement may require that the sale be handled through the landlord, as agent, or through a specified real estate agent. In the former case the tenant will frequently be required to pay the landlord an agent's fee of a percentage of the sale price (or perhaps a fixed amount, e.g. \$300), sometimes irrespective of whether the landlord actually contributed to the sale. In the latter case, the tenant may suffer financially because of his inability to choose his own selling agent.

(c) The rules or tenancy agreement may require a tenant selling his mobile home within the park to pay the landlord a fee in recompense for the expense and time involved in investigation and approval of a new tenant.

#### (5) Rules and Regulations

A tenant of a mobile home park is usually required to comply with certain rules and regulations promulgated by the landlord. Violation of the rules may result in eviction, or in termination of the tenancy by notice, or in some other penalty, such as a fine, service charge or withdrawal of facilities. Rules and regulations are obviously both necessary and desirable in a mobile home park, but if rules are ambiguous, applied inconsistently or unfairly, imposed retrospectively or without notice, or are otherwise unreasonable, then the tenant may be in need of statutory protection from them.

Park rules may also be undesirable in a different way, for example by restricting unduly the freedom of residents to buy supplies from particular dealers, or by forcing residents to undue expense in order to improve the landlord's

property, perhaps by landscaping the site or laying concrete patios or other similar permanent improvements.

#### (6) Fees, Charges and Assessments

A tenant of a mobile home site may incur numerous fees, charges and assessments before, during and even after the duration of the tenancy agreement. He may be required to pay an entrance fee before occupation of the mobile home site; an exit fee or commission on sale when he leaves the site (with or without his mobile home), and all manner of other amounts between the two: for hook-up of services; for landscaping of the site; as a penalty for failing to mow his lawn or paint his skirting; for taxes and utilities; and, not least, for rent. If the tenancy agreement and rules are not in writing the tenant may be unaware of such possible expenses before he enters into the tenancy agreement and once he has brought his mobile home into the park he may well feel that he has no alternative but to pay what is requested.

#### (7) Termination of a Mobile Home Site Tenancy

A fixed term tenancy agreement gives both parties protection against termination of the tenancy whilst the period subsists, but monthly periodic tenancies of mobile home sites are more common in Alberta and here either party need give only one month's notice of termination. Although either party has the power to terminate a monthly tenancy at short notice, in times of high demand for mobile home sites (as at present exists in many areas of Alberta, particularly in and around the urban centres) the advantage in this situation lies with the landlord. On termination of the tenancy the landlord may be entitled to a resale commission, or alternatively will have little difficulty in reletting the site, perhaps collecting an entrance fee or increased

rent from the incoming tenant. The outgoing tenant will however be burdened with haulage charges, possibly a second entrance fee if he can find a vacancy in another mobile home park, and storage charges plus the cost of alternative accommodation if another site is not available. He may also lose the benefit of an entrance fee and of permanent improvements which he has made to the site. For the tenant, therefore, the financial consequences of termination may be serious. We return to the subject of termination of tenancies in Section VIII of the Report.

We have presented above an outline of some of the special problems associated with tenancies of mobile home sites, particularly in mobile home parks. We will return to these problems at Section XIV of this Report, when each will be discussed in detail and our recommendations presented.

## II TRENDS TOWARDS STATUTORY REGULATION

The special problems encountered in tenancies of mobile home sites have caused an increasing number of jurisdictions to enact statutes specifically aimed at the regulation of this particular landlord and tenant relationship. In the United States, eighteen states have this type of legislation, as does Great Britain. In Canada, Ontario and British Columbia devote a part of their Landlord and Tenant statutes to tenancies of mobile home sites, while some of the other provinces include such tenancies generally in landlord and tenant or residential tenancies statutes without separate provision for them. Some do not mention such tenancies at all.

As mentioned above, Alberta has included tenancies of mobile home sites in its Landlord and Tenant Act since 1971, but the coverage is very limited and leaves untouched the special problems outlined in the preceding section. Whether further legislation is required, and the form it might take, will be subject to examination in the following sections of this Report.

## III

## THE SCOPE OF THE PROPOSED LEGISLATION

1. Terminology of the Report: Landlord, Tenant and Tenancy Agreement

The transfer by one person, the 'landlord', to another, the 'tenant', of a right of exclusive possession of a mobile home site creates a tenancy relationship between the parties. The agreement to create a tenancy relationship may or may not be in writing and if in writing may be termed either a lease or a tenancy agreement. If the relationship is governed by a lease then the parties to the lease are correctly known as "lessor" and "lessee" but for the purposes of simplicity we shall in this Report use "landlord" and "tenant" to refer to the parties to the tenancy relationship, however constituted, and "tenancy agreement" will include a lease.

We turn now to subtenancies. Suppose that landlord A rents his mobile home site to tenant B for a fixed term of three years. This produces a tenancy relationship between A and B as to the three year term. Tenant B may later wish to rent the mobile home site to tenant C for a fixed term of one year. If he does so, a new tenancy relationship arises as to the one year term between B as landlord and C as tenant. C becomes B's tenant and B becomes C's landlord. The tenancy relationship between A and B as to the balance of the three year term remains in effect. In describing this situation we may say that tenant B (of landlord A) has made a sublease, or has sublet, to C. It is useful to describe B as a sublandlord or sublessor, and C as a subtenant or sublessee, because one is immediately put on notice that B, although the landlord of C, is a tenant of a third party, in this example A. As a matter of accurate legal definition, however, C is a tenant of B, (not a



subtenant), and B is a landlord of C (not a sublandlord). For this reason, the term "tenant" in this Report will include a subtenant, and "landlord" will include a tenant who sublets, unless the text indicates otherwise.

We think that the relationship between B and C, in our example, should properly be governed by the provisions of our proposed Tenancies of Mobile Home Sites Act, since the relationship is one of landlord and tenant of a mobile home site. However, as we discuss at pp. 69-70 of this Report, we do not think that subtenant C should become entitled, by virtue of his tenancy with sublandlord B, to the extended notice of termination provisions which we put forward for tenancies arising inside mobile home parks. For one reason, subtenant C could otherwise become entitled to a longer period of notice of termination from sublandlord B than that to which B is entitled from landlord A. We recommend therefore that a subtenancy created by a tenant under a mobile home site tenancy be excluded from the longer notice provisions of the proposed Act. We recognize, however, that a tenancy may be created specifically for the purpose of enabling the tenant to sublet. In this case the subtenancy will have all the characteristics of the ordinary tenancy of a mobile home site, but the head tenancy will be largely commercial in nature. For this reason we think that the head tenancy should receive separate treatment under the proposed Act and the subtenancy should be treated in the same way as an ordinary tenancy of a mobile home site. We recommend that the provisions of the proposed Act, including the long notice provisions, if the tenancy arises within a mobile home park, apply to the subtenancy, but not to the head tenancy. If the head tenancy is terminated the landlord under the head tenancy should become the landlord under the subtenancy and either landlord or tenant under the head tenancy should be able to terminate the subtenancy by giving

notice of the duration required under our proposals.

## 2. Definitions

We propose to avoid a complicated technical definition of "mobile home" because we think that technological innovation could quickly render such a definition worthless. We prefer instead to concentrate on the 'mobile home site' which is the true subject of the tenancy agreement. The essential feature of a mobile home site tenancy is that a self-contained residential dwelling unit (the mobile home) is provided by one party and placed on a site which is owned by another party. It is the intention of both parties that ownership of mobile home and mobile home site shall remain separate throughout the course of the tenancy relationship. We define "mobile home site", therefore, as a site intended to be occupied by a self-contained residential dwelling unit, the ownership of which is intended to remain separate from the ownership of the site. In this way we exclude from the proposed Act mobile homes which rest on land owned by the mobile home owner. The definition also expressly excludes sites maintained solely for recreational enjoyment.

The definition central to the proposed Act is that of "mobile home site tenancy". We do not attempt to define "tenancy" because we believe that drawing the line between a tenancy and some other legal relationship, such as an easement, is more properly a judicial than a legislative function. We give two reasons for this. One is that courts can resolve border-line cases with more flexibility and hence responsiveness to the needs of unique situations. The other is that any definition we might develop would be so complex that it might well create more problems than it would solve. We confine ourselves, therefore, to defining "mobile home site tenancy" as a tenancy or a licence of a mobile

home site. We include a licence of a mobile home site in our definition because we think that the relationship between licensor and licensee of a mobile home site is substantially similar to that of landlord and tenant and should therefore be regulated in the same way. Moreover the object of the Act could be defeated by the use of licences.

In a number of our recommendations we distinguish between tenancies arising within mobile home parks and those arising elsewhere. We define "mobile home park" as a parcel of land which includes three or more mobile home sites rented or held out for rent.

### 3. Employees

We think that a person who occupies premises in order more conveniently to perform the duties of his employment, although he may more properly be regarded as an employee rather than as a tenant, should have much of the protection of the proposed Act. To avoid doubt, the definition of "mobile home site tenancy" should make express reference to such arrangements.

An employee-tenant should be treated differently in one case, and that is when the employment is terminated. The landlord may then have a legitimate interest in requiring him to leave the mobile home site and we deal with this special situation at pp. 67-68 of the Report.

### 4. The Crown as Landlord

The Crown in right of Alberta, and its agencies, are important landlords in many forms of housing and may in the future become so in mobile home sites also. We see no reason why the Crown as landlord should not be bound by the proposed Act. As was said in Report No. 22, Residential

Tenancies, tenants of the Crown or of a Crown agency are as much entitled to protection against the use of the superior position of the landlord as are the tenants of private landlords.

## 5. Recommendations

### Recommendation #2

*That the proposed Act contain the following definitions:*

- (1) *"Landlord" means the landlord under a mobile home site tenancy and includes a tenant who sublets.*
- (2) *"Tenant" means the tenant under a mobile home site tenancy and includes a subtenant.*
- (3) *"Mobile home site" means a site intended to be occupied by a self-contained residential dwelling unit, the ownership of which is intended to remain separate from the ownership of the site, but does not include sites maintained solely for recreational enjoyment.*
- (4) *"Mobile home park" means a parcel of land which includes three or more mobile home sites rented or held out for rent.*
- (5) *"Mobile home site tenancy" or "tenancy"*
  - (a) *means a tenancy or a licence of a mobile home site, and*
  - (b) *includes an arrangement under which a landlord provides a mobile home site to an employee*
    - (i) *who provides services in respect of the property of which the mobile home site is a part, or*
    - (ii) *in connection with the employee's employment.*
- (6) *"Subtenancy" means a tenancy created by sub-*

*lease by a tenant under a mobile home site tenancy.*

Recommendation #3

- (1) *That if a tenancy is entered into for the purpose of enabling the tenant to sublet, the provisions of this Act*
  - (a) *apply to the subtenancy, and*
  - (b) *do not apply to the tenancy.*
- (2) *That if a tenancy described in subsection (1) is terminated*
  - (a) *the landlord under the tenancy becomes the landlord under the subtenancy, and*
  - (b) *either the landlord or the tenant may terminate the subtenancy by notice to the subtenant under*
    - (i) *recommendations #25, 27 or 28 in the case of subtenancies of mobile home sites which are in mobile home parks, or*
    - (ii) *recommendations #26 or 27 in the case of subtenancies of mobile home sites which are not in mobile home parks.*

Recommendation #4

*That the Crown in right of Alberta be bound by the proposed Act.*

IV  
THE TENANCY AGREEMENT

1. Form of Tenancy Agreement

A tenancy agreement may be oral or in writing. In Report No. 22, *Residential Tenancies*, we considered a proposal that the law require every tenancy agreement to be written and to be in a prescribed form, with a copy to be delivered to the tenant. These proposals would have had their advantages, particularly in ensuring that the tenant is made aware of his rights and obligations, since it could be made obligatory that the tenancy agreement include those rights and obligations imposed by law as well as private arrangements between landlord and tenant.

We nevertheless decided against these proposals in respect of ordinary residential tenancies and we do so again in respect of tenancies of mobile home sites. We believe that information as to the rights and obligations prescribed by law can better be given in other ways, outside the tenancy agreement. Many people would not read a written tenancy agreement, particularly if it were long and complicated, and we do not think that the advantage gained would justify imposing upon the parties the inconvenience and cost of preparing a written tenancy agreement if they do not wish to do so.

However, we think it is important that both parties to a tenancy of a mobile home site be well informed about their rights and obligations under such agreement (including those imposed upon them by law) and we turn now to the ways in which we think such information should be given.

## 2. Notification of Tenant's Rights

In Report No. 22 we recommended that a commercial landlord be required to deliver to a tenant, when he takes possession or earlier, a statement of his rights and obligations under the Act in concise and simple terms. We did not think it appropriate to impose this duty on a non-commercial landlord, e.g. one renting his home or a part of it, because such landlords may have no more business experience or acquaintance with the law than many tenants. We think that the same considerations apply with respect to tenancies of mobile home sites and therefore we recommend that a landlord of one or two mobile home sites, i.e. not a landlord of a mobile home park, be excluded from the requirement to deliver a notice of rights and obligations to the tenant.

A form of statement which will be comprehensible to most tenants of mobile home sites, and brief enough to be readily readable, is included as Form C to the proposed Act. The form should be made readily available by the Department of Consumer and Corporate Affairs and so that there will be some sanction behind the requirement, failure by the landlord to deliver the notice should be made an offence.

### Recommendation #5

- (1) *That a landlord of a mobile home park be required to ensure that a notice in Form C of the proposed Act is delivered to the tenant at or before the time at which the tenant takes possession of the mobile home site.*
- (2) *That a landlord who contravenes subsection (1) be guilty of an offence and liable on summary conviction to a fine and/or imprisonment under the provisions of the Summary Convictions Act.*

### 3. Obligation to Deliver a Copy of the Tenancy Agreement

As we have stated, we do not think it is desirable to impose a requirement that all tenancy agreements be in writing. However, section 17 of the present Landlord and Tenant Act requires that, where a tenancy agreement is in writing, the landlord deliver to the tenant a fully executed duplicate original copy within 21 days after its execution and delivery by the tenant. We think that it would be sufficient for the landlord to deliver a true copy of a tenancy agreement which is in writing and we recommend that he be required to do so.

In Report No. 22 we proposed that the tenant be entitled to withhold payment of all rent until a copy of the tenancy agreement is delivered. We thought that this would cause the landlord to deliver the copy, a task which should not be onerous to him, and this provision seems equally applicable to tenancies of mobile home sites.

The landlord should be permitted to deliver the copy personally or by mail.

#### Recommendation #6

- (1) *That where a tenancy agreement in writing is executed by a tenant, the landlord be required to ensure that a true copy of the tenancy agreement is delivered to the tenant within 21 days after its execution and delivery by the tenant.*
- (2) *That until a copy of the tenancy agreement is delivered in accordance with subsection (1) the tenant be entitled to withhold payment of all rent.*
- (3) *That the landlord be permitted to deliver the copy of the tenancy agreement to the tenant*



*as required by subsection (1)*

*(a) personally, or*

*(b) by ordinary mail addressed to the tenant*

*(i) at the mobile home site if the  
tenant has taken possession, or*

*(ii) at any address provided by the  
tenant for delivery of a copy of  
the tenancy agreement.*

## OBLIGATIONS OF LANDLORD AND TENANT

1. Landlord's Obligations

## (1) Covenant for Quiet Enjoyment

The covenant for quiet enjoyment has its origin in the common law and is implied from the relation of landlord and tenant. Its meaning is as determined by the common law, although it may be altered by the lease. The name of the covenant, "quiet enjoyment", is misleading: consistent with the primary purpose of a lease as the transfer of a leasehold estate in land to a lessee, the primary function of the covenant as it originally arose was to protect the tenant's possession of the rented premises from interference by the landlord or persons acting under his authority. Following this, the orthodox and still current view is that only conduct of the landlord, and those acting under his authority, which seems designed to interfere physically with the tenant's possession, i.e., to evict him, constitutes a breach of the covenant.

In Report No. 22, Residential Tenancies, at pp. 19-21, we discussed in detail two problems which are or have been associated with the covenant for quiet enjoyment: the failure of the landlord to give the tenant possession of the rented premises, and interference by the landlord with the tenant's enjoyment of the premises short of direct interference with his possession of them. An example of the first problem as it might arise in connection with tenancies of mobile home sites would be the landlord's failure to see that the site is ready for the tenant's mobile home at the beginning of the tenancy. An example of the second would be the landlord's sanction of a noisy or otherwise disturbing

business enterprise close to a mobile home site.

The law is at present uncertain in its reaction to these types of problems, as our discussion at pp. 19-21 of Report No. 22 illustrates. In that Report we recommended a statutory protection for the tenant, covering both his peaceful possession of the rented premises and his peaceful "enjoyment" of them in the sense in which most people would understand that word. The proposed protection is equally applicable to tenancies of mobile home sites and we recommend that it be adopted in its entirety.

#### Recommendation #7

*That in every tenancy agreement there be implied the following covenants between the landlord and the tenant:*

- (1) *that the mobile home site shall be available for peaceful occupation by the tenant at the commencement of the term, and*
- (2) *that neither the landlord nor anyone claiming under or through the landlord shall in any significant manner disturb the tenant's possession or peaceful enjoyment of the mobile home site.*

#### (2) Covenant for Habitability and Repair

Under the common law, the respective obligations of the residential landlord and tenant for maintenance and repair of rented premises and common areas are minimal. A landlord has no obligation to ensure that residential premises are habitable at the commencement of the tenancy unless the premises are rented furnished, and there is no obligation upon him to maintain or repair premises during the tenancy. The only obligation applicable to a tenant is contained in section 98 of the Land Titles Act and applies to a lease for

a term in excess of three years. That section implies a covenant by the tenant, unless a contrary intention appears in the lease, that the tenant will leave the premises at the termination of the lease "in good and tenantable repair", damage from fire, storm, and reasonable wear and tear excepted. Landlords, however, are often able to insert in tenancy agreements additional obligations upon tenants.

In Report No. 22, we recognized that many landlords of residential premises already accept voluntarily the burdens of responsibility for repair and maintenance of the premises, and provide habitable premises at the beginning of the tenancy. We thought, however, because of the inequality in bargaining power of the parties and the better position of the landlord both to arrange for the work to be done and to budget for its cost from the rental payments, that the law should impose upon all landlords the obligations now undertaken by many. We recommended, therefore, that in every tenancy agreement there be implied a covenant between landlord and tenant that the rented premises will be habitable and in good repair at the commencement of the tenancy and that throughout the tenancy the landlord shall take all reasonable steps to maintain the rented premises and common areas habitable and in good repair (see pp. 26-27 of Report No. 22, Residential Tenancies). We also recommended that the parties not be permitted to contract out of the implied covenant (see p. 127 of Report No. 22).

For the same reasons, we recommend that the landlord of a mobile home site also be obliged to accept responsibility for repair and maintenance of the mobile home site and common areas (if any). However, the physical characteristics of the mobile home site are rather different from the characteristics of the rented premises in an ordinary residential tenancy and, since terms such as "habitability" and "good repair" could not naturally be used in connection with land, and since mobile home site tenancies have other

special features which require specific consideration, we think that somewhat different provisions will have to be made for tenancies of mobile home sites.

The landlord should be required to provide the tenant with a mobile home site that is generally clean and fit for occupation at the commencement of the tenancy, and to ensure that all equipment and facilities installed on the site are sound and in good working order. We include in fitness of the site the soundness of the land, including foundations, piers, and anything else attached to the land for the placement and semi-permanent resting of a mobile home upon it, or upon them, and for ordinary use by the residents of the mobile home. We propose also that the landlord be required to maintain the fitness of the site throughout the tenancy, though it should be the tenant's obligation to keep it clean. Our recommendations would not prevent the parties from arranging that, during the currency of the tenancy, the tenant should plant lawns, lay paths, and such like.

We have proposed that the landlord of residential premises be required to maintain common areas in good repair and we think that this obligation should also be imposed on landlords of mobile home sites. The term would include those areas available for the use of the mobile home site residents and their guests, including recreational areas and buildings, laundry facilities, roads, and walkways, but it would not include individual mobile home sites, whether or not they are occupied.

The landlord of a mobile home site will from time to time have duties imposed upon him by statutes, regulations and by-laws in connection with health, safety, planning and structural standards and we recommend that the proposed Act contain a provision requiring him to carry out these duties.

We also think that the legislation should require the landlord to take reasonable steps to ensure garbage removal and to ensure that common roads are in a good state of repair and free of snow as does section 114 of the Ontario Landlord and Tenant Act.

Recommendation #8

*That in every tenancy agreement there be implied the following covenants between the landlord and the tenant:*

- (a) that at the commencement of the tenancy the mobile home site and appurtenances thereon will be clean and free from all accumulations of debris, filth, refuse, garbage and other foreign material and will be sound and suitable for the purposes for which they are intended, and*
- (b) that throughout the tenancy the landlord shall:*
  - (i) take all reasonable steps to maintain the mobile home site and appurtenances thereon sound and fit for the purpose for which they are intended and in addition take all reasonable steps to maintain the common areas habitable and in good repair,*
  - (ii) take all reasonable steps to maintain in good and working order and condition all electrical, plumbing, sanitary, heating, fuel, and other facilities supplied or required to be supplied by him,*
  - (iii) take all reasonable steps to provide or ensure the availability of a means for the removal or disposal of garbage at reasonable intervals,*
  - (iv) take all reasonable steps to maintain common roads in a good state of repair and free of excess snow, and*
  - (v) comply with health and safety standards, including planning and structural standards, prescribed by law.*

### (3) Privacy

At pp. 27-31 of our Report No. 22, Residential Tenancies, we proposed that the landlord of rented premises should have the right to enter the rented premises for a number of reasons. These included an emergency; abandonment by the tenant; to inspect the state of repair; to make repairs, and to show the property to prospective purchasers, mortgagees and tenants. We proposed that in other cases the landlord should have no right of entry, except with the consent of the tenant.

In the case of a residential tenancy it is necessary to balance the interests of the landlord, who owns the property, and the tenant, whose home it presently is. The landlord has a legitimate interest in preserving the value of his property and therefore requires periodic access, e.g. to inspect the state of repair, and the tenant has a corresponding but conflicting interest in maintaining the privacy of his home. The situation is somewhat different in a tenancy of a mobile home site because here the tenant's "castle" is his mobile home, and this is not the property of the landlord. The separation of ownership means that the problem of privacy for the tenant and access for the landlord in a tenancy of a mobile home site falls into two parts: entry to the mobile home site and entry to the mobile home itself.

#### (a) The Mobile Home Site

In the usual type of residential tenancy, i.e., the leasing of one apartment in a building containing other apartments, there is no equivalent to the mobile home site; however, in a residential tenancy of a house and gardens the gardens are the equivalent of a mobile home site outside the mobile home. In such a residential tenancy the tenant

would expect his privacy to extend throughout the rented property and the proposals made in Report No. 22 would support this: the landlord would have only the same limited right of access to the gardens as to the house itself. We think that the tenant of a mobile home site is entitled to the same degree of privacy within the confines of the mobile home site as is the ordinary residential tenant within his garden, and therefore we recommend that the same proposals apply.

The cases in which we think that the landlord should have the right to enter the mobile home site without consent, and our reasons, are as follows:

(a) Emergency. Emergencies which might arise on a mobile home site, creating possible danger for other tenants and for the landlord's property include fires involving garbage receptacles, vehicles, electrical connections, etc.; or flooding from sewer, water or fuel pipes, etc. A right of entry for the landlord without consent or notice is necessary to enable him to act promptly if any emergency arises. We do not think that the proposed Act should attempt to define the term 'emergency', because the circumstances in which the landlord may be required to enter are so many and varied that a definition is unlikely to cover them all.

(b) Abandonment. An abandoned mobile home site ceases to be in the exclusive possession of the tenant and the landlord should be entitled to enter without notice or consent in order to establish the fact of abandonment, to disconnect supplied facilities and to take possession.

(c) Inspection. A mobile home site is not merely a patch of ground which the landlord is able to inspect at a distance, but is a more complex arrangement which may include concrete



foundations, piers (which will often be concealed behind skirting), pathways, fences, and a number of pipes supplying basic facilities. Our recommendations will place on the landlord a duty to take all reasonable steps to maintain the mobile home site sound and fit for the purposes for which it is intended, and the supplied facilities in good and working order and condition and therefore he should be entitled to inspect in order to discover what repairs are necessary.

(d) Repair. As we propose a duty on the landlord to maintain the mobile home site, he must be permitted to enter in order to make repairs.

(e) Prospective purchasers, mortgagees and tenants. Such persons will have much the same interest in inspecting a mobile home site as they would have in inspecting ordinary residential premises in the same circumstances.

In the final three cases, inspection, repair and the showing of the site, the landlord should be required to obtain consent before entry, or to give notice. We propose that the notice should be in writing and given, at least 24 hours before the time of entry, to the tenant or another person rightfully on the mobile home site or in the mobile home. In all cases the landlord's right of entry should be exercised with due regard to the tenant's right of quiet enjoyment, and the statute should so provide in order that the tenant may have recourse if the landlord's rights are abused.

#### (b) The Mobile Home

No jurisdiction at present gives the landlord a right to enter a mobile home which has not been rented from him,

and we see no reason to recommend that he should have that right. The landlord should, of course, be free to enter the mobile home upon consent of the tenant, and, for clarity, we will state this in the proposed statute.

Recommendation #9

- (1) *That except as provided in this recommendation, a landlord not be entitled to enter either a mobile home site or a mobile home situated on a mobile home site without the consent of the tenant or of a person rightfully on the mobile home site or in the mobile home.*
- (2) *That a landlord be entitled to enter a mobile home site without consent or notice if he has reasonable grounds to believe that*
  - (a) *an emergency requires entry, or*
  - (b) *the tenant has abandoned the mobile home site.*
- (3) *That a landlord be entitled to enter a mobile home site without consent but upon notice*
  - (a) *to inspect the state of repair,*
  - (b) *to make repairs,*
  - (c) *to show the mobile home site to prospective purchasers and mortgagees of the property, or*
  - (d) *to show the mobile home site to prospective tenants*
    - (i) *after a notice of termination of a tenancy has been given, or*
    - (ii) *during the last month of a tenancy for a fixed term.*
- (4) *That a notice under subsection (3) must:*
  - (a) *be in writing,*
  - (b) *be given to the tenant at least 24 hours before the time of entry, and*

*(c) name a reasonable time of entry.*

*(5) That the landlord be required to exercise his rights under this recommendation with due regard to the rights of the tenant under recommendation #7.*

#### (4) Retaliatory Eviction

The recommendations made in this Report will substantially increase the protection of the tenant of a mobile home site and will create a more equal balance between his rights and obligations and those of the landlord. The objectives of the proposed Act will, however, be frustrated if tenants do not exercise their rights for fear of eviction.

Accordingly, in Report No. 22, Residential Tenancies, we recommended that the proposed Act prohibit termination of a periodic tenancy by a landlord in retaliation for the legitimate exercise of his rights by a tenant. We think that there is no difference here between the protection required by a residential tenant and by a tenant of a mobile home site and therefore we recommend that the same basic protections apply.

We recognize that this recommendation may not give complete protection, for the tenant will carry a difficult burden of proof. However, he will have the right to contest a termination as retaliatory, and we think that the majority of landlords will respect the law.

The mere prohibition and setting aside of the notice of termination are unlikely to constitute adequate and effective sanctions, and we therefore recommend that it be made an offence to attempt a retaliatory termination.

Recommendation #10

- (1) *That a landlord be prohibited from terminating a tenancy for the reason that the tenant has*
  - (a) *taken steps to enforce a right granted to the tenant or an obligation imposed on the landlord by the proposed Act, or*
  - (b) *made a bona fide complaint to a municipal or governmental authority alleging that the landlord has violated a statute, by-law or regulation dealing with health, safety, planning or structural standards.*
- (2) *That a notice of termination given in contravention of subsection (1) be ineffective.*
- (3) *That a landlord who contravenes subsection (1) be guilty of an offence and liable on summary conviction to a fine and/or imprisonment under the provisions of the Summary Convictions Act.*

2. Tenant's Obligations

- (1) Rent
  - (a) Obligation to Pay Rent

The obligation to pay rent is well understood and we do not think that it requires discussion or reform.

- (b) Increases in Rent

The amount of rent is customarily agreed upon by the landlord and the tenant and, like any other term in an agreement, can be changed only by mutual agreement. In a tenancy for a fixed term, the landlord cannot increase the rent during the tenancy unless the agreement so provides and his only recourse is to refuse to renew the tenancy at the end of the term unless the tenant agrees to an increased

rent. In a month to month tenancy the landlord can give notice of termination if the tenant resists the increase; he can, therefore, in the absence of a statutory provision to the contrary, or of rent control, effectively increase the rent by a month's notice given before the end of a rental period, unless the tenant is prepared to move rather than pay the increased rent.

In 1970 the Legislature made a decision that the landlord should be prohibited from increasing the rent unless he gives at least 90 days written notice. This decision was enacted in section 21 of the Landlord and Tenant Act and in our Residential Tenancies Report we recommended that much the same provisions continue to apply to residential tenancies. At pp. 72-73 of this Report we make recommendations which would require a landlord of a mobile home park to give a tenant (other than a tenant from year-to-year) a minimum of 6 months' notice of termination of the tenancy agreement, unless termination is for cause or because of a change in the use of the property. We think that the landlord should also be required to give 6 months' notice of an increase in rent under any periodic tenancy. We do so because a substantial increase in rent, however intended, may compel the tenant to leave, with all the adverse financial and personal consequences described in our discussion at pp. 63-65 and because the increase may be used by a landlord as an indirect form of eviction. The same considerations might suggest that the law go further and prohibit an increase in rent during the whole of the first year of the tenancy, as our recommendations would do or prevent the landlord from terminating a weekly or monthly tenancy during that period. We are not, however, prepared to go so far. It does not appear to us to be too onerous on a landlord of a mobile home park to set a rental figure which will be adequate for 6 months, but we think that it would be too much to require

him to look ahead for a full year, though our later recommendations would give the tenant some protection against an increase intentionally imposed as a means of eviction.

At pp. 68-69 of this Report we discuss the termination provisions appropriate to tenancies outside mobile home parks and conclude that the notice provisions contained in the Landlord and Tenant Act should continue to apply. We see no reason, therefore, to increase the period of advance notice of rent increase to be given to tenants outside mobile home parks from the 90 day period imposed by the Legislature in 1970 and we recommend that this period continue to apply.

Recommendation #11

(1) *That the following provisions apply to a tenancy of a mobile home site in a mobile home park:*

(a) *that a landlord be prohibited from increasing the rent payable under a periodic tenancy agreement and from recovering any additional rent resulting from such an increase unless he gives to the tenant a written notice of the increase in rent at least six months before the date on which the increase is to be effective,*

(b) *that a tenant under*

(i) *a periodic tenancy, or*

(ii) *a fixed-term tenancy which, by virtue of recommendation #28 will become a periodic tenancy before the date of rent increase,*

*who receives a notice under subsection (1)(a) and who fails to give to the landlord notice of termination effective on or before the date of rent increase, shall be deemed to have accepted the same,*

- (c) that a landlord who gives a notice of termination of a tenancy shall not, for a period of six months after the date the notice is given, be entitled to demand or retain any rent for the mobile home site in excess of that payable under the tenancy agreement at the time of the notice,
  - (d) that a tenant who pays rent in excess of that permitted by subsections (1)(a) and (1)(c) be entitled to recover such excess rent from the landlord,
  - (e) that this recommendation not apply if the tenancy agreement provides for a period of notice longer than six months.
- (2) That the same provisions apply to a tenancy of a mobile home site not in a mobile home park but that the period of notice be 90 days instead of six months.

(c) Acceleration Clauses

A tenancy agreement may contain a provision that if the tenant defaults in paying rent or performing other obligations, the current and all future rent becomes payable immediately. This type of provision is known as an acceleration clause. In Report No. 22 we recommended that acceleration clauses be prohibited in Alberta because they impose undue hardship on tenants and are not necessary to landlords who would have sufficient remedies under the proposed Act. The same reasoning applies to tenancies of mobile home sites.

Recommendation #12

*That a term in a tenancy agreement that provides that, by reason of default in payment of rent due or in observance of any obligation of the tenant under a tenancy agreement, the whole or any part of the remaining rent for the term of the tenancy becomes due and payable, be void and unenforceable.*

(2) Use and Care of Premises

We have dealt with the landlord's implied obligations of quiet enjoyment and repair. We turn now to the corresponding obligations of the tenant with regard to his use and care of the mobile home site and common areas.

(a) Disturbance of Possession and Enjoyment of Landlord and Other Tenants

It is desirable that the possession and peaceful enjoyment of property of all parties should be protected by the proposed Act. We have already recommended that the landlord should be placed under an obligation not to disturb the possession and peaceful enjoyment of the tenant. As we did in Report No. 22, and for the reasons found at pp. 36-38 of that Report, we now recommend that the same obligation be placed on the tenant vis-à-vis the landlord and other tenants.

(b) Care of the Mobile Home Site

The proposed Act will impose an obligation on the landlord to maintain the mobile home site and common areas in good repair during the tenancy. We think that the tenant should also have some affirmative duties with regard to the site.

In Report No. 22 we recommended that a covenant be implied in all residential tenancy agreements that the tenant will notify the landlord of conditions of disrepair in the rented premises, and that he will undertake reasonable emergency action to prevent damage to the rented premises. The first requirement is sensible because the tenant will usually be in a better position to know of disrepair than will the landlord, and the second calls for no more than what we believe a reasonable tenant would do voluntarily.



Such requirements are likely to be of less importance in tenancies of mobile home sites than in residential tenancies because of the physical difference in the rented property. However, disrepair may exist in the supplied equipment, or in the land itself, and we recommend that the same covenants be implied.

We also recommended, in Report No. 22, that the tenant be obligated to maintain "the rented premises and included furnishings and equipment in reasonable cleanliness". This provision is not appropriately worded for mobile home site tenancies because it is obviously intended to protect enclosed rented premises. However, as the tenant has exclusive possession of the mobile home site, including equipment thereon and, since the appearance of the mobile home site is of direct and continuing interest to the landlord, affecting as it does the value of his investment, we think that it is reasonable to require that the tenant not only keep the site and equipment reasonably clean, but that he keep them tidy and free of unsightly rubbish also.

Closely connected with external appearances of the site is the question of the external appearance of the mobile home itself and any attachments to it. Here the landlord's interest is the same as before: a mobile home of unsightly appearance will detract from its surroundings, particularly if it is in a mobile home park, but the problem is different because, while the site is the landlord's property, the home is not. The tenant will often have two different interests. One is his interest in being left alone to maintain his property as he wishes. The second is his interest in having the other tenants maintain a good appearance for the benefit of all. We think it important to acknowledge also that the tenant voluntarily places his mobile home on another's land, knowing that this form of quasi-communal living will

necessarily involve all parties in detriments as well as benefits. We also take note of the fact that many mobile home parks already have detailed rules and regulations concerning the appearance of mobile homes within them and that tenants appear to abide by these rules. We think that the different interests can best be balanced by an implied covenant that the tenant will observe all reasonable rules of the landlord relating to the external appearances of the mobile home and site.

(c) Tenant's Responsibility for Other Occupants and Visitors

In Report No. 22, Residential Tenancies, for the reasons discussed at pp. 39-40, we recommended that a tenant should have the same responsibility for acts of other occupants and visitors in the rented premises as he does for his own acts. Outside the rented premises, we recommended that the tenant should only be responsible for acts of other occupants and visitors if the tenant could reasonably have prevented them from occurring.

We think that the reasoning applies equally to tenants of mobile home sites and therefore we recommend that the same provisions be adopted.

(d) Recommendations

Recommendation #13

- (1) *That in every tenancy agreement there be implied the following covenants between the tenant and the landlord:*
- (a) *that neither the tenant, another occupant of the mobile home situated on the mobile home site, nor a person invited to property of which the mobile*

home site forms a part by the tenant or another occupant, shall

- (i) disturb, in any significant manner, the possession and peaceful enjoyment by the landlord or another tenant of their rights in property of which the mobile home site forms a part, or
  - (ii) damage such property by any wilful or negligent conduct including but not limited to, illegal, dangerous, or offensive conduct.
- (b) that the tenant shall maintain the mobile home site, including equipment and facilities supplied thereto, in a clean, tidy and sanitary condition, free of garbage and refuse,
  - (c) that the tenant shall observe all reasonable rules of the landlord in connection with the cleanliness, tidiness, safety and general appearance of the exterior of his mobile home and appurtenances thereto,
  - (d) that the tenant shall notify the landlord insofar as reasonably possible, of any condition of disrepair in the mobile home site known to the tenant, and
  - (e) that the tenant shall take such emergency action as would be taken by a reasonable tenant under the circumstances, short of permanent repair, to minimize damage to the mobile home site from any cause.
- (2) That the tenant not be liable under subsection (1)(a) for the conduct of another person other than on the mobile home site unless the tenant could reasonably have prevented the conduct.
  - (3) That the covenant implied by subsection (1)(a) in favour of the landlord also benefit and be enforceable by any other tenant of the landlord affected by a breach thereof.

- (4) *That the tenant not be liable to the landlord under sections (1) and (2) for any damage sustained from fire, unless*
- (a) *the fire was intentionally caused by the tenant, or*
  - (b) *the insurer under a policy of insurance in favour of the landlord is entitled to and does refuse to indemnify the landlord by reason of the tenant's conduct.*

(3) Possession

There is no uncertainty in the law concerning the tenant's obligation to surrender possession of rented premises to the landlord at the termination of a tenancy. The landlord may apply for an order for possession under section 10 of the Landlord and Tenant Act and, under section 13, if such an order is given it will direct the tenant to deliver possession within a specified period, or by a specified date. We do not recommend a change in the law.

3. Transfer of Interests of Landlord and Tenant

The present Landlord and Tenant Act does not deal with transfer, assignment, and subletting. Under the common law the landlord can transfer his reversion and also the benefit of any covenants which "touch and concern" the land in a tenancy agreement. Except as to the disposition of security deposits, with which we shall deal later, we think that the proposed Act need not regulate these rights.

The right of a tenant to assign or sublet does, however, require further consideration and this subject will be discussed in Section XIV, along with the wider question of restrictions on the sale of a mobile home, with which it is closely connected.

## VI REMEDIES

In Section V we discussed the rights and obligations of the landlord and of the tenant. We now turn to discuss the remedies of each if the other fails to carry out his obligations, or if performance of the tenancy agreement is made impossible by a fundamental change in the state of things upon the basis of which the parties contracted.

### 1. Independence of Covenants

Under the doctrine of independence of covenants a breach of a covenant by one party to a tenancy agreement does not relieve the other party of the duty to perform his covenants, unless the tenancy agreement so provides. If the tenant fails to pay rent, the landlord must bring an action to recover it; he cannot evict the tenant. Conversely, if the landlord breaches a covenant, the tenant must sue for damages; he cannot make a deduction from his rent and he cannot terminate the lease.

We believe these results of the doctrine to be undesirable and accordingly we will make recommendations which will effectively abolish the doctrine in the law relating to tenancies of mobile home sites, as we did in the case of residential tenancies.

### 2. Breach of Obligation

At pp. 53-65 of Report No. 22, Residential Tenancies, we discussed in detail the remedies of the landlord and of the tenant for breaches of obligation by the other, and made recommendations for improvement. The same considerations arise in tenancies of mobile home sites and we think that

the same remedies should be available to the parties. We will now summarize the discussion and repeat the recommendations.

(a) Breach of obligation by landlord. The landlord may commit a very serious breach of his obligations, depriving the tenant of a substantial part of the benefit of the contract, or he may commit a less serious breach. In the first instance we think it reasonable that the tenant should be entitled to treat the tenancy agreement as terminated; in recommendation #14 we propose ways in which the tenant should be able to act: either by simply vacating the mobile home site or by giving the landlord a notice that the tenancy will terminate within 14 days unless the landlord applies to the court for an order setting aside the notice. For a less serious breach, however, termination may not be appropriate, nor desired by the tenant. In recommendation #15 we propose that the tenant have the right to apply to the court for an abatement of rent to pay for the cost of curing a breach of the landlord's obligation, or for damage caused by the breach.

(b) Breach of obligation by tenant. If the tenant repudiates the tenancy agreement during its term recommendation #17 would allow the landlord to recover damages for the remainder of the term, as well as past damages and rent. However, this remedy would be unlikely to be used except in the case of fixed term tenancies.

If the tenant fails to pay rent the landlord may sue for it or may distrain for it (i.e., take any goods that the tenant has on the premises, forcibly, if necessary, and sell them) under the provisions of the Seizures Act and subject to the provisions of the Exemptions Act. We recommend that both methods of recovering rent be retained. Both suing and

distress have their disadvantages, however, being both relatively expensive and time-consuming and accordingly we think that another remedy should also be available to the landlord. Recommendation #18 would allow the landlord, upon default in payment of rent, to serve a notice of termination of the tenancy, to have effect 14 days after service. If the tenant did not object to the notice the tenancy would terminate accordingly. Alternatively, instead of giving notice, or if the tenant should object to the notice, the landlord would be able to apply to the court, which would make an order terminating the tenancy if there has been a substantial breach. If the tenant should pay the arrears of rent within the 14 day period then the notice would be ineffective, whether or not the landlord applied to the court.

This proposal commends itself to us as an expeditious means of terminating a tenancy for non-payment of rent and is considerably more advantageous to the landlord than is the present law. The tenant is not unfairly disadvantaged because he has a reasonable opportunity to cure the default in payment without penalty.

We think that the landlord should also be able to terminate the tenancy in the same way for failure by the tenant to perform other obligations under the tenancy agreement, if the failure represents a substantial breach of obligation. We do not think, however, that the tenant should have the same right to cure his default. A mere default in payment is something which can be made good by subsequent payment, but a breach consisting of offensive, illegal or dangerous conduct, for example, cannot be made good merely by a period of abstention from the conduct.

### 3. Recommendations

#### Recommendation #14

- (1) *That if a landlord's breach of obligation under the tenancy agreement or under the proposed Act deprives the tenant of a substantial part of the benefit of the tenancy agreement the tenant be entitled to*
  - (a) *treat the tenancy agreement as terminated and vacate the mobile home site, or*
  - (b) *proceed under subsection (2).*
- (2) *That the tenant be entitled to give the landlord a notice in writing*
  - (a) *specifying the breach; and*
  - (b) *notifying the landlord that the tenancy agreement will terminate 14 days after the giving of the notice unless within that time the landlord files and serves a notice of application to the court for an order setting aside the notice.*
- (3) *That the court be required to set aside the notice unless it is satisfied that a breach described in subsection (1) has occurred.*
- (4) *That if the landlord does not apply, it be conclusively deemed that there was a breach described in subsection (1) and the tenancy be terminated.*
- (5) *That if a tenancy be terminated under this section*
  - (a) *rent be payable to the date of termination, and no longer, at the rate provided in the tenancy agreement, with pro rata provision for a fractional rental period, and*
  - (b) *each party be entitled to enforce all rights which accrue to the time of termination, and*



- (c) *the tenant be entitled to damages for the loss of the benefit of the agreement over the balance of the unexpired term.*

Recommendation #15

- (1) *That if a landlord commits a breach of an obligation under a tenancy agreement or under the proposed Act, the tenant have the right to apply for any one or more of the following remedies:*
  - (a) *damages suffered by reason of the breach,*
  - (b) *abatement of rent to the extent that the breach deprives the tenant of the benefit of the tenancy agreement,*
  - (c) *judgment for the cost of making good the landlord's default.*
- (2) *That the court have the power:*
  - (a) *to make an order or give a judgment applied for under subsection (1),*
  - (b) *to direct that the tenant pay into court, pending and after disposition of the application, such amounts of future rent, if any, as the court deems appropriate to secure enforcement of any order applied for or granted under subsection (1), and*
  - (c) *to direct that any amount of rent paid into court be disbursed, as appropriate,*
    - (i) *to the tenant as damages,*
    - (ii) *to the landlord, the tenant, or a third party, for costs reasonably incurred in making good the landlord's default, and*
    - (iii) *to the landlord any remaining sums.*
- (3) *That the court have power to refuse to permit the tenant to pay future rent into court upon being satisfied that*

- (a) there was no breach, or
- (b) the breach
  - (i) was not significant,
  - (ii) was beyond the landlord's reasonable control, or
  - (iii) was expressly or impliedly waived by the tenant.

Recommendation #16

*That distress for rent as regulated by the Seizures Act be retained.*

Recommendation #17

- (1) *That if a tenant, by abandonment of the mobile home site or otherwise, gives the landlord reasonable ground to believe that the tenant has repudiated the tenancy agreement, the landlord may either*
  - (a) *accept the repudiation as a termination of the tenancy, or*
  - (b) *refuse to accept the repudiation and continue the tenancy.*
- (2) *That a landlord who proceeds under subsection (1)(a)*
  - (a) *may recover any rent accrued, and damages suffered by reason of the breach of other obligations of the tenant, to the date of termination of the tenancy, and*
  - (b) *may recover damages for the loss of the benefit of the tenancy agreement*
    - (i) *if for a fixed term tenancy, over the unexpired period of the tenancy agreement, or*
    - (ii) *if for a periodic tenancy, until the*

*earliest date the tenant could have terminated the tenancy if his acts of repudiation had constituted a proper notice of termination,*

*and*

- (c) is subject to a duty to take reasonable steps to mitigate his damages.*
- (3) That a landlord who proceeds under subsection (1)(b)*
- (a) may enforce the tenancy agreement, but*
  - (b) is subject to a duty to take reasonable steps to rent the mobile home site on behalf of the tenant to mitigate the tenant's liability for rent under the tenancy agreement.*

#### Recommendation #18

- (1) That if a tenant commits a substantial breach of obligation under a tenancy agreement or under the proposed Act, the landlord may give the tenant notice that the tenancy will terminate 14 days after the date of giving of notice unless within the said period of 14 days the tenant serves on the landlord a notice of objection to the termination.*
- (2) That a notice under subsection (1) be required to give particulars of the alleged breach.*
- (3) That without restricting the generality of subsection (1), "substantial breach" for the purposes of this recommendation includes*
  - (a) a failure to pay rent,*
  - (b) doing or permitting substantial damage to the mobile home site or common areas,*
  - (c) performing illegal acts, or carrying on an illegal trade, business, occupation or calling, on the mobile home site or in the common areas,*

- (d) a breach which creates a danger to person or property,
  - (e) a breach which causes undue interference with the rights of the landlord or other tenants,
  - (f) a series of breaches the cumulative effect of which is substantial.
- (4) That if the breach is a default in payment of rent, and if the tenant pays the arrears of rent within the said period of 14 days, the notice be ineffective whether or not the landlord applies under subsection (6).
- (5) That except as provided in subsection (4) the tenancy terminate in accordance with the landlord's notice unless the tenant serves a notice of objection under subsection (1).
- (6) That the landlord may
- (a) instead of serving a notice under subsection (1), or
  - (b) if the tenant serves a notice of objection under subsection (1)
- apply to the court for an order terminating the tenancy agreement.
- (7) That upon an application by a landlord under subsection (6) the court
- (a) if satisfied that the tenant has committed a substantial breach of obligation under the tenancy agreement or under the proposed Act, shall make an order terminating the tenancy agreement, or
  - (b) if not so satisfied, shall deny the application.
- (8) That if a tenancy agreement is terminated under this recommendation
- (a) rent accrued before the date of termination is payable, and

- (b) *the rights of the parties shall be determined as in the case of any other termination of a tenancy agreement.*

#### 4. Frustration of Contract

A contract ceases to have effect if the contemplated performance of the contract is frustrated, whether by supervening illegality, or impossibility, or uselessness. It is at present unclear whether the doctrine of frustration can ever apply to a lease or tenancy and in order to avoid the uncertainty and possible injustice to a tenant, who could, for example, find himself forced to pay rent for a burnt-out apartment, we recommended in Report No. 22, Residential Tenancies, that frustration of a tenancy agreement be dealt with by statute. While mobile home sites are less subject to destruction than apartment buildings and houses, we think that the same provisions should apply.

#### Recommendation #19

- (1) *That a tenancy agreement be frustrated if*
- (a) *the mobile home site is destroyed or rendered permanently unusable, or*
  - (b) *the mobile home site, the common areas or the property of which they form a part, are damaged to such an extent that*
    - (i) *a reasonable landlord would not repair the damaged property, or*
    - (ii) *a reasonable tenant would not be willing to remain as a tenant.*
- (2) *That the Frustrated Contracts Act apply to a tenancy agreement which is frustrated.*

VII  
FAILURE TO GIVE POSSESSION

1. By Tenant

A tenant, including a tenant of a mobile home site, is under an obligation to give the landlord possession of the rented premises at the termination of the tenancy. A tenant who does not give up possession is called an "overholding tenant" and the landlord may want to seek damages and possibly recover possession from him. We discussed the law applicable to the landlord's claims for damages and possession at pp. 71-73 of Report No. 22, Residential Tenancies, a discussion which is also relevant to tenancies of mobile home sites, and recommended that sections 9-15 of the Alberta Landlord and Tenant Act continue to apply and that in addition the court should be authorized to award such other damages as the landlord may actually incur because of the overholding. We will make the same recommendation here.

2. By Landlord

We will in this discussion call a lessee who has not yet obtained possession a "tenant" and his lessor a "landlord", though in legal usage these terms are not applied until the tenant is in possession.

In any tenancy agreement the landlord is subject to an implied obligation that the rental premises will be available for occupation by the tenant on the day stipulated in the tenancy agreement. If they are not, it may be because the landlord has repudiated the tenancy agreement and locked the tenant out, or it may be that there is an overholding tenant, rightfully or wrongfully in possession. Whatever the cause,

the new tenant is likely to incur serious hardship.

The new tenant is clearly entitled to recover damages from the landlord and we discussed the amount of damages available at p. 74 of Report No. 22. The tenant is likely to be out of pocket for such things as money spent on living in a hotel, unless the landlord can provide a temporary site for the mobile home. The court is at present able to award these special damages if they could reasonably have been foreseen by the parties as a consequence of breach of the covenant to give possession.

Although the law at present gives the tenant the right to repudiate the tenancy agreement if the rented premises are not available on the agreed date, the tenant may prefer to enforce the agreement and sue the landlord for possession, or seek specific performance of the covenant for possession in equity. We discussed these rights at p. 75 of Report No. 22, and recommended that the tenant should have them all, although specific performance should continue to be available only at the discretion of the court.

### 3. Overholding Tenant and New Tenant

It is clear that the new tenant may bring an ejectment action against the overholding tenant but he can secure only possession, not damages for trespass. He may however sue the landlord, who may be obliged to pay both special and general damages to the new tenant, yet be able to claim only the general damages, plus compensation for use and occupation (under sections 9-12 of the Landlord and Tenant Act) from the overholding tenant who is the one responsible for the landlord's breach of the covenant for possession. As we stated at pp. 76-77 of Report No. 22, Residential Tenancies, we did not think it fair that the landlord should be out of

pocket in this way and therefore we recommended that the overholding tenant be liable to indemnify the landlord for all special and general damages for which the landlord is liable to the new tenant. We also thought that the new tenant should be able to claim his damages directly from the one responsible for his loss, that is, the overholding tenant.

We recommend that all these provisions apply also to tenancies of mobile home sites, for a landlord or overholding tenant who refuses to allow a new tenant possession of the site creates much the same problems for other parties as does overholding or refusing possession in residential tenancies. Indeed, the difficulties created for the new tenant of the mobile home site could be even greater, for he has the additional problem of finding temporary accommodation for his mobile home, unless the landlord can provide a temporary site for it.

We recommend also the abolition of the doctrine of "interesse termini", which provides that a lessee is not a tenant, and therefore cannot enforce any of the covenants of the tenancy agreement, until he in fact obtains possession. We discussed this matter in detail at pp. 74-75 of Report No. 22.

#### 4. Recommendations

##### Recommendation #20

*That while an overholding tenant remains in possession of a mobile home site after the termination of the tenancy, neither the landlord nor a new tenant be entitled to obtain possession except by consent or under order of the court.*



Recommendation #21

- (1) *That where a tenant overholds after the termination of a tenancy, the landlord have a right to recover from such tenant*
  - (a) *compensation for use and occupation by the overholding tenant, and*
  - (b) *damages suffered by the landlord as a consequence of the overholding, including, but not limited to, indemnification for damages, general and special, for which the landlord is liable to a new tenant, which could reasonably have been foreseen by the overholding tenant as a consequence of the overholding.*
  
- (2) *That where a landlord breaches his covenant to give a tenant possession of the mobile home site at the commencement of the term, the tenant have the following rights against the landlord*
  - (a) *to recover damages, general and special, which could reasonably have been foreseen by the landlord as a consequence of the breach, and either*
  - (b) *to repudiate the tenancy agreement, or*
  - (c) *to obtain specific performance of the covenant for possession in the discretion of the court.*
  
- (3) *That where a tenant is unable to obtain possession of a mobile home site because it is wrongfully occupied by another, the tenant have a right to recover from the wrongful occupant*
  - (a) *possession of the mobile home site, and*
  - (b) *damages, general and special, which could reasonably have been foreseen by the wrongful occupant as a consequence of the occupation.*
  
- (4) *That the doctrine of "interesse termini" be abolished.*

- (5) *That except as modified by this recommendation sections 9 to 15 inclusive of the Landlord and Tenant Act be included in the proposed Act.*
  
- (6) *That section 99(b) of the Land Titles Act; the Landlord and Tenant Act, 4 Geo. 2 c. 28; and the Distress for Rent Act, 11 Geo. 2 c. 19 s. 18 not apply to mobile home site tenancies.*

VIII  
TERMINATION OF TENANCIES

1. Termination at Common Law

A tenancy of a mobile home site may be either periodic or for a fixed term. In the former case the tenancy has no termination date but continues indefinitely until terminated by mutual agreement of the parties, or by unilateral notice of termination by either of the parties. A fixed term tenancy, on the other hand, terminates automatically on a date fixed by the parties when the tenancy agreement is drawn up. This automatic termination is merely an example of the general rule that a tenancy, whether periodic or for a term certain, may always be terminated by agreement of the parties.

2. Termination as Regulated by Statute

Sections 3 to 8 of the Landlord and Tenant Act contain detailed provisions governing unilateral termination of periodic tenancies by notice given by one of the parties and for reasons given at pp. 80-83 of Report No. 22, Residential Tenancies, we recommended that these provisions, with some minor changes, continue to apply to residential tenancies. Slightly simplified, the present statutory notice provisions are that, unless the parties have agreed to the contrary, a week's notice is required in order to terminate a weekly periodic tenancy; a month's notice is required to terminate a monthly tenancy, and 60 days' notice is required to terminate a yearly tenancy. The notice period must end on the same date as a week, month, or year of the tenancy. We further recommended in the Report that the parties to a residential tenancy not be allowed to contract out of these statutory notice requirements and that the notice of

termination, whether given by landlord or tenant, must be in writing.

### 3. Proposals for Change

Although we decided in Report No. 22 to recommend continuation of the existing notice requirements, we also gave detailed consideration to the wider question of security of tenure for residential tenants, i.e., whether a tenant who pays his rent and performs his other obligations should be entitled to remain indefinitely in the rented premises unless the landlord withdraws the premises from the rental market. We presented the arguments for and against security of tenure and constructed draft legislation. We did not make a recommendation either for or against its adoption, however, for two reasons. One was that the plan raised serious social and economic questions which we were not able to answer without commissioning studies which would have greatly expanded the scope of the project and caused serious delay in issuing the report. The second was that a decision about security of tenure could have an effect upon the supply of rental accommodation and we thought that it would not be wise for us to make recommendations about one part of a complex and interrelated problem and one which is probably best left to the Legislature, since it alone has the power to regulate the supply of housing and related matters.

Our discussion on security of tenure forms Section XIII of Report No. 22 and the arguments for and against can be found at pp. 131-134. We think that these arguments apply substantially to security of a mobile home site tenancy and for this reason, and for the reasons given above, we neither recommend for nor against a security of tenure plan for tenancies of mobile home sites. If it is found that security of tenure is desirable, then the draft legislation prepared

in respect of residential tenancies, and reproduced below in Appendix C, is appropriate also for tenancies of mobile home sites.

If security of tenure is not adopted there remains the question whether or not some other change in the provisions for termination of mobile home site tenancies is necessary. Because of the extreme financial and social consequences which may result from termination, we think that tenants of mobile home sites are in need of greater protection from unilateral termination than at present exists. We exclude from the following discussion tenancies of mobile home sites occurring outside mobile home parks, and return to these tenancies at pp. 68-69.

(1) Tenancies Inside Mobile Home Parks

Most tenancies of mobile home sites are monthly tenancies and therefore the tenant will usually have only one month to find a vacant site for his mobile home, and to arrange haulage for it. We have been advised that there is great difficulty in finding an alternative site, particularly in and around the urban areas of Alberta, and that the owner's chances of settling in the same or a neighboring locality, with minimal dislocation to his or his family's schooling, work and social connections, are very slight. In addition, if a vacant site exists but is not available until a date beyond one month into the future then the home owner may have to consider storage of the home for this period, plus further haulage arrangements. There is, in fact, a real possibility that the owner will not be able to find any vacancy at all within commuting distance of his place of work and that the mobile home would therefore have to be sold, bringing new difficulties to its owner. A landlord who wishes to have a particular tenant leave his land is unlikely to wish to enter into

contractual arrangements with that tenant to buy his mobile home or to facilitate its on-site sale to a third party (particularly if the home is less than new or if the landlord runs a closed park) and, having spent time searching for an alternative site, the owner will be left with only a short period to arrange a sale elsewhere, especially as any prospective buyer will also be confronted with the problem of finding a suitable location.

A tenant of a mobile home site therefore may face time-consuming, dislocating and expensive problems when given notice of termination: the difficulty of finding a new site; the change of location; the expense of haulage, storage, and temporary accommodation; and possibly even the sale, under less than advantageous circumstances, of his major capital asset, the mobile home itself.

We realize that not all of these consequences of termination are exclusive to the tenant of a mobile home site: the residential tenant will also have to finance the removal of his personal effects; will be obliged to search for a new residence at usually only a month's notice, and may have to move to a less desirable location. However, we think that the average residential tenant will suffer less as a result of termination of the tenancy than will a tenant of a mobile home site. The removal expenses of the former are likely to be low as compared with the cost of moving a mobile home and the same may be said of storage of personal effects versus storage of a mobile home. In addition, while residential premises available for rent continue greatly to outnumber equivalent mobile home sites, particularly in the larger centres of population, the chance that the residential tenant will have to move to a totally different area to live is significantly less than is the case with a tenant of a mobile home site, although we recognize that both types of

premises are currently in short supply. A final and most important point of dissimilarity is the degree of financial investment which the respective tenants have in their place of residence. A tenant of a mobile home site has commonly invested upwards of \$10,000 in his mobile home, frequently more than double that amount, but his home is of greatly reduced value if neither he nor a potential buyer can secure a site on which to rest it. If this should happen, the owner's investment is impaired. A residential tenant, on the other hand, if he does make permanent improvements to his rented home, does so in the knowledge that he enjoys such benefits only while the tenancy agreement subsists, and that he has no other investment in the property.

For these reasons we believe that residential tenants and tenants of mobile home sites have different needs in terms of protection and we therefore propose to recommend a degree of security for tenants of mobile home sites greater than we felt justified in suggesting for ordinary residential tenants.

What form should that security take? We have considered recommending that the law require some form of fixed term tenancy so that unilateral termination would be possible only at the end of the period, but we have concluded that this would go further than is required for the protection of tenants and could because of its inflexibility be unduly onerous in certain cases for both landlords and tenants. We think that the tenant should instead be protected from termination for a reasonable period after moving into a mobile home park and thereafter should be entitled to an amount of notice that will allow him to prepare for the removal. We therefore propose a form of extended notice from the landlord. We think that one year after entry to a mobile home park is a reasonable period for protection from

eviction. After the one year period we think that a landlord should be required to give a minimum of six months' notice in order to terminate a tenancy. The landlord should still be able to terminate the tenancy for cause under our previous recommendations.

Our recommendations do not extend to tenancies from year-to-year, if they exist. Under the existing provisions of the Landlord and Tenant Act, the tenant is entitled to 60 days' notice ending with a year of the tenancy and we do not see any reason why the law should go further. We recommend that the existing provisions for termination of year-to-year tenancies should be reproduced in the new statute.

Tenants with fixed-term tenancy agreements should not have less protection than tenants with periodic tenancies, and landlords should not be able to avoid the minimum notice periods recommended above by offering mobile home sites only to those tenants willing to accept a fixed-term tenancy of short duration, for example three months, or even less. If no special provision is made for fixed-term tenancy agreements the landlord would be able to evict the tenant at the end of the fixed-term, if he desired to do so, or could offer another short fixed-term tenancy, which process could continue until the landlord declined to renew the tenancy.

Fixed-term tenancy agreements should therefore be regulated so that tenants under such agreements would receive at least the same advance notice of termination as would periodic tenants. We think that that could best be done by providing that the tenancy will not terminate at the end of the fixed-term unless one party gives advance notice of termination, of the same duration required to terminate a monthly tenancy. If the stated date of termination is passed and notice has not been given by either party, or if the landlord's



notice would have the effect of terminating the tenancy within twelve months of the commencement of the tenant's first tenancy agreement in the mobile home park, the fixed-term tenancy would cease to exist but would become a monthly tenancy. This monthly tenancy would be on the same terms as before, so far as the old terms can reasonably apply to a monthly tenancy. Termination of this new monthly tenancy would be brought about in the same way as termination of other monthly tenancies, under the terms of our proposals. However, we think that landlords should be permitted to offer short fixed-term tenancies during the period before closure of a mobile home park and therefore we recommend that, where at the commencement of a fixed-term tenancy the landlord has a bona fide intention to close down the mobile home park within twelve months, the tenancy should terminate at the end of the term, and should not become a monthly tenancy, and the tenant should not be entitled to notice of termination under the proposed Act.

We think that a landlord should be permitted to increase the rent payable during the existence of a monthly tenancy which has been created out of fixed-term tenancy, if the increase is lawfully made under the terms of recommendations #11 and #28. However, the landlord should not be able to use a large increase in rent or other change in terms to compel a tenant to leave. Accordingly, we recommend that any rent increase imposed, or any other change of terms made with this intention be null and void.

We discussed at p. 82 of Report No. 22, Residential Tenancies, the position where the residential tenancy exists, in whole or in part, because of an employment relationship between the landlord and the tenant and we recommended that, where this is so, and the landlord terminates the employment relationship, the landlord should be able to terminate the

tenancy with a one-week notice. Such a relationship is likely to occur only infrequently in tenancies of mobile home sites but, where it does, we think that for the reasons discussed above a tenant of a mobile home site requires more notice of termination than an ordinary residential tenant and we therefore recommend that one month's notice be given.

We have discussed above the notice which we recommend that the landlord should be obliged to give in order to terminate the tenancy. The next question is whether the tenant should be required to give the same notice as the landlord. Although it seems plausible that the same rule should apply, the situations are in fact quite different. The landlord does not have to relocate a mobile home. He is free to look for another tenant. We recommend, therefore, that no change should be made in the notice required of the tenant. He should have to give the notice provided in the present Landlord and Tenant Act to terminate a periodic tenancy, including a monthly tenancy arising in the manner specified in recommendation #28(2), following the expiration of a fixed-term tenancy. In addition, in order that the landlord should know in advance whether or not a fixed-term tenancy will continue beyond the date fixed for termination, the tenant should have to give one month's notice, expiring on or before the date fixed for termination, to prevent the tenancy becoming a monthly tenancy.

## (2) Tenancies Outside Mobile Home Parks

Our discussion to this point has dealt with mobile home parks, which are commercial ventures in which the landlords are in the business of providing mobile home sites for tenants. We think it would be unfair to impose a tenant for any substantial period of time on a non-commercial landlord who is not engaged in business and who does not have the same

facilities and business sophistication. Accordingly, we recommend that the notice periods which exist in the present Landlord and Tenant Act continue to apply to landlords and tenants of mobile home sites which are not in mobile home parks, i.e. one week from either party in the case of a weekly tenancy, one month in the case of a monthly tenancy, and 60 days in the case of a yearly tenancy.

### (3) The Effect of Assignments and Subleases

In recommendation #41 we have proposed that a tenant have the right to assign the tenancy or to sublet the mobile home site. An assignee of the tenancy has only the rights, and becomes subject to the obligations, of the assignor and therefore will be entitled only to that period of notice to which the assignor was entitled at the date of transfer. Since a tenancy is not created by assignment, but merely transferred, the assignee will not be in the same position as a new tenant in a mobile home park and therefore will not be entitled to 12 months' protection from termination without cause. This matter is further discussed at p. 105 of this Report.

The case of a sub-tenant is different. The head tenant creates a new tenancy between himself and the sub-tenant, while the original tenancy between the head tenant and the landlord continues to exist. We think that it would be inappropriate for the sub-tenant to become entitled, by virtue of his tenancy with the head tenant, to 12 months' protection from termination without cause from the head tenant, because the head tenant himself will invariably be entitled to less than 12 months' protection from the landlord, at the date of the subletting. Nor do we think that our recommendation for 6 months' protection from eviction, outside the initial 12 months, should apply to sub-tenancies.

The sub-tenancy could be created after the head tenant has received notice of termination and the sub-tenant would then be entitled to notice from the head tenant in excess of the duration of the head tenancy. It is unlikely that a sub-tenant will place his own mobile home on a mobile home site while subletting the site, but will instead sublet the existing mobile home. The sub-tenant will therefore be in the same position as the residential tenant, who does not require lengthy advance notice of termination of a tenancy in order to arrange for the removal and resettlement of a mobile home. For these reasons, we propose that tenancies created by sub-lease (other than those covered by recommendation #3) be treated for the purposes of termination in the same way as residential tenancies and as tenancies outside mobile home parks and that therefore the notice provisions which exist in the present Landlord and Tenant Act apply to termination by either sub-tenant (as tenant) or head tenant (as landlord).

We propose that all landlords and tenants should be required to give notice to terminate in writing and should not be permitted to contract out of the provisions relating to notice.

#### 4. Recommendations

##### Recommendation #22

*That the parties not be permitted to contract out of the notice provisions.*

##### Recommendation #23

- (1) *That 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 the notice

- (a) shall meet the requirements of recommendation #24,
  - (b) shall be given in the manner prescribed by recommendation #39, and
  - (c) shall be given in sufficient time to give the period of notice required by recommendation #25, 26, or 27, as the case may be.
- (2) That any other kind of tenancy determinable on notice may be terminated as provided by recommendation #24 and recommendation #39.

#### Recommendation #24

- (1) That a landlord or a tenant shall give notice in writing.
- (2) That a notice in writing
  - (a) shall be signed by the person giving the notice, or his agent,
  - (b) shall identify the mobile home site in respect of which the notice is given, and
  - (c) shall state the date on which the tenancy is to terminate or shall give some formula which will allow the termination date to be calculated precisely.
- (3) That 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 a specified period of the tenancy,

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 specified period of the tenancy.

- (4) That 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.

Recommendation #25

- (1) That this recommendation shall not apply to
- (a) tenancies of mobile home sites which are not in mobile home parks,
  - (b) sub-tenancies other than those referred to in recommendation #3.
- (2) That a notice given by a landlord to terminate a weekly tenancy shall be given on or before the last day of one week of the tenancy to be effective on or after the last day of the twenty-sixth week following the week in which notice was given.
- (3) That a notice given by a landlord to terminate a monthly tenancy or a tenancy governed by recommendation #28(2) shall be given on or before the last day of one month of the tenancy to be effective on or after the last day of the sixth month following the month in which notice was given.
- (4) That notwithstanding subsections (2) and (3), a notice given by a landlord under a tenancy in a mobile home park shall not take effect before twelve months from the date of commencement of the tenant's first tenancy in the mobile home park.
- (5) That a notice given by a tenant to terminate a weekly tenancy shall be given on or before the last day of one week of the tenancy to be effective on or after the last day of the following week of the tenancy.
- (6) That a notice given by a tenant to terminate a monthly tenancy shall be given on or before the last day of one month of the tenancy to be effective on or after the last day of the following month of the tenancy.

- (7) That for the purposes of this recommendation and of recommendation #26, "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.
- (8) That for the purposes of this recommendation and of recommendation #26, "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.

#### Recommendation #26

- (1) This recommendation applies to
- (a) tenancies of mobile home sites which are not in mobile home parks, and
  - (b) subtenancies other than those referred to in recommendation #3.
- (2) That a notice given by a landlord or a tenant to terminate a weekly tenancy shall be given on or before the last day of one week of the tenancy to be effective on or after the last day of the following week of the tenancy.
- (3) That a notice given by a landlord or a tenant to terminate a monthly tenancy shall be given on or before the last day of one month of the tenancy to be effective on or after the last day of the following month of the tenancy.
- (4) That "week of the tenancy" and "month of the tenancy" have the same meaning as in recommendation #25.

#### Recommendation #27

- (1) That a notice given by a landlord or a tenant to terminate a year-to-year tenancy shall be given on or before the 60th day before the

last day of any year of the tenancy to be effective on or after the last day of that year of the tenancy.

- (2) That for the purposes of this recommendation, "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.

### Recommendation #28

- (1) That this recommendation applies where a landlord or tenant enter into a tenancy agreement for a fixed term, but shall not apply
- (a) to tenancies of mobile home sites which are not in mobile home parks,
  - (b) subtenancies, other than those referred to in recommendation #3, or
  - (c) where at the commencement of the tenancy agreement the landlord has a bona fide intention to close down the mobile home park within 12 months of the date of commencement.
- (2) That a monthly tenancy arises at the expiration of the fixed term unless
- (a) notice is given under subsection (4), or
  - (b) the tenancy agreement is terminated by either party in accordance with the provisions of recommendations #14, 17 or 18.
- (3) That the terms of the monthly tenancy agreement are the same as the terms of the expired tenancy agreement, to the extent that the terms of the expired tenancy agreement are not inconsistent with a monthly tenancy.
- (4) That a notice given



(a) to prevent a monthly tenancy from arising under subsection (2), or

(b) to terminate such a monthly tenancy

shall meet the requirements of recommendation #24 and be given in the manner prescribed by recommendation #39 and shall be given

(c) by the landlord so as to be effective no earlier than the later of

(i) the last day of the sixth month of the tenancy following the month in which the notice is given, and

(ii) the expiration of twelve months from the date of the commencement of the tenant's first tenancy agreement in the mobile home park, and

(d) by the tenant on or before the last day of one month of the tenancy to be effective on or after the last day of the following month of the tenancy.

(5) That nothing in this recommendation confers upon either party a right to terminate a tenancy for a fixed term before the date fixed in the tenancy agreement.

(6) That notwithstanding subsection (3), a landlord may before or during a monthly tenancy under subsection (2) give notice under recommendation #11 increasing the rent thereunder.

(7) That for the purposes of this recommendation "month of the tenancy" means

(a) a monthly period of a fixed-term tenancy commencing with the date of the commencement of the tenancy or with the same date in another calendar month, or

(b) a monthly period of a monthly tenancy as defined in recommendation #25(8), and

"tenancy" includes the periods of both the fixed-term tenancy and the monthly tenancy arising under subsection (2).

Recommendation #29

- (1) That this recommendation shall not apply to
  - (a) tenancies of mobile home sites which are not in mobile home parks,
  - (b) subtenancies, other than those referred to in recommendation #3.
- (2) That any rent increase or other change in the terms of the tenancy agreement which is imposed by a landlord for the purpose of causing a tenant to terminate his tenancy agreement shall be null and void.

Recommendation #30

*That notwithstanding anything contained in this Act, where a periodic residential tenancy has been entered into because of the tenant's employment by the landlord, and the landlord terminates the employment, either the landlord or the tenant may terminate the tenancy by giving a one-month notice to the other which shall in all other respects meet the notice requirements of the proposed Act.*

5. Termination for Breach of Obligation or Frustration of Contract

In Section VI, Remedies, we have made recommendations which would permit:

- (1) a tenant to terminate a tenancy if a breach of obligation by the landlord deprives the tenant of a substantial part of the benefit of the contract, and
- (2) a landlord to terminate a tenancy if the tenant
  - (a) repudiates the tenancy, or
  - (b) fails to pay rent, or

- (c) commits a substantial breach of obligation,  
and,
- (3) either party to terminate a tenancy under the  
Frustrated Contracts Act.

As these recommendations are fully discussed in Section VI,  
they will not be repeated here.

6. Periodic Tenancies Created by Implication of Law at the  
Termination of a Prior Tenancy, and Acceptance of Rent  
After Termination of a Tenancy

We discussed the legal position in these two circum-  
stances at pp. 83-86 of Report No. 22, Residential Tenancies,  
and made the following recommendations which we think should  
also apply to tenancies of mobile home sites.

Recommendation #31

- (1) *That the acceptance by a landlord of arrears  
of rent, or compensation for use and occupation  
of a mobile home site, after the expiration of  
a tenancy or after notice of termination of the  
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.*
- (2) *That the burden of proof that the notice has  
been waived or that the tenancy has been  
reinstated or a new tenancy created is upon  
the person so claiming.*
- (3) *That where a periodic tenancy, other than one  
arising under recommendation #28, is implied  
by operation of law after the termination of  
a prior tenancy for a fixed term, the implied  
tenancy, in the absence of facts showing a  
contrary intention, be*
  - (a) *where the prior tenancy was for a fixed  
term of one month or more, a tenancy*

*from month to month, or*

- (b) where the prior tenancy was for a fixed term of less than one month, a tenancy from week to week.*

IX  
SECURITY OF TENURE

In Section VIII of the Report we have discussed termination of tenancy agreements and put forward recommendations to benefit tenants of mobile home sites in mobile home parks through longer notice periods. We have not, however, recommended the adoption of a full security of tenure scheme, for the reasons given both in Section VIII of this Report and at pp. 131-134 of Report No. 22, Residential Tenancies. If it is found that security of tenure is desirable for tenants of mobile home sites, then the draft legislation which was prepared in respect of residential tenancies will be suitable (with minor amendments) to cover tenancies of mobile home sites also, and for convenience we reproduce below a summary of the plan embodied in the legislation.

Summary of Plan for Security of Tenure

The plan may be summarized as follows:

- (1) A periodic tenancy may only be terminated under the following procedures:
  - (a) Those provided by recommendation #18 except that
    - (i) if the landlord proceeds under subsection (1) of recommendation #18, his statement of the particulars of the alleged breach under subsection (2) of recommendation #18, is absolutely privileged in any action for defamation or injurious falsehood brought by the tenant, and
    - (ii) if the landlord proceeds under subsection (6) of recommendation #18, the landlord may establish proper cause for termination by proving that he has reasonable grounds for believing that the tenant committed a substantial breach of obligation under the

tenancy agreement or under the proposed Act, and the tenant may rebut the landlord's cause by proving that he did not commit such a breach.

- (b) Those applicable in the absence of security of tenure, but subject to the following additional provisions:
- (i) The tenancy may only be terminated if
    - A. the tenant has committed a substantial breach of obligation under the tenancy agreement or under the proposed Act, or
    - B. the landlord requires possession of the mobile home site for the purposes of
      - (A) demolition;
      - (B) occupation by himself, his spouse, or a child or parent of either, or by an employee;
      - (C) a proposed change of use;
      - (D) a bona fide sale of the property; or
      - (E) carrying out extensive repairs that make continued occupation by the tenant not feasible.
  - (ii) The notice of termination must state the reasons which the landlord will rely on to justify the termination.
  - (iii) The tenant may apply to the court, within 14 days of receipt of the notice of termination, for an order setting aside the order of termination, which application shall be returnable not less than 10 days before the termination date stated in the notice of termination.
  - (iv) The court may extend any time specified in subsection (1)(b)(iii) upon such terms as it deems appropriate.
  - (v) The landlord may establish proper cause for termination under subsection (1)(b)(i)(A). by proving that he had reasonable grounds for believing that the tenant committed such

a breach, which cause may be rebutted by the tenant's proof that he did not commit such a breach.

- (vi) The notice of termination is absolutely privileged in any action for defamation or injurious falsehood brought by the tenant.
- (2) (a) Upon the expiration of a tenancy agreement for a fixed term the landlord and tenant would be deemed to have entered into a month to month tenancy agreement upon the same terms and conditions as are provided for in the expired tenancy, except for the term.
- (b) Subsection (1) would not apply if the landlord and tenant enter into a new agreement before the expiration of the term specified in the old tenancy agreement, or if either the landlord or the tenant gives to the other, not less than 30 days before the expiration date specified in the old tenancy agreement, notice that no new tenancy agreement is to be implied upon the expiration of the old tenancy agreement.
- (c) The landlord's notice under subsection (2)(b), and the rights of the parties, are subject to all of the provisions of subsection (1)(b) applicable to termination by notice.
- (3) (a) A landlord would be prohibited from
- (i) increasing the rent payable under a tenancy agreement and from recovering any additional rent resulting from such an increase, or
  - (ii) changing any other term of the tenancy agreement and from enforcing any changed term,
- unless he gives to the tenant a written notice of the increase in rent or change of any other term at least 90 days before the date on which the increase or change is to be effective.
- (b) A tenant under a periodic tenancy who receives a notice under subsection (3) and who fails to give to the landlord notice of termination effective on or before the date of the rent increase, or other change in terms, would be deemed to have accepted the same.
- (c) A landlord who gives a notice of termination of a

periodic tenancy would not, for a period of 90 days after the date the notice is given, be entitled to demand or retain

- (i) any rent for the mobile home site in excess of that payable under the tenancy agreement at the time of the notice, or
  - (ii) any benefit arising from any other term in the tenancy agreement relating to the mobile home site which is more favourable than the terms of the tenancy agreement in force at the date of the notice.
- (d) A tenant who
- (i) pays rent in excess of that permitted by subsections (3)(a) and (c) would be entitled to recover such excess rent from the landlord, or
  - (ii) confers a benefit not permitted by subsections (3)(a) and (c) would be entitled to recover compensation from the landlord for the value of the benefit.
- (e) That subsection (3) not apply if the tenancy agreement provides for a period of notice longer than 90 days.
- (4) The court could annul a rent increase or other change in terms imposed by the landlord for the purpose of evicting the tenant.
- (5) The assignee of a tenant's rights would not have security of tenure as against the landlord unless the landlord has agreed to grant him security of tenure.
- (6) These provisions would apply to tenancies in existence at the commencement of the proposed Act.



X  
SECURITY DEPOSITS

We discussed the arguments for and against allowing landlords to demand security deposits from residential tenants at pp. 87-89 of Report No. 22, Residential Tenancies, and concluded that such deposits are useful to encourage tenants to leave the landlord's property in good repair and are a legitimate protection for the landlord. However, to ensure that they are not used unfairly against tenants, we made recommendations governing the maximum amount of deposits and the administration of them. We had at first thought that legislation on security deposits for tenancies of mobile home sites would not be appropriate because a tenant of a mobile home site is unlikely to slip away from the site, leaving rent unpaid or damage unrepaired, in a way that a residential tenant might find relatively easy. However, during the course of our consultations we were informed that the removal of a mobile home from a site frequently causes damage to landscaping, including plants and trees, fencing and foundations, and that a landlord is unable to prevent a tenant with unpaid rent from removing his mobile home from the site, even though the removal can rarely be accomplished secretly. We learned also that security deposits are increasingly being required by landlords of mobile home sites.

For these reasons we think it appropriate that the recommendations made in respect of residential tenancies, discussed at pp. 87-89 of Report No. 22, and reproduced below, apply also to tenancies of mobile home sites.

Recommendation #32

- (1) *That a landlord be prohibited from exacting from a tenant*

- (a) a security deposit exceeding one month's rent under the tenancy agreement, or
  - (b) any sums of money exceeding the security deposit permitted by subsection (1)(a) and one month's rent in advance.
- (2) That "security deposit" be defined in accordance with s. 16(1)(b) of the Landlord and Tenant Act.
  - (3) That sections 18 and 19 of the Landlord and Tenant Act be carried through into the proposed Act.

### Recommendation #33

- (1) That a person who becomes an owner of a mobile home site which is subject to a tenancy be subject to the obligations of the landlord with respect to a security deposit except as provided in subsections (2) and (3).
- (2) That a purchaser of the property be entitled
  - (a) to demand from the seller
    - (i) a statement of account certified by the seller of all security deposits held by the seller at the date of the sale and of the interest accrued to date on each, and
    - (ii) payment to the purchaser of all such security deposits and interest, and
  - (b) to give to each mobile home site tenant notice not less than 7 days before the completion of the sale of the statement of account of the tenant certified by the seller.
- (3) That a purchaser who has complied with subsection (2) be liable to the tenant only for the amount stated in the statement of account.
- (4) That upon paying a security deposit and interest to the purchaser under this recommendation the seller be discharged from all further liability for the amount so paid.

XI  
DISPOSAL OF ABANDONED GOODS

We learned in the course of our consultation on residential tenancies that it is quite common for tenants to leave goods behind when they give up possession of rented premises. The goods are usually, though not invariably, of little or no value, but they create difficulty for the landlord who must deal with them in some way so that the premises can be used by another tenant. Although the nature of the rented premises is different in a tenancy of a mobile home site, the landlord may still be faced with clearance from a site of old vehicles, refrigerators, and on rare occasions the mobile home itself.

In order to assist the landlord in disposal of such abandoned goods, in Report No. 22, Residential Tenancies, at pp. 99-102, we constructed a scheme whereby the landlord may dispose of goods according to their market value. If the landlord believes that the goods have a market value of less than \$200 we proposed that he be entitled to dispose of the goods in any manner he chooses; if over that value, our proposals would allow him to sell the goods immediately for a reasonable price if storage would be impracticable (e.g. because of the unsanitary nature of the goods), or otherwise to store the goods for 60 days prior to public auction.

We think this plan would be suitable also for landlords of mobile home sites and we recommend accordingly, although, as with residential tenancies, we see no reason to prevent the parties from making other arrangements by contract if they so wish.

Section 36.1 of the Judicature Act, which appears in Appendix F, provides a statutory scheme for dealing with

goods and chattels found in premises by a sheriff when he exercises a writ of possession. We do not propose changes in subsections (1) to (8), but we do not think subsection (9) gives sufficient help to a landlord faced with the problem of abandoned goods and our plan will therefore differ from subsection (9) in such cases.

Recommendation #34

- (1) *That for the purposes of this recommendation "abandoned goods" be defined as goods left on a mobile home site by a tenant who has*
  - (a) *abandoned the mobile home site in breach of the tenancy agreement, or*
  - (b) *gone out of possession of the mobile home site upon termination of the tenancy agreement.*
- (2) *That a landlord who believes on reasonable grounds that abandoned goods have a market value of less than \$200 be entitled to dispose of the goods in any manner he chooses.*
- (3) *That if subsection (2) does not apply, a landlord who on reasonable grounds believes*
  - (a) *that the storage of the goods would be unsanitary or unsafe or would rapidly result in total or substantial depreciation in their market value, or*
  - (b) *that the cost of removing, storing and selling the goods would exceed the proceeds of the sale,*  
  
*be entitled to sell the goods by a means and for a price which he believes reasonable.*
- (4) *That if neither subsection (2) nor subsection (3) applies, the landlord*
  - (a) *be required to store or arrange for storage of the goods on behalf of the tenant until the expiration of a period of 60 days after the date of their abandonment, and*

- (b) thereafter be entitled to dispose of the goods by public auction.
- (5) That a landlord may apply to the Provincial Court for directions as to the disposition of any abandoned goods, and upon such application the court may make any order which appears appropriate in the circumstances.
- (6) That the landlord be required, upon payment of his proper costs of removing and storing the goods, to deliver the goods to the tenant or an encumbrancer claiming them.
- (7) That the landlord be entitled to apply the proceeds of any sale
- (a) to his reasonable costs of removing, storing and selling the goods, and
  - (b) to any judgment obtained by him against the tenant in connection with the tenancy.
- (8) That the landlord be required to pay the balance of any proceeds of sale to the Provincial Treasurer who shall retain the same for one year on behalf of the tenant and thereafter, if the tenant has not claimed the same, pay the same into the general revenue of the Province, following which payment the claim of the tenant shall be extinguished.
- (9) That this recommendation not apply if the landlord and the tenant agree to the contrary.
- (10) That this recommendation not apply to goods and chattels on premises against which the Sheriff executes a writ of possession.

XII  
RESOLUTION OF DISPUTES

In Section IX of Report No. 22, Residential Tenancies, we gave extensive consideration to the question of resolution of disputes between landlords and tenants. We discussed in detail the pros and cons of the system of adjudication by an administrative tribunal or rentalsman as opposed to a system of adjudication by the courts (pp. 103-109); matters relevant to jurisdiction and procedures of courts (pp. 109-115); and dissemination of information plus provision of advice and mediation (pp. 117-123).

We believe that it is correct in principle that parties to residential tenancies and to tenancies of mobile home sites be subject to the same system of adjudication and that they be served by the same bodies for the purposes of obtaining information, advice and mediation. Their needs are not dissimilar. Separate provision for tenancies of mobile home sites would be inefficient in terms of both finance and manpower and would cause unnecessary confusion for landlords and tenants alike. For these reasons we recommend that our proposals for residential tenancies apply also to tenancies of mobile home sites. We reproduce these recommendations below.

Recommendation #35

- (1) *That except as otherwise provided, the Supreme Court, the District Court, and the Provincial Court be courts of competent jurisdiction.*
- (2) *That notwithstanding subsection (1), the Provincial Court not have jurisdiction*
  - (a) *to give judgment for debt or damages under the proposed Act or a tenancy agreement in excess of the amount prescribed by the Small Claims Act,*

- (b) *to grant equitable remedies, or*
  - (c) *to grant an order for possession except in a case in which a tenant who has been denied possession of a mobile home site at the inception of the tenancy brings proceedings for damages and possession.*
- (3) *That procedures be provided in the Provincial Court for summary disposition of landlord and tenant matters, and that the Lieutenant Governor in Council have power to make Rules of Court for such proceedings.*

Recommendation #36

- (1) *That where it appears in an action or proceeding brought in the Provincial Court under the proposed Act or a tenancy agreement that a question raised therein could for any reason be dealt with more conveniently in the Supreme Court or in the District Court, the judge of the Provincial Court or a judge of the Supreme Court or the District Court may order the action or proceeding to be transferred to the Supreme Court or the District Court.*
- (2) *The order to transfer may be made by the court or judge of his own accord, or upon the application of either party on notice to the other parties interested, and at any stage of the action or proceeding.*
- (3) *When an order is made under subsection (1)*
- (a) *the action or proceeding shall thereafter proceed in the Supreme Court, or District Court,*
  - (b) *the judges of the Supreme Court or District Court and the officers thereof have the same powers and shall perform the same duties in relation thereto as if the action or proceeding had been originally instituted in the Supreme Court or District Court as the case may be,*
  - (c) *the pleadings and proceedings taken in*

*the court from which the action or proceeding was transferred stand and have effect notwithstanding the transfer, and*

*(d) subject to the rules of court and to any order in that behalf made by the court or judge, the costs of the proceedings so taken previous to the transfer shall be paid and and the solicitor's costs taxed according to the scale of costs in the Provincial Court.*

*(4) Where an order transferring from the Provincial Court to the District Court or the Supreme Court is made at the instance of any of the parties thereto, the judge making the order may in his discretion make and impose on the party applying for the order terms with regard to payment of costs, or security for costs, or such other terms as he sees fit.*

Recommendation #37

- (1) That there be an appeal from the Provincial Court to the District Court in a dispute arising under the proposed Act or a tenancy agreement.*
- (2) That the provisions of sections 748 to 760 inclusive of the Criminal Code of Canada and the rules promulgated thereunder apply with necessary changes to an appeal under subsection (1).*

Recommendation #38

- (1) That section 22 of the Landlord and Tenant Act providing for Landlord and Tenant Advisory Boards be continued in the proposed Act, and that the maintenance and establishment of such boards be encouraged.*
- (2) That an official of the Department of Consumer and Corporate Affairs be designated to advise and assist the Landlord and Tenant Advisory Boards and to promote the adoption by them of uniform policies, having due regard to differences in local conditions.*



- (3) *That the province make funding available to municipal bodies who establish and maintain Landlord and Tenant Advisory Boards.*
- (4) *That officials on the staff of the Provincial Courts be given training in assisting landlords and tenants in following procedures involved in prosecution and defence of claims under the proposed Tenancies of Mobile Home Sites Act.*

## XIII

## SERVICE AND DELIVERY OF NOTICES AND DOCUMENTS

The proposed Act requires service or delivery of various notices and documents and should therefore provide how service or delivery is to be effected. This matter was discussed at pp. 124-125 of Report No. 22, Residential Tenancies, and we see no reason to deviate from the recommendations made at that point. We therefore recommend that service or delivery of a notice or document be achieved in the following manner unless otherwise provided.

Recommendation #39

- (1) *That except as otherwise provided, a notice or document be served or delivered personally or by registered mail.*
- (2) *That for service or delivery by registered mail*
  - (a) *a tenant's address is the address of the mobile home site, and*
  - (b) *a landlord's address is the address where rent is payable.*
- (3) *That a landlord or a tenant may from time to time change his address for service or delivery by written notice served upon the other party.*
- (4) *That if a notice or document cannot be served or delivered personally by reason of the tenant's absence from the mobile home site, or by reason of his evading service, service or delivery may be effected*
  - (a) *upon any adult person who apparently resides with the tenant, or*
  - (b) *by posting it in conspicuous place upon some part of the mobile home site.*
- (5) *That this recommendation not apply to service governed by the rules or practice of a court.*

## XIV

## SPECIAL FEATURES OF TENANCIES OF MOBILE HOME SITES

1. Entrance Fees

A mobile home owner may be required to pay a non-refundable fee before he is granted a tenancy of a mobile home site. This fee is called an "entrance fee" and is payable to the landlord of the mobile home park as a condition of entering into the tenancy.

Entrance fees are complicated because the term means different things to different persons. Some landlords, for example, may demand an entrance fee and offer nothing whatsoever in return for the fee, other than the granting of a tenancy. Other landlords, however, may consider the fee to be payment for actual services rendered, such as hook-up of facilities, special preparation of the mobile home site, or administrative costs associated with acceptance of a new tenant. Since we are not aware that entrance fees are required in connection with tenancies of mobile home sites outside mobile home parks, we confine our discussion to the practice within mobile home parks.

There are several arguments in favour of regulation or prohibition of entrance fees. Firstly, it could be said to be wrong in principle that a landlord is able to demand an entrance fee and offer nothing in return, and inflationary for dealers to make special arrangements with landlords and pass the cost on to the mobile home buyer. However, we recognize that these entrance fees are features of a market which is at present unusually favourable to landlords, and which may eventually turn to favour tenants, in which circumstance such fees would be unlikely to survive. Our principal arguments against entrance fees have been that the

landlord is in a position to demand the fee and then to terminate the tenancy on a month's notice, leaving the tenant with no return for his investment and no means of recovering it, and that financing the capital sum is unfairly burdensome to the tenant. Some members of our Board have accepted these arguments and think that entrance fees should be banned by legislation.

There are also arguments against regulation or prohibition of entrance fees. At least in the case of the first rental of a mobile home site, an entrance fee will help to defray the initial development costs of the site or park, costs which would otherwise be reflected in the rent. We are not in this Report dealing with the regulation of rent, which is the principal element in the financial return from a mobile home park. Rents are at present regulated, and entrance fees prohibited for all but the newest mobile home sites in mobile home parks, under the Temporary Rent Regulation Measures Act, S.A. 1975, c. 84, and the Rent Decontrol Act, S.A. 1977, c. 41, and we believe that, if entrance fees are economically undesirable, they should be controlled along with rents and not as a separate part of the regulation of the tenancy relationship.

The arguments discussed above appear to favour leaving entrance fees unregulated by legislation, but we should not be content that that should be done if it were not that our strongest objection to entrance fees, that the landlord is in a position to accept the fee then terminate the tenancy before the tenant has enjoyed the benefit of his investment, would be removed by two of our earlier recommendations. The recommendations referred to (#25 and #28) would give every tenant a minimum period of one year's security of tenure from the date of entry to a mobile home park, and would permit the landlord to terminate a tenancy outside this

period (other than a tenancy from year-to-year) only upon six months' notice, except for cause. A tenant would therefore be protected from early and arbitrary termination of his tenancy. In addition, as will be discussed later, at pp. 100-104, we make certain recommendations concerned with the restrictions which a landlord may make on the sale of a mobile home on a mobile home site, and these recommendations will remove part of the temptation that a landlord may have to terminate a tenancy. On balance, a majority of our Board thinks that entrance fees should not be regulated by the proposed Act. We are troubled by the possible consequences of interfering with market forces without a fully considered regulation of economic returns under mobile home site tenancies, and we do not think that a compelling case has been made for singling out entrance fees for special treatment.

We are all agreed on the kind of legislation which should be enacted if it is thought desirable to regulate entrance fees. We think that it should permit entrance fees to be charged in order to recoup the actual cost to the landlord of services provided by him in connection with the installation of the mobile home upon the mobile home site, and should require the existence and amount of such fees to be made known to the tenant before he enters into the tenancy agreement. It should otherwise prohibit the exaction of any sum of money by the landlord as a condition of allowing the tenant to enter. We have considered a proposal that landlords be allowed to require unlimited entrance fees for first site rentals, in order to finance development costs, but we have decided against recommending such a course of action because we think that it would discriminate unfairly between tenants. Also, we see no substantial difference in this respect between landlords of mobile home parks and landlords of conventional residential premises, who do not

seek to recover development costs except through tenants' regular rental payments.

Recommendation #40

*That the proposed Act not regulate entrance fees.*

2. Exit Fees

We understand an exit fee to be a sum of money demanded by a landlord of a mobile home site on the occasion of the removal of a mobile home from a mobile home site or park. We have no evidence that such fees are commonly charged in Alberta and we do not think that legislation is required on this subject.

3. Closed Parks

A "closed park" is a mobile home park to which entry is restricted to those who have purchased mobile homes from the park landlord or from a specified mobile home dealer. A specified dealer will often be one that is owned by a company associated with the park landlord, or one that has some other financial arrangement with him.

A common feature of closed parks is that tenants who wish to leave the park are not permitted to leave their mobile home on site and arrange for its sale to a third party who in turn becomes a tenant. The reason for this is that the landlord is in the business of selling mobile homes and a private sale on site amounts to a lost sale opportunity for him. For the same reason, the landlord of a closed park will benefit if he maintains a steady turnover of tenants and this leads to a feeling of insecurity amongst park residents. The notice periods which we have proposed, and

the provisions which we will recommend to protect the tenant's freedom to sell his mobile home on the site will do something to alleviate these problems.

In favour of closed parks, it can be said that they are likely to be more aesthetically pleasing than open parks because the mobile homes within them will have a uniform appearance. This is a factor which we do not dismiss lightly since mobile home dwellers at present suffer considerably from public prejudice against their way of life, caused at least in part by the typically ugly trailer parks of the past.

The most important argument in favour of closed parks, however, is that they bring benefits to the mobile home industry as a whole. Primarily, the fact that a park can be "closed" encourages developers to build mobile home parks, because a ready market is thus created for sale of their mobile homes and a closed park can be controlled as desired, in terms of rents, appearance, and so on. Closed parks therefore create sites for rent, and thereby benefit mobile home owners, but do not adversely affect the business of open parks, at least during times such as the present, when mobile home sites are both in short supply and great demand.

We do not think that it has been demonstrated that closed parks are an abuse which require legislative control. We therefore do not make a recommendation on this subject.

#### 4. Transfer of Interests of Landlord and Tenant

##### (1) The Landlord's Interests

We have discussed at pp. 44-45 of Report No. 22, Residential Tenancies, the existing law relating to transfer,

assignment and subletting. The present Landlord and Tenant Act does not deal with these subjects, but under common law the landlord can transfer his reversion and also the benefits of any covenants in a tenancy agreement which "touch and concern" the land and, subject to the terms of the tenancy agreement, the tenant can assign the tenancy or sublet the rented premises, although he remains liable to the landlord for the performance of his obligations under the tenancy agreement. We think that the proposed Act need not regulate the landlord's right of transfer, except as to disposition of security deposits with which we have dealt in recommendation #33.

(2) The Tenant's Interests: Assignments and Subleases

A tenant of a mobile home site may wish to assign the tenancy, i.e. to transfer it to a third party, thus severing his own tenancy relationship with the landlord of the mobile home site, or he may wish to sublet the mobile home site, maintaining his own tenancy relationship with the landlord but allowing the subtenant some of the benefits of the tenancy agreement, including possession of the mobile home site. Assignment will generally occur in connection with the sale of a tenant's mobile home which is to remain on site, and subletting will generally occur in connection with a tenancy of the mobile home itself. Most tenancy agreements, including mobile home site tenancy agreements, contain a provision prohibiting assignments and subleases either absolutely or without the landlord's consent. We intend now to consider whether the law should regulate the right to assign and sublet.

The landlord has a legitimate interest in controlling assignment and subletting. He may have chosen a particular tenant on the basis of his personal qualities and he may



well want some means of deciding who will occupy his premises. On the other hand, members of our society are increasingly mobile, particularly for reasons connected with employment, and many tenants want to move elsewhere before their tenancy agreements expire. Because of the difficulties involved in moving a mobile home, a tenant of a mobile home site may wish to move away temporarily, leaving the mobile home rented on site to a third party, to return to the mobile home park after a period of training, education, out-of-town employment, or vacation. In these circumstances the tenant is engaging in two transactions. As owner of the mobile home, the tenant acts as landlord when he rents the home to a third party. As tenant of the mobile home site, he sublets the rented premises, i.e. the mobile home site, to the party to whom he has rented his mobile home.

For the same reason, that is the difficulty of moving and relocating a mobile home, a tenant may wish not to rent his mobile home on site but to sell it on site, thereby giving up his interest in both the mobile home and the mobile home site. In this case he is assigning the tenancy in the mobile home site to the third party, rather than subletting it.

Sale of a mobile home on site is of greater consequence to the landlord than renting on site, particularly if the landlord is operating a closed park. In this case, the landlord will lose the opportunity to sell a new mobile home to the incoming tenant. In addition, an entrance fee would not normally be charged if the mobile home is sold on site and the landlord will therefore be deprived of this source of revenue also. We can see some force in these arguments, but we do not feel that they are sufficient to justify a restriction which will prevent the tenant from disposing of his own property.

For these reasons, we think that the tenant of a mobile home site should have the right to sell, rent or otherwise part with the possession of his mobile home on site, if he does so in conjunction with an assignment or subletting of the mobile home site. The landlord should be permitted to protect himself by a provision in the tenancy agreement requiring his consent as a prerequisite to the assignment or subletting, but the proposed Act should provide that his consent shall not be arbitrarily or unreasonably withheld. Nor should the landlord be able to impede a tenant by remaining silent. Consequently, he should be held to have consented unless he replies within 15 days of a request for consent. We believe the landlord should be permitted to require that an assignee assume the obligations of the tenancy as a condition of consent. A provision requiring the landlord's consent should apply to subsequent exercise of these rights, even if it does not expressly so state.

A landlord may wish to prohibit the sale of a mobile home on site so that he can facilitate the removal of unsightly homes and thus protect or improve the appearance of a mobile home park by having older homes, or those in a state of considerable disrepair, replaced by new homes. This is a legitimate objective and one which we think would be acceptable under the terms of our recommendation, if the landlord's guidelines for consent or refusal were both reasonable in themselves and applied reasonably in each individual case.

(3) Restrictions on Sale of the Mobile Home on the Mobile Home Site

We have received a great amount of comment on matters concerned with restrictions on the sale of a mobile home on site. The great majority of it has been adverse to the

restrictions presently practiced. As has been stated at pp. 13-14 of the Report, there are three common forms of restriction on sale:

(a) The landlord may forbid entirely the sale of mobile homes on site, either by means of a clause in the tenancy agreement that tenants must remove their homes on leaving the site themselves, or by stating verbally that prospective buyers will not be accepted as tenants, or simply by giving a month's notice to a tenant who wishes to sell his home on site.

(b) The mobile home park rules or the tenancy agreement may require a tenant to pay the landlord a fee in recompense for the time and expense involved in the investigation of a new tenant.

(c) The mobile home park rules or the tenancy agreement may require that the sale be handled through the landlord, as agent, or through a specified real estate agent. In the former case the tenant will frequently be required to pay the landlord a fee for his assistance in the sale (sometimes irrespective of whether he in fact assisted or not), either in the form of a percentage of the sale price or a fixed amount. In the latter case the tenant will be required to pay a fee or commission to the real estate agent.

We have already considered the first form of restriction and our recommendation #41 should ensure that outright prohibition of sale on site will no longer be possible, while recommendations #25 and #28 will prevent a landlord from arbitrarily prohibiting sale on site by terminating the tenancy on a month's notice.

Tenants are particularly opposed to the third type of

restriction on sale as outlined above. They are angry that landlords seek to interfere in the sale of the tenant's own property, and to make money from it. They regard it as an unjustifiable inroad on their freedom that they are forced to pay the landlord a commission or fee on the sale of their home, particularly if the landlord has not assisted in the sale. Similarly, they object to the common requirement that sale be handled through one particular real estate agent, since they are then prevented from shopping around for the most advantageous rates, most effective advertising, or other benefits. They also sometimes suspect that the landlord and agent have a monetary arrangement between themselves which may be detrimental to the tenant.

Landlords, on the other hand, feel able to justify these types of restrictions. As agent for all sales, particularly in a mobile home park, the landlord is able to scrutinize prospective buyers/tenants at an early stage, ensuring that tenants do not sell their homes and leave without notification, with the landlord suddenly finding a new and undesirable tenant occupying his land. In addition, the landlord can handle sales in a consistent and orderly manner, controlling advertising and inspections by possible purchasers, and giving accurate information about the park, in terms of rents, taxes, rules and regulations, and available facilities. The same arguments apply to the requirement that a particular real estate agent handle all sales.

As for the landlord's profit from sale of a mobile home on site, where mobile home sites are in short supply it is alleged that tenants are able to sell their homes on site for an inflated price and landlords claim that, since part of the sale price is attributable to their investment in land, the commission or fee charged on sale represents their fair share of the capital gain.

We can appreciate the merits of both sets of arguments outlined above but we feel that the landlord should not be entitled to use his superior bargaining power to impose on the tenant either his own services as agent in the sale of the mobile home, or the services of any other party, including a particular real estate agent. We also think the landlord should not have a claim for semi-automatic share in the proceeds of sale. As was said in the British Columbia report on mobile homes (Mobile Homes: Problems and Prospects, 1975, p. 52) "...owners of mobile home parks are in the business of leasing spaces for mobile homes and thus should be required to obtain their income from that source, not from the imposition of fees or commissions or extracting a share of any increased capital values of homes owned by people living in their park".

We do not wish to prevent the tenant from appointing the landlord as his agent, with the right to exact a commission or fee from the sale or lease of the mobile home on site, but for the tenant's protection we recommend that this relationship be permitted only if pursuant to a written agency contract. However, we do not think that the landlord should be out of pocket as a result of an assignment or subletting for which he must consider giving his consent, and therefore we recommend that he be allowed to charge the tenant for his reasonable and actual expenses.

We think that different considerations apply outside mobile home parks in relation to assignments, subletting, and sale of the mobile home on site. The small scale of activity of the landlord will tend to mean that the relationship between landlord and tenants will be of a personal rather than commercial nature and for this reason we do not think that the legislation should ensure to tenants the right to assign, sublet, or sell the mobile home on site because the

new tenant may be unacceptable to the landlord, yet for reasons which would not enable him to refuse his consent to the transaction within the terms of the proposed legislation.

Recommendation #41

- (1) *That this recommendation applies to tenancies of mobile home sites in mobile home parks.*
- (2) *That a tenant have the right*
  - (a) *to assign and sublet, and*
  - (b) *to sell, lease, or otherwise part with the possession of his mobile home in conjunction with an assignment or subletting.*
- (3) *That if the tenancy agreement so provides, the exercise of a right under subsection (2) be subject to the landlord's consent, but the landlord shall not withhold his consent arbitrarily or unreasonably.*
- (4) *That unless a contrary intention is expressed in the tenancy agreement, a provision requiring the landlord's consent to the exercise of a right under subsection (2) applies to a subsequent exercise of the same right.*
- (5) *That if a landlord does not answer a request for a consent under subsection (3) within 15 days from the date of the request, he be deemed to have given his consent.*
- (6) *That a landlord shall not exact a commission or fee, save only his reasonable expenses actually incurred, in connection with the exercise by a tenant of a right under subsection (2), except pursuant to a written agency contract.*
- (7) *That a landlord shall not require that a tenant designate the landlord or any other person to act as agent in the tenant's exercise of a right under subsection (2).*

## 5. Obligations After Transfer

At pp. 46-48 of Report No. 22, Residential Tenancies, we discussed whether and to what extent a purchaser of the landlord's interest and the tenant's assignee should acquire the rights and assume the obligations of the landlord and of the tenant respectively. We recommended that the subsequent owner of property subject to a tenancy, while he remains owner of the property, have all the rights and be subject to all the obligations of the landlord relating to the tenancy. We also recommended that an assignee of the interest of the tenant, while he continues to hold the interest, have all the rights and be subject to all the obligations of the tenant relating to the tenancy. We think that these proposals are also appropriate to tenancies of mobile home sites and we recommend their adoption.

We are aware that the second of the above recommendations will have the effect that a purchaser of a tenant's mobile home which is to remain on site after sale, i.e. an assignee of the tenancy, will not usually be entitled to the benefit of an initial period of one year during which the tenancy cannot be terminated without cause. The purchaser, or assignee, will be entitled only to the rights of the assignor, including the right to that period of notice to which the assignor was entitled at the date of transfer of the interest. We are unwilling to suggest that a new one year commitment be imposed on the landlord since if the proposed purchaser is generally acceptable the landlord would not be able to refuse his consent to the assignment or change the terms of the tenancy, e.g. by increasing the rent. Unless notice was given to the assignor before the date of assignment the assignee will be entitled to at least six months' notice of termination from the landlord and we think that this arrangement is fair to all parties.

Recommendation #42

- (1) *That, except as provided in Recommendation #33, a subsequent owner of property subject to a tenancy, while he remains owner of the property, have all the rights and be subject to all the obligations of the landlord relating to the tenancy.*
- (2) *That an assignee of the interest of the tenant, while he continues to hold the interest, have all the rights and be subject to all the obligations of the tenant relating to the tenancy.*
- (3) *That the Grantees of Reversion Act, 32. Hen. 8, c. 34, not apply to the rights of a landlord under a mobile home site tenancy.*
- (4) *This this recommendation be subject to the Land Titles Act.*

6. Rules and Regulations

As has been stated at p. 14 of the Report, a tenant of a mobile home site within a mobile home park is usually required to comply with certain rules and regulations promulgated by the landlord. Violation of the rules may result in eviction (although as a result of our recommendation #18 at pp. 53-55, a future breach would have to be substantial in order to support a lawful eviction); or in termination of the tenancy by notice, or in some other penalty, such as a fine, service charge, or withdrawal of facilities.

We are aware that rules and regulations, as a formal list of instructions and requirements, are more likely to exist in a mobile home park than where a landlord has only one or two tenants of mobile home sites. For this reason, the discussion in the following section is framed in terms of the situation in mobile home parks. However, we think



that, where rules and regulations do exist in the smaller enterprises, the tenant should have the same protection from abuse of them as we recommend for tenants within mobile home parks.

Rules and regulations are obviously both necessary and desirable in a mobile home park, but if rules are ambiguous; enforced arbitrarily or with partiality; unreasonable or unfair; imposed retrospectively or without notice; or altered at will; then the tenant may be in need of statutory protection from them. Rules and regulations may also be undesirable in a different way, for example by unreasonably restricting the freedom of tenants to chose their own plumbers or electricians, or suppliers of food, equipment, or fuel, or by forcing tenants to expense in order to make permanent improvements to the landlord's property.

We have no evidence that tenants' freedom to trade is commonly curtailed in Alberta and we do not think that legislative protection is required in this area. We do understand that tenants of some mobile home parks are required to make improvements to the mobile home site, but we feel that this would not necessarily be undesirable in view of the increased notice period which we have recommended in recommendations #25 and #28 and if the tenant is either informed before entering the park that such work will be required of him, or if the expense and effort demanded is not unreasonable. We think that our recommendation on rules and regulations will give sufficient general protection to a tenant from any unreasonable rules of this nature that might be imposed during the tenancy and that specific regulation is unnecessary.

We believe that it is important that a tenant be fully informed, before entering into a tenancy agreement, of the

rules and regulations to which he will be subject as a resident of the mobile home park. Since the tenant will need to refer to these rules and regulations periodically, and because they could form the grounds for eviction of the tenant by the landlord, we recommend that the disclosure be in writing.

We do not propose to make a recommendation that would restrict the rules and regulations which the landlord may offer and the tenant may accept, except for those rules and regulations which may be imposed on the tenant after he has entered into the tenancy agreement. We think that we should not take from a tenant the responsibility of deciding for himself whether he wishes to enter into the contract on the terms held out to him, nor should we dictate to the landlord the terms which he may offer to a prospective resident of his mobile home park. However, we recognize that, once committed to the tenancy, a tenant of a mobile home site may require protection from unreasonable rules and regulations, rules involving capital outlay, retrospective rules, and rules which seek substantially to modify the original tenancy agreement: rules of which the tenant could not have known at the commencement of the tenancy and which he must now accept or terminate the tenancy. We have at several points in this Report discussed the difficulties faced by a mobile home owner who is required to leave a mobile home park and we think that these difficulties distinguish the mobile home owner from the ordinary residential tenant and justify our recommendation for protection of the former.

We are informed that tenants are concerned about ambiguous rules and about rules that are applied with partiality or which apply in a discriminatory fashion to only particular tenants. Some tenants complain also that

they are given little or no advance warning of the adoption of new rules, or of amendments in old, thus allowing them little time in which to comply, yet with threatened termination of the tenancy as a result if they do not. Our recommendation will not protect the tenant from rules which he was unwise to accept when he entered into the tenancy agreement, but should protect him from unreasonable impositions in the future.

We recommend that a landlord of a mobile home park should have the right to adopt reasonable rules or regulations from time to time during the currency of the tenancy agreement, for the purpose of promoting the convenience, safety or welfare of the residents of the mobile home park, preserving the landlord's property from abusive use, or distributing services and facilities. Such rules should be enforceable against the tenant only if they apply and are applied to all tenants in a fair manner and if they are sufficiently explicit fairly to inform the tenant of the conduct required of him. In addition, a rule or regulation adopted after the tenant has entered into the tenancy agreement should be enforceable against him only if the tenant is given reasonable notice in writing of its adoption and if it does not work a substantial modification of his tenancy agreement. As an exception to the last mentioned requirement, we recommend that a rule pertaining to safety or to recreational facilities in the mobile home park should be amendable without advance notice, since we do not wish to prevent the landlord from acting to protect the immediate safety of the park residents, or from using his discretion in regulation of the recreational facilities.

Recommendation #43

- (1) *That a landlord be required to disclose fully in writing all rules and regulations prior to a tenant entering into a tenancy agreement.*
- (2) *That subject to subsection (1), a landlord may from time to time during the tenancy adopt reasonable rules or regulations, the purpose of which is to promote the convenience, safety or welfare of the mobile home site residents, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the residents generally. Such rules are enforceable against the tenant only if:*
  - (a) *they apply and are applied to all tenants in a fair manner, and*
  - (b) *they are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct fairly to inform him of what he must or must not do to comply.*
- (3) *That except as provided in subsection (4), a rule or regulation adopted after the tenant enters into the tenancy agreement be enforceable against the tenant only if reasonable notice in writing of its adoption is given to the tenant and if it does not work a substantial modification of his tenancy agreement.*
- (4) *That a rule or regulation pertaining to the safety of mobile home site residents, or to recreational facilities, may be introduced, amended or deleted by the landlord without advance notice.*

7. Fees, Charges and Assessments

We have attempted throughout the Report to maintain a balance between sometimes conflicting interests. We have as far as possible forborne from recommendations which will substantially increase the administrative work of the landlord, for which reason we did not recommend that the

tenancy agreement necessarily be in writing, yet we have also attempted to protect the tenant from his inferior bargaining position with the landlord. In particular, because we have sought to avoid interference with the economic structure of the industry, we have not recommended changes to the closed park system, or to the practice of charging entrance fees. However, since such fees may be considerable, we think that landlords owe a responsibility to tenants to ensure that the latter are fully aware of the fees which they may incur before, during or after the tenancy, and to notify tenants in advance of proposed changes. Accordingly, we recommend that a landlord be required to disclose fully in writing all fees, charges and assessments prior to a tenant entering into a tenancy agreement. In addition, we recommend that such fees, etc., may not be increased without six months' written notice to tenants within mobile home parks or 90 days' written notice to tenants of mobile home sites outside mobile home parks.

Recommendation #44

- (1) *That the following apply to a tenancy of a mobile home site in a mobile home park:*
  - (a) *that a landlord be required to disclose fully in writing all fees, charges or assessments prior to a tenant entering into a tenancy agreement,*
  - (b) *that no fees, charges or assessments so disclosed may be increased, nor additional fees, charges or assessments imposed, without written notice to the tenant informing him of the increase or addition, which notice shall be given to the tenant at least six months before the date on which the increase or addition is to be effective.*
- (2) *That the same provisions apply to a tenancy of a mobile home site not in a mobile home park but that the period of notice be 90 days instead of six months.*

XV  
CONTRACTING OUT

We discussed agreements contrary to the proposed Act at p. 127 of Report No. 22, Residential Tenancies, and recommended that parties be prohibited from contracting out of the Act which we proposed in that Report, except where expressly permitted. We think that this is necessary in respect of tenancies of mobile home sites also in order to prevent the Act proposed in this Report from being rendered nugatory by clauses in standard form tenancy agreements under which tenants would give up the protection provided in the proposed Act.

Recommendation #45

*That except as otherwise provided, the proposed Act apply notwithstanding an agreement to the contrary.*

XVI  
TRANSITIONAL PROVISIONS

In Report No. 22, *Residential Tenancies*, we discussed at pp. 128-129 the question whether or not the proposed Act should apply to tenancies which are in existence when it comes into force. For the reasons discussed in Report No. 22, we recommended that the Act should apply to any tenancy agreement made after its commencement and to a weekly or monthly tenancy made before its commencement. Yearly tenancies we thought should not be subject to the proposed Act until one year after the Act has come into force, and the Act should not apply to existing fixed term tenancies at all, unless they are renewed after the commencement of the Act.

We believe that these proposals are suitable also to tenancies of mobile home sites and we recommend their adoption.

Recommendation #46

*That the proposed Act*

*(1) apply to*

- (a) any tenancy agreement made after its commencement,*
- (b) a weekly or monthly tenancy agreement made before its commencement, and*
- (c) a yearly tenancy agreement made before its commencement, from and after the first anniversary of its commencement.*

*(2) not apply to a tenancy agreement for a fixed term made before its commencement, but apply to a renewal of such a tenancy agreement made after its commencement.*

XVII  
CONCLUSION

We have attached as Appendix B a proposed Act which we think is successful in balancing the sometimes conflicting interests of the parties to tenancies of mobile home sites, and which will provide the parties with appropriate and convenient new rights, responsibilities and remedies. We hope that our discussion of a plan for security of tenure, and the plan itself, which is attached as Appendix C, will assist in the making of an informed decision on the subject.

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J. P. S. McLAREN  
W. A. STEVENSON  
W. E. WILSON

BY: 

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CHAIRMAN



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DIRECTOR

April, 1978



## APPENDIX A

CROSS-REFERENCE BETWEEN RECOMMENDATIONS AND  
PROPOSED ACT

<u>Recommendation No.</u>	<u>Page No.</u>	<u>Subject</u>	<u>Section No.</u>
1	4	Scope of proposed Act	1, 2, 3, 5, 13, 32, 33, 35, 36
2	22-23	Definitions	1
3	23	Application of proposed Act	2
4	23	Crown	50
5	25	Tenant's Information	3
6	26-27	Tenant's Information	4
7	29	Quiet Enjoyment	7
8	32	Landlord's Obligations	7
9	36-37	Privacy	8
10	38	Retaliatory Eviction	9
11	40-41	Rent Increase	10
12	41	Acceleration clauses	11
13	44-46	Tenant's Obligations	12
14	50-51	Tenant's Remedies	16
15	51-52	Tenant's Remedies	17
16	52	Distress	No action
17	52-53	Landlord's Remedies	18
18	53-55	Landlord's Remedies	19
19	55	Frustration	20

<u>Recommendation No.</u>	<u>Page No.</u>	<u>Subject</u>	<u>Section No.</u>
20	58	Overholding tenant	21
21	59-60	Failure to give possession	22-29
22-30	70-76	Termination of tenancies	30-37
31	77-78	Implied tenancy	38, 39
32-33	83-84	Security deposits	40-43 1(7)
34	86-87	Abandoned goods	44
35-36	88-90	Courts	45
37	90	Appeals	46
38	90-91	Landlord and Tenant Advisory Boards	47 (see also Appendix D)
39	92	Service	48
40	96	Entrance fees	No action
41	104	Assignment, subleasing and sale	13
42	106	Subsequent owners and assignees	14
43	110	Rules and regulations	6
44	111	Fees, charges or assessments	5
45	112	Contracting out	49
46	113	Transitional provisions	51

APPENDIX B  
TENANCIES OF MOBILE HOME SITES ACT

Definitions

1. In this part, unless the context otherwise requires
  - (1) "common areas" means areas controlled by a landlord and used for access to a mobile home site or for service to a tenant;
  - (2) "court" means a court of competent jurisdiction;
  - (3) "landlord" means the landlord under a mobile home site tenancy and includes a tenant who sublets;
  - (4) "mobile home park" means a parcel of land which includes three or more mobile home sites rented or held out for rent.
  - (5) "mobile home site" means a site intended to be occupied by a self-contained residential dwelling unit, the ownership of which is intended to remain separate from the ownership of the site, but does not include sites maintained solely for recreational enjoyment;
  - (6) "mobile home site tenancy" or "tenancy"
    - (a) means a tenancy or a licence of a mobile home site, and
    - (b) includes an arrangement under which a landlord provides a mobile home site to an employee
      - (i) who provides services in respect of the property of which the mobile home site is a part, or
      - (ii) in connection with the employee's employment.
  - (7) "security deposit" means money or any property or right paid or given by a tenant under a mobile home site tenancy to a landlord or his agent or to anyone on his behalf to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant or to be returned to the tenant upon the happening of a condition.

- (8) "subtenancy" means a tenancy created by sublease by a tenant under a mobile home site tenancy;
- (9) "tenancy agreement" means a lease or a written or oral agreement creating a mobile home site tenancy.
- (10) "tenant" means the tenant under a mobile home site tenancy and includes a subtenant.

#### Application of Act

- 2. (1) If a tenancy is entered into for the purpose of enabling the tenant to sublet, the provisions of this Act
  - (a) apply to the subtenancy, and
  - (b) do not apply to the tenancy.
- (2) If a tenancy described in subsection (1) is terminated
  - (a) the landlord under the tenancy becomes the landlord under the subtenancy, and
  - (b) either the landlord or the tenant may terminate the subtenancy by notice to the subtenant under
    - (i) sections 32, 34 or 35 in the case of subtenancies of mobile home sites which are in mobile home parks, or
    - (ii) sections 33 or 34 in the case of subtenancies of mobile home sites which are not in mobile home parks.

#### Tenant's Information

- 3. (1) A landlord of a mobile home park shall ensure that a notice in Form C is delivered to the tenant at or before the time at which the tenant takes possession of the mobile home site.
  - (2) A landlord who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine and/or imprisonment under the provisions of the Summary Convictions Act.
- 4. (1) Where a tenancy agreement in writing is executed by a tenant, the landlord shall ensure that a true

copy of the tenancy agreement is delivered to the tenant within 21 days after its execution and delivery by the tenant.

- (2) Until a copy of the tenancy agreement is delivered in accordance with subsection (1) the tenant may withhold payment of all rental payments which fall due.
  - (3) The landlord may deliver the copy of the tenancy agreement as required by subsection (1)
    - (a) personally, or
    - (b) by ordinary mail addressed to the tenant
      - (i) at the mobile home site if the tenant has taken possession, or
      - (ii) at any address provided by the tenant for delivery of a copy of the tenancy agreement.
5. (1) The following provisions apply to a tenancy of a mobile home site in a mobile home park:
- (a) a landlord shall disclose fully in writing all fees, charges or assessments prior to a tenant entering into a tenancy agreement,
  - (b) no fees, charges or assessments so disclosed may be increased, nor additional fees, charges or assessments be imposed, without written notice to the tenant informing him of the increase or addition, which notice shall be given to the tenant at least six months before the date on which the increase or addition is to be effective.
- (2) The same provisions apply to a tenancy of a mobile home site not in a mobile home park but the period of notice shall be 90 days instead of six months.
6. (1) A landlord shall disclose fully in writing all rules and regulations prior to a tenant entering into a tenancy agreement.
- (2) Subject to subsection (1), a landlord may from time to time during the tenancy adopt reasonable rules and regulations, the purpose of which is to promote the convenience, safety or welfare of the mobile home site residents, preserve the landlord's pro-

perty from abusive use, or make a fair distribution of services and facilities held out for the residents generally. Such rules are enforceable against the tenant only if:

- (a) they apply and are applied to all tenants in a fair manner, and
  - (b) they are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct fairly to inform him of what he must or must not do to comply.
- (3) Except as provided in subsection (4), a rule or regulation adopted after the tenant enters into the tenancy agreement is enforceable against the tenant only if reasonable notice in writing of its adoption is given to the tenant and if it does not work a substantial modification of his tenancy agreement.
- (4) A rule or regulation pertaining to the safety of mobile home site residents, or to recreational facilities, may be introduced, amended or deleted by the landlord without advance notice.

#### Landlord's Obligations

7. In every tenancy agreement there be implied the following covenants between the landlord and the tenant:
- (a) that the mobile home site shall be available for peaceful occupation by the tenant at the commencement of the term,
  - (b) that neither the landlord nor anyone claiming under or through the landlord shall in any significant manner disturb the tenant's possession or peaceful enjoyment of the mobile home site,
  - (c) that at the commencement of the tenancy the mobile home site and appurtenances thereon will be clean and free from all accumulations of debris, filth, refuse, garbage and other foreign material and will be sound and suitable for the purpose for which they are intended, and
  - (d) that throughout the tenancy the landlord shall:
    - (i) take all reasonable steps to maintain the mobile home site and appurtenances thereon

sound and fit for the purpose for which they are intended and in addition take all reasonable steps to maintain the common areas habitable and in good repair,

- (ii) take all reasonable steps to maintain in good and working order and condition all electrical, plumbing, sanitary, heating, fuel, and other facilities supplied or required to be supplied by him,
- (iii) take all reasonable steps to provide or ensure the availability of a means for the removal or disposal of garbage at reasonable intervals,
- (iv) take all reasonable steps to maintain common roads in a good state of repair and free from excess snow, and
- (v) comply with health and safety standards, including planning and structural standards, prescribed by law.

#### Privacy

- 8. (1) Except as provided in this section a landlord is not entitled to enter either a mobile home site or a mobile home situated on a mobile home site without the consent of the tenant or of a person rightfully on the mobile home site or in the mobile home.
- (2) A landlord is entitled to enter a mobile home site without consent or notice if he has reasonable grounds to believe that
  - (a) an emergency requires entry, or
  - (b) the tenant has abandoned the mobile home site.
- (3) A landlord is entitled to enter a mobile home site without consent but upon notice
  - (a) to inspect the state of repair,
  - (b) to make repairs,
  - (c) to show the mobile home site to prospective purchasers and mortgagees of the property, or
  - (d) to show the mobile home site to prospective tenants

- (i) after notice of termination of a tenancy has been given, or
  - (ii) during the last month of a tenancy for a fixed term.
- (4) A notice under subsection (3) shall
- (a) be in writing,
  - (b) be given to the tenant at least 24 hours before the time of entry, and
  - (c) name a reasonable time for the entry.
- (5) The landlord shall exercise his rights under this section with due regard to the rights of the tenant under section 7(b).

#### Retaliatory Eviction

9. (1) A landlord shall not terminate a tenancy for the reason that the tenant has
- (a) taken steps to enforce a right granted to the tenant or an obligation imposed on the landlord by this Act, or
  - (b) made a bona fide complaint to a municipal or governmental authority alleging that the landlord has violated a statute, by-law or regulation dealing with health, safety, planning or structural standards.
- (2) A notice of termination given in contravention of subsection (1) is ineffective.
- (3) A landlord who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine and/or imprisonment under the provisions of the Summary Convictions Act.

#### Rent

10. (1) The following provisions apply to a tenancy of a mobile home site in a mobile home park:
- (a) a landlord shall not increase the rent payable under a periodic tenancy agreement or recover any additional rent resulting from such an



increase unless he gives to the tenant a written notice of the increase in rent at least six months before the date on which the increase is to be effective,

- (b) a tenant under
  - (i) a periodic tenancy, or
  - (ii) a fixed-term tenancy which, by virtue of section 35 will become a periodic tenancy before the date of rent increase,

who receives a notice under subsection (1)(a) and who fails to give to the landlord notice of termination effective on or before the date of rent increase, shall be deemed to have accepted the same,

- (c) a landlord who gives a notice of termination of a tenancy shall not, for a period of six months after the date the notice is given, be entitled to demand or retain any rent for the mobile home site in excess of that payable under the tenancy agreement at the time of the notice,
- (d) a tenant who pays rent in excess of that permitted by subsections (1)(a) and (1)(c) is entitled to recover such excess rent from the landlord,
- (e) this section does not apply if the tenancy agreement provides for a period of notice longer than six months.

- (2) The same provisions apply to a tenancy of a mobile home site not in a mobile home park but the period of notice shall be 90 days instead of six months.

#### Acceleration Clauses

- 11. A term in a tenancy agreement that provides that, by reason of default in payment of rent due or in observance of any obligation of the tenant under a tenancy agreement, the whole or any part of the remaining rent for the term of the tenancy becomes due and payable, is void and unenforceable.

Tenant's Obligations

12. (1) In every tenancy agreement there are implied the following covenants between the tenant and the landlord:
- (a) that neither the tenant, another occupant of the mobile home situated on the mobile home site, nor a person invited to property of which the mobile home site forms a part by the tenant or another occupant, shall
    - (i) disturb, in any significant manner, the possession and peaceful enjoyment by the landlord or another tenant of their rights in property of which the mobile home site forms a part, or
    - (ii) damage such propertyby any wilful or negligent conduct including, but not limited to, illegal, dangerous, or offensive conduct.
  - (b) that the tenant shall maintain the mobile home site including equipment and facilities supplied thereto, in a clean, tidy and sanitary condition, free of garbage and refuse,
  - (c) that the tenant shall observe all reasonable rules of the landlord in connection with the cleanliness, tidiness, safety and general appearance of the exterior of his mobile home and appurtenances thereto,
  - (d) that the tenant shall notify the landlord insofar as reasonably possible, of any condition of disrepair in the mobile home site known to the tenant, and
  - (e) that the tenant shall take such emergency action as would be taken by a reasonable tenant under the circumstances, short of permanent repair, to minimize damage to the mobile home site from any cause.
- (2) The tenant is not liable under subsection (1)(a) for the conduct of another person other than on the mobile home site unless the tenant could reasonably have prevented the conduct.

- (3) The covenant implied by subsection (1)(a) in favour of the landlord also benefits and is enforceable by any other tenant of the landlord affected by a breach thereof.
- (4) The tenant is not liable to the landlord under sections (1) and (2) for any damage sustained from fire, unless
  - (a) the fire was intentionally caused by the tenant, or
  - (b) the insurer under a policy of insurance in favour of the landlord is entitled to and does refuse to indemnify the landlord by reason of the tenant's conduct.

#### Transfer of Interests

- 13. (1) This section applies to tenancies of mobile home sites in mobile home parks.
- (2) A tenant has the right
  - (a) to assign and sublet, and
  - (b) to sell, lease or otherwise part with the possession of his mobile home in conjunction with an assignment or subletting.
- (3) If the tenancy agreement so provides, the exercise of a right under subsection (2) is subject to the landlord's consent, but the landlord shall not withhold his consent arbitrarily or unreasonably.
- (4) Unless a contrary intention is expressed in the tenancy agreement, a provision requiring the landlord's consent to the exercise of a right under subsection (2) applies to a subsequent exercise of the same right.
- (5) If a landlord does not answer a request for a consent under subsection (3) within 15 days from the date of the request, he is deemed to have given his consent.
- (6) A landlord shall not exact a commission or fee, save only his reasonable expenses actually incurred, in connection with the exercise by a tenant of a right under subsection (2), except pursuant to a written agency contract.

- (7) A landlord shall not require that a tenant designate the landlord or any other person to act as agent in the tenant's exercise of a right under subsection (2).
- 14. (1) Except as provided in section 43 a subsequent owner of property subject to a tenancy, while he remains owner of the property, has all the rights and is subject to all the obligations of the landlord relating to the tenancy.
- (2) An assignee of the interest of the tenant, while he continues to hold the interest, has all the rights and is subject to all the obligations of the tenant relating to the tenancy.
- (3) This section is subject to the Land Titles Act.

#### Preservation of Existing Remedies

- 15. Unless otherwise provided this Act does not affect
  - (1) a remedy to which a landlord or tenant is entitled, or
  - (2) the power of a court to grant relief.

#### Tenant's Remedies

- 16. (1) If a landlord's breach of obligation under the tenancy agreement or under this Act deprives the tenant of a substantial part of the benefit of the tenancy agreement the tenant may
  - (a) treat the tenancy agreement as terminated and vacate the mobile home site, or
  - (b) proceed under subsection (2).
- (2) The tenant may give the landlord a notice in writing
  - (a) specifying the breach; and
  - (b) notifying the landlord that the tenancy agreement will terminate 14 days after the giving of the notice unless within that time

the landlord files and serves a notice of application to the court for an order setting aside the notice.

- (3) The court shall set aside the notice unless it is satisfied that a breach described in subsection (1) has occurred.
  - (4) If the landlord does not apply, it shall be conclusively deemed that there was a breach described in subsection (1) and the tenancy is terminated.
  - (5) If a tenancy is terminated under this section
    - (a) rent is payable to the date of termination, and no longer, at the rate provided in the tenancy agreement, with pro rata provision for a fractional rental period, and
    - (b) each party is entitled to enforce all rights which accrue to the time of termination, and
    - (c) the tenant is entitled to damages for the loss of the benefit of the agreement over the balance of the unexpired term.
17. (1) If a landlord commits a breach of an obligation under a tenancy agreement or this Act, the tenant may by notice apply for any one or more of the following remedies
- (a) damages suffered by reason of the breach,
  - (b) abatement of rent to the extent that the breach deprives the tenant of the benefit of the tenancy agreement, and
  - (c) judgment for the cost of making good the landlord's default.
- (2) The court may
- (a) make an order or give a judgment applied for under subsection (1),
  - (b) direct that the tenant pay into court, pending and after disposition of the application, such amounts of future rent, if any, as the court deems appropriate to secure enforcement of any order applied for or granted under subsection (1), and

- (c) direct that any amount of rent paid into court be disbursed, as appropriate,
  - (i) to the tenant as damages,
  - (ii) to the landlord, the tenant, or a third party, for costs reasonably incurred in making good the landlord's default, and
  - (iii) to the landlord any remaining sums.
- (3) The court may refuse to permit the tenant to pay future rent into court upon being satisfied that
  - (a) there was no breach, or
  - (b) the breach
    - (i) was not significant,
    - (ii) was beyond the landlord's reasonable control, or
    - (iii) was expressly or impliedly waived by the tenant.

#### Landlord's Remedies

- 18. (1) If a tenant, by abandonment of the mobile home site or otherwise, gives the landlord reasonable grounds to believe that the tenant has repudiated the tenancy agreement, the landlord may either
  - (a) accept the repudiation as a termination of the tenancy, or
  - (b) refuse to accept the repudiation and continue the tenancy.
- (2) A landlord who proceeds under subsection (1)(a)
  - (a) may recover any rent accrued, and damages suffered by reason of the breach of other obligations of the tenant, to the date of termination of the tenancy, and
  - (b) may recover damages for the loss of the benefit of the tenancy agreement
    - (i) if for a fixed term tenancy, over the unexpired period of the tenancy agreement, or

(ii) if for a periodic tenancy, until the earliest date the tenant could have terminated the tenancy if his acts of repudiation had constituted a proper notice of termination,

and

(c) is subject to a duty to take reasonable steps to mitigate his damages.

(3) A landlord who proceeds under subsection (1)(b)

(a) may enforce the tenancy agreement, but

(b) is subject to a duty to take reasonable steps to rent the mobile home site on behalf of the tenant to mitigate the tenant's liability for rent under the tenancy agreement.

19. (1) If a tenant commits a substantial breach of obligation under a tenancy agreement or under the Act, the landlord may give the tenant notice that the tenancy will terminate 14 days after the date of giving of notice unless within the said period of 14 days the tenant serves on the landlord a notice of objection to the termination.
- (2) A notice under subsection (1) shall give particulars of the alleged breach.
- (3) Without restricting the generality of subsection (1), "substantial breach" for the purposes of this section includes
- (a) a failure to pay rent,
  - (b) doing or permitting substantial damage to the mobile home site or common areas,
  - (c) performing illegal acts, or carrying on an illegal trade, business, occupation or calling, on the mobile home site or in the common areas,
  - (d) a breach which creates a danger to person or property,
  - (e) a breach which causes undue interference with the rights of the landlord or other tenants,

- (f) a series of breaches the cumulative effect of which is substantial.
- (4) If the breach is a default in payment of rent, and if the tenant pays the arrears of rent within the said period of 14 days, the notice is ineffective whether or not the landlord applies under subsection (6).
  - (5) Except as provided in subsection (4) the tenancy shall terminate in accordance with the landlord's notice unless the tenant serves a notice of objection under subsection (1).
  - (6) The landlord may
    - (a) instead of serving a notice under subsection (1), or
    - (b) if the tenant serves a notice of objection under subsection (1)
 apply to the court for an order terminating the tenancy agreement.
  - (7) Upon an application by a landlord under subsection (6) the court
    - (a) if satisfied that the tenant has committed a substantial breach of obligation under the tenancy agreement or under this Act, shall make an order terminating the tenancy agreement, or
    - (b) if not so satisfied, shall deny the application.
  - (8) If a tenancy agreement is terminated under this section
    - (a) rent accrued before the date of termination is payable, and
    - (b) the rights of the parties shall be determined as in the case of any other termination of a tenancy agreement.

#### Frustration

- 20. (1) A tenancy agreement is frustrated if



- (a) the mobile home site is destroyed or rendered permanently unusable, or
  - (b) the mobile home site, the common areas, or the property of which they form a part, are damaged to such an extent that
    - (i) a reasonable landlord would not repair the damaged property, or
    - (ii) a reasonable tenant would not be willing to remain as tenant.
- (2) The Frustrated Contracts Act applies to a tenancy agreement which is frustrated.

#### Overholding Tenant

21. While an overholding tenant remains in possession of a mobile home site after the termination of the tenancy, neither the landlord nor a new tenant is entitled to obtain possession except by consent or under order of a court.

#### Failure to Give Possession

22. (1) Where a tenant overholds after the termination of a tenancy, the landlord has a right to recover from such tenant
- (a) compensation for use and occupation by the overholding tenant, and
  - (b) damages suffered by the landlord as a consequence of the overholding, including, but not limited to, indemnification for damages, general and special, for which the landlord is liable to a new tenant, which could reasonably have been foreseen by the overholding tenant as a consequence of the overholding.
- (2) Where a landlord breaches his covenant to give a tenant possession of the mobile home site at the commencement of the term, the tenant has the following rights against the landlord
- (a) to recover damages, general and special, which could reasonably have been foreseen by the landlord as a consequence of the breach, and either

- (b) to repudiate the tenancy agreement, or
  - (c) to obtain specific performance of the covenant for possession in the discretion of the court.
- (3) Where a tenant is unable to obtain possession of a mobile home site because it is wrongfully occupied by another, the tenant has a right to recover from the wrongful occupant
- (a) possession of the mobile home site, and
  - (b) damages, general and special, which could reasonably have been foreseen by the wrongful occupant as a consequence of the occupation.
- (4) The doctrine of interesse termini is abolished.

#### Obtaining Possession

23. (1) Where a tenant, after his tenancy has expired or has been terminated, does not go out of possession of the mobile home site held by him, the landlord may apply by originating notice of motion to the Supreme Court for an 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.
24. (1) The originating notice of motion of the landlord may also include
- (a) a claim for arrears of rent,
  - (b) a claim for compensation for use and occupa-

tion of the mobile home site by the tenant after the expiration or termination of the tenancy, and

- (c) a claim for damages.
- (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,
  - (b) where a claim is made for compensation, particulars of the use made of the mobile home site after the expiration or termination of the tenancy, so far as is known, and
  - (c) where a claim is made for damages, particulars thereof.
25. (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 court may
- (a) if it is satisfied that the tenancy has expired, give an order for possession,
  - (b) where a claim for rent is made, give judgment for the amount of rent proven to be in arrears,
  - (c) where a claim for compensation for use and occupation or for damages is made give judgment in such amount as the court may determine, having regard in the case of a claim for compensation for use and occupation to the nature of the use and occupation and the rent payable during the tenancy, and
  - (d) make such order as to costs as it thinks just.
- (2) The court 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.

*(Note: If the Temporary Rent Regulation Measures Act is continued references should be made to it in this section as is done in section 12(1.1) of the Landlord and Tenant Act as amended by section 42 of S.A. 1975, c. 84).*

26. (1) An order under section 25 granting possession
- (a) shall direct the tenant to deliver up possession of the mobile home site 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 48.
27. 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.
28. 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 mobile home site after service upon him of the originating notice of motion.
29. Where an application is made in which the Provincial Court has power to grant an order for possession as provided in section 45, the landlord, instead of proceeding under sections 23 to 29, may apply to the Provincial Court in accordance with the rules and practice of the court for an order for possession, compensation for use and occupation, and damages flowing from the tenant's refusal to give possession.

#### Termination of Tenancies

30. (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 the notice
- (a) shall meet the requirements of section 31,
  - (b) shall be given in the manner prescribed by section 48, and
  - (c) shall be given in sufficient time to give the period of notice required by section 32, 33, or 34, as the case may be.

- (2) Any other kind of tenancy determinable on notice may be terminated as provided by sections 31 and 48.
31. (1) A landlord or a tenant shall give notice in writing.
- (2) A notice in writing
    - (a) shall be signed by the person giving the notice, or his agent,
    - (b) shall identify the mobile home site in respect of which the notice is given, and
    - (c) shall state the date on which the tenancy is to terminate or shall give some formula which will allow the termination date to be calculated precisely.
  - (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 a specified period of the tenancy,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 specified period of the tenancy.
  - (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.
32. (1) This section shall not apply to
- (a) tenancies of mobile home sites which are not in mobile home parks,
  - (b) subtenancies other than those referred to in section 2.
- (2) A notice given by a landlord to terminate a weekly tenancy shall be given on or before the last day of one week of the tenancy to be effective on or after the last day of the twenty-sixth week following the week in which notice was given.

- (3) A notice given by a landlord to terminate a monthly tenancy or a tenancy governed by section 35(2) shall be given on or before the last day of one month of the tenancy to be effective on or after the last day of the sixth month following the month in which notice was given.
  - (4) Notwithstanding subsections (2) and (3), a notice given by a landlord under a tenancy in a mobile home park shall not take effect before twelve months from the date of commencement of the tenant's first tenancy in the mobile home park.
  - (5) A notice given by a tenant to terminate a weekly tenancy shall be given on or before the last day of one week of the tenancy to be effective on or after the last day of the following week of the tenancy.
  - (6) A notice given by a tenant to terminate a monthly tenancy shall be given on or before the last day of one month of the tenancy to be effective on or after the last day of the following month of the tenancy.
  - (7) For the purposes of this section and of section 33, "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.
  - (8) For the purposes of this section and of section 33, "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.
33. (1) This section applies to
- (a) tenancies of mobile home sites which are not in mobile home parks, and
  - (b) subtenancies other than those referred to in section 2.
- (2) A notice given by a landlord or a tenant to terminate a weekly tenancy shall be given on or before the last day of one week of the tenancy to be effective on or after the last day of the following week of the tenancy.

- (3) A notice given by a landlord or a tenant to terminate a monthly tenancy shall be given on or before the last day of one month of the tenancy to be effective on or after the last day of the following month of the tenancy.
  - (4) In this section "week of the tenancy" and "month of the tenancy" have the same meaning as in section 32.
- 34.
- (1) A notice given by a landlord or a tenant to terminate a year-to-year tenancy shall be given on or before the 60th day before the last day of any year of the tenancy to be effective on or after the last day of that year of the 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.
- 35.
- (1) This section applies where a landlord or a tenant enter into a tenancy agreement for a fixed term, but shall not apply
    - (a) to tenancies of mobile home sites which are not in mobile home parks,
    - (b) to subtenancies, other than those referred to in section 2, or
    - (c) where at the commencement of the tenancy agreement the landlord has a bona fide intention to close down the mobile home park within 12 months of the date of commencement.
  - (2) A monthly tenancy arises at the expiration of the fixed term unless
    - (a) notice is given under subsection (4), or
    - (b) the tenancy agreement is terminated by either party in accordance with the provisions of sections 16, 18, or 19.
  - (3) The terms of the monthly tenancy are the same as the terms of the expired tenancy agreement, to the extent that the terms of the expired tenancy agreement are not inconsistent with a monthly tenancy.

- (4) A notice given
- (a) to prevent a monthly tenancy from arising under subsection (2), or
  - (b) to terminate such a monthly tenancy
- shall meet the requirements of section 31 and be given in the manner prescribed by section 48 and shall be given
- (c) by the landlord so as to be effective no earlier than the later of
    - (i) the last day of the sixth month of the tenancy following the month in which the notice is given, and
    - (ii) the expiration of twelve months from the date of the commencement of the tenant's first tenancy agreement in the mobile home park, and
  - (d) by the tenant on or before the last day of one month of the tenancy to be effective on or after the last day of the following month of the tenancy.
- (5) Nothing in this section confers upon either party a right to terminate a tenancy for a fixed term before the date fixed in the tenancy agreement.
- (6) Notwithstanding subsection (3), a landlord may before or during a monthly tenancy under subsection (2) give notice under section 10 increasing the rent thereunder.
- (7) For the purposes of this section "month of the tenancy" means
- (a) a monthly period of a fixed-term tenancy commencing with the date of the commencement of the tenancy or with the same date in another calendar month, or
  - (b) a monthly period of a monthly tenancy as defined in section 32(8), and

"tenancy" includes the periods of both the fixed-term tenancy and the monthly tenancy arising under subsection (2).

36. (1) This section shall not apply to



- (a) tenancies of mobile home sites which are not in mobile home parks,
  - (b) subtenancies, other than those referred to in section 2.
- (2) Any rent increase or other change in the terms of the tenancy agreement which is imposed by a landlord for the purpose of causing a tenant to terminate his tenancy agreement shall be null and void.
37. Notwithstanding anything contained in this Act, where a periodic tenancy has been entered into because of the tenant's employment by the landlord, and the landlord terminates the employment, either the landlord or the tenant may terminate the tenancy by giving a one-month notice to the other which shall in all other respects meet the notice requirements of this Act.

#### Implied Tenancy

38. (1) The acceptance by a landlord of arrears of rent, or compensation for use and occupation of a mobile home site, after the expiration of a 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.
- (2) The burden of proof that the notice has been waived or that the tenancy has been reinstated or a new tenancy created is upon the person so claiming.
39. Where a periodic tenancy, other than one arising under section 35, is implied by operation of law after the termination of a prior tenancy for a fixed term, the implied tenancy, in the absence of facts showing a contrary intention, is
- (1) where the prior tenancy was for a fixed term of one month or more, a tenancy from month to month, or
  - (2) where the prior tenancy was for a fixed term of less than one month, a tenancy from week to week.

#### Security Deposits

40. A landlord shall not exact from a tenant

- (1) a security deposit exceeding one month's rent under the tenancy agreement, or
  - (2) any sums of money totalling more than the security deposit permitted by subsection (1) and one month's rent in advance.
- 41.
- (1) A landlord holds each security deposit paid or given to him or his agent, or to anyone on his behalf, as trustee for the tenant but subject to the provisions of this Act and the tenancy agreement and any other agreement pertaining to it.
  - (2) Where the security deposit consists of money, the landlord may invest the money in investments authorized by The Trustee Act for the investment of trust funds.
  - (3) Subject to subsection (4), a landlord shall pay annually to the tenant interest on a security deposit consisting of money held by him or his agent or anyone on his behalf at the rate of 6 per cent per year.
  - (4) Where the security deposit consists of money, a tenant may notify his landlord in writing that he elects not to have the interest on the security deposit paid annually as provided in subsection (3) and in that case the interest shall be payable on the termination or expiration of the tenancy, unless otherwise agreed between the landlord and the tenant.
  - (5) The landlord is entitled to retain any interest and profit resulting from the investment of a security deposit in excess of the amount of interest payable under subsection (3) or (4).
  - (6) Where the landlord and the tenant agree that interest shall be payable under this section at a rate of interest higher than 6 per cent per year, subsections (3), (4) and (5) shall be deemed to refer to the higher rate.
- 42.
- (1) Where a landlord holds a security deposit, then, upon the expiry or termination of the tenancy,
    - (a) the landlord shall return the security deposit to the tenant within 10 days after the tenant delivered up possession of the mobile home site,

- (b) if all or part of the security deposit may be deducted in accordance with the conditions agreed to by the tenant, the landlord shall
  - (i) deliver a statement of account therefor, and
  - (ii) return the balance of the deposit, if any, to the tenant within 10 days after the tenant delivered up possession of the mobile home site,or
- (c) if the landlord is entitled to make a deduction from the security deposit for repairs to the mobile home site but is unable to determine the correct amount thereof within 10 days after the tenant delivers up possession of the mobile home site, the landlord may make an estimate thereof, and in that case the landlord
  - (i) shall
    - (A) deliver an estimated statement of account, and
    - (B) return the estimated balance of the deposit, if any,to the tenant within 10 days after the tenant delivered up possession of the mobile home site, and
  - (ii) shall
    - (A) deliver a final statement of account, and
    - (B) return the final balance, if any,to the tenant within 30 days after the tenant delivered up possession of the mobile home site.
- (2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine and/or imprisonment under the provisions of the Summary Convictions Act.
- (3) Where a landlord fails to return all or part of

a security deposit to a tenant in accordance with subsection (1), then, whether or not a statement of account was delivered to the tenant, the tenant may take proceedings under The Small Claims Act to recover the whole of the deposit or that part of the deposit to which the tenant claims to be entitled, if the amount claimed is within the monetary jurisdiction of the court.

- (4) In proceedings taken under subsection (3) the magistrate or judge
    - (a) shall determine the amounts, if any, which the landlord is entitled to deduct from the security deposit in accordance with the conditions agreed to by the tenant, and
    - (b) where the deductions so determined are less than the amount of the deposit, shall give judgment in favour of the tenant for the balance.
  - (5) In this section, "security deposit" includes any amounts owing to the tenant as interest by virtue of section 41 at the time of termination or expiration of the tenancy.
43. (1) A person who becomes an owner of a mobile home site which is subject to a tenancy is subject to the obligations of the landlord with respect to a security deposit except as provided in subsections (2) and (3).
- (2) A purchaser of the property is entitled
    - (a) to demand from the seller
      - (i) a statement of account certified by the seller of all security deposits held by the seller at the date of the sale and of the interest accrued to date on each, and
      - (ii) payment to the purchaser of all such security deposits and interest,

and
    - (b) to give to each mobile home site tenant notice not less than 7 days before the completion of the sale of the statement of account of the tenant certified by the seller.

- (3) A purchaser who has complied with subsection (2) is liable to the tenant only for the amount or amounts stated in the statement of account.
- (4) Upon paying a security deposit and interest to the purchaser under this section the seller is discharged from all further liability for the amount so paid.

#### Abandoned Goods

44. (1) In this Act, "abandoned goods" means goods left on a mobile home site by a tenant who has
  - (a) abandoned the mobile home site in breach of the tenancy agreement, or
  - (b) gone out of possession of the mobile home site upon termination of the tenancy agreement.
- (2) A landlord who believes on reasonable grounds that abandoned goods have a market value of less than \$200 may dispose of the goods in any manner he chooses.
- (3) If subsection (2) does not apply, a landlord who on reasonable grounds believes
  - (a) that the storage of the goods would be unsanitary or unsafe or would rapidly result in total or substantial depreciation in their market value, or
  - (b) that the cost of removing, storing and selling the goods would exceed the proceeds of the sale,may sell the goods by a means and for a price which he believes reasonable.
- (4) If neither subsection (2) nor subsection (3) applies, the landlord
  - (a) shall store or arrange for storage of the goods on behalf of the tenant until the expiration of a period of 60 days after the date of abandonment, and
  - (b) thereafter may dispose of the goods by public auction.

- (5) A landlord may apply to the Provincial Court for directions as to the disposition of any abandoned goods remaining on the mobile home site and upon such application the court may make any order which appears appropriate in the circumstances.
- (6) The landlord shall, upon payment of his proper costs of removing and storing the goods, deliver the goods to the tenant or an encumbrancer claiming them.
- (7) The landlord may apply the proceeds of the sale
  - (a) upon his reasonable costs of removing, storing and selling the goods, and
  - (b) upon any judgment obtained by him against the tenant in connection with the tenancy.
- (8) The landlord shall pay the balance of any proceeds of sale to the Provincial Treasurer who shall retain the same for one year on behalf of the tenant and thereafter, if the tenant has not claimed the same, pay the same into the general revenue of the Province, following which payment the claim of the tenant shall be extinguished.
- (9) This section does not apply if the landlord and the tenant agree to the contrary.
- (10) This section does not apply to goods and chattels on premises against which the Sheriff executes a writ of possession.

#### Courts

45. (1) Except as otherwise provided, the Supreme Court, the District Court, and the Provincial Court are courts of competent jurisdiction for the purposes of this Act.
- (2) Notwithstanding subsection (1), the Provincial Court does not have jurisdiction
  - (a) to give judgment for debt or damages under this Act or a tenancy agreement in excess of the amount prescribed by the Small Claims Act,
  - (b) to grant equitable remedies, or
  - (c) to grant an order for possession except in a

case in which a tenant who has been denied possession of a mobile home site at the inception of the tenancy brings proceedings for damages and possession.

- (3) The Lieutenant Governor in Council may make rules of court for the Provincial Court for disputes between landlords and tenants.
- (4) Where it appears in an action or proceeding brought in the Provincial Court under this Act or a tenancy agreement that a question raised therein could for any reason be dealt with more conveniently in the Supreme Court or in the District Court, the judge of the Provincial Court or a judge of the Supreme Court or the District Court may order the action or proceeding to be transferred to the Supreme Court or the District Court.
- (5) The order to transfer may be made by the court or judge of his own accord, or upon the application of either party on notice to the other parties interested, and at any stage of the action or proceeding.
- (6) When an order is made under subsection (1)
  - (a) the action or proceeding shall thereafter proceed in the Supreme Court, or District Court,
  - (b) the judges of the Supreme Court or District Court and the officers thereof have the same powers and shall perform the same duties in relation thereto as if the action or proceeding had been originally instituted in the Supreme Court or District Court as the case may be,
  - (c) the pleadings and proceedings taken in the court from which the action or proceeding was transferred stand and have effect notwithstanding the transfer, and
  - (d) subject to the rules of court and to any order in that behalf made by the court or judge, the costs of the proceedings so taken previous to the transfer shall be paid and the solicitor's costs taxed according to the scale of costs in the Provincial Court.
- (7) Where an order transferring from the Provincial

Court to the District Court or the Supreme Court is made at the instance of any of the parties thereto, the judge making the order may in his discretion make and impose on the party applying for the order terms with regard to payment of costs, or security for costs, or such other terms as he sees fit.

46. (1) An appeal lies from the Provincial Court to the District Court in a dispute arising under this Act or a tenancy agreement.
- (2) The provisions of sections 748 to 760 inclusive of the Criminal Code of Canada and the rules promulgated thereunder, and not the provisions of sections 33 to 44 inclusive of the Small Claims Act, apply with necessary changes to an appeal under subsection (1).

#### Landlord and Tenant Advisory Boards

47. (1) The council of a city, town, village, municipal district or county, or the board of administrators of a new town, may by by-law establish a Landlord and Tenant Advisory Board and provide for the remuneration of its members and any other matters pertaining to its procedures or incidental to the exercise of its functions.
- (2) The functions of a Landlord and Tenant Advisory Board are
- (a) to advise landlords and tenants in tenancy matters,
  - (b) to receive complaints and seek to mediate disputes between landlords and tenants,
  - (c) to disseminate information for the purpose of educating and advising landlords and tenants concerning rental practices, rights and remedies, and
  - (d) to receive and investigate complaints of conduct in contravention of legislation governing tenancies.

#### Service of Documents and Notices

48. (1) Except as otherwise provided, a notice or document



shall be served or delivered personally or by registered mail.

- (2) For service or delivery by registered mail
  - (a) a tenant's address is the address of the mobile home site, and
  - (b) a landlord's address is the address where rent is payable.
- (3) A landlord or a tenant may from time to time change his address for service or delivery by written notice served upon the other party.
- (4) If a notice or document cannot be served or delivered personally by reason of the tenant's absence from the mobile home site, or by reason of his evading service, service or delivery may be effected
  - (a) upon any adult person who apparently resides with the tenant, or
  - (b) by posting it in a conspicuous place upon some part of the mobile home site.
- (5) This section does not apply to service governed by the rules or practice of a court.

#### Contracting Out

49. Except as otherwise provided, this Act applies notwithstanding an agreement to the contrary.

#### Crown

50. The Crown in right of Alberta is bound by this Act.

#### Transitional Provisions

51. This Act
  - (1) applies to
    - (a) any tenancy agreement made after its commencement,
    - (b) a weekly or monthly tenancy agreement made before its commencement, and

(c) a yearly tenancy agreement made before its commencement, from and after the first anniversary of its commencement,

and

(2) does not apply to a tenancy agreement for a fixed term made before its commencement, but applies to a renewal of such a tenancy agreement made after its commencement.

#### Exclusion of Statutes

52. The following do not apply to mobile home site tenancies:

- (1) The Grantees of Reversion Act, 32 Hen. 8, c. 34 (Imp.),
- (2) The Landlord and Tenant Act, 4 Geo. 2 c. 28 (Imp.),
- (3) The Distress for Rent Act, 11 Geo. 2 c. 19, s. 18 (Imp.), and
- (4) Sections 98 and 99 of the Land Titles Act.

TENANCIES OF MOBILE HOME SITES ACT

SCHEDULE

FORM A

NOTICE TO TENANT

TO (Name of Tenant)

I hereby give you notice to deliver up possession of  
the mobile home site . . . . .  
. . . . . (identify the mobile home site) . . . . .  
. . . . .  
which you hold of me as tenant, on the . . . . . day of  
. . . . . next, or on the  
earliest date permitted under sections 29-37 of the  
Tenancies of Mobile Home Sites Act.

Dated this . . . . . day of . . . . .  
19. . . . .

. . . . .  
(Landlord)

TENANCIES OF MOBILE HOME SITES ACT

SCHEDULE

FORM B

NOTICE TO LANDLORD

TO (Name of Landlord)

I hereby give you notice that I am giving up possession  
of the mobile home site . . . . .  
. . . . . (identify the mobile home site) . . . . .  
. . . . .  
which I hold of you as tenant, on the . . . . . day of  
. . . . . next, or on the  
earliest date permitted under sections 29-37 of the  
Tenancies of Mobile Home Sites Act.

Dated this . . . . . day of . . . . .  
19. . . . .

. . . . .  
(Tenant)

## TENANCIES OF MOBILE HOME SITES ACT

## SCHEDULE

## FORM C

## INFORMATION FOR TENANT

IT IS IMPORTANT THAT ALL TENANTS READ THE FOLLOWING:

UNDER THE TENANCIES OF MOBILE HOME SITES ACT:

A. You have the right

1. to receive written details of all fees, charges or assessments, prior to entering into the tenancy agreement;
2. to receive a copy of the tenancy agreement (if it is in writing);
3. to a mobile home site which is clean when you take possession and sound throughout the tenancy;
4. to facilities for heating, fuel, electricity, plumbing, etc. in good and working order and condition if the landlord is, by your agreement, to supply these;
5. to possession and peaceful enjoyment of the mobile home site, subject to your landlord's right to enter in specified circumstances;
6. (if you are in a mobile home park), to assign or sublet, and to sell, lease, or otherwise part with the possession of your mobile home in conjunction with an assignment or subletting, though your landlord's consent will be needed if your tenancy agreement says so;
7. to a copy of the rules and regulations, changes in which are only enforceable against you if reasonable

notice is given;

8. to an abatement of rent by court order if the landlord does not perform his obligations;
9. (if you are in a mobile home park), to a minimum of six months' notice of termination from the landlord, but not to be effective until you have been in possession at least 12 months, subject to the landlord's right to terminate for cause;
10. to terminate the tenancy for a very serious breach of your landlord's obligations;
11. to receive back your security deposit and interest less any deductions made under the tenancy agreement.

B. You are obliged to

1. keep the mobile home site clean and observe the landlord's reasonable rules in connection with the external appearance of the mobile home;
2. refrain from disturbing the landlord or other tenants;
3. pay for wilful or careless damage caused by yourself, other occupants of the mobile home, and visitors;
4. notify the landlord of repairs needed and take reasonable emergency steps to prevent damage;
5. give notice of termination of your tenancy;
6. vacate at the end of the tenancy.

C. Your landlord is not entitled to

1. evict you because you assert your legal rights;  
Note: If security of tenure is adopted, substitute the following:
  1. evict you without just cause as set forth in the Act.

2. increase the rent except on 6 months' notice (90 days' notice in the case of tenancies arising outside mobile home parks).  
(Note that if you receive a notice of rent increase you must either accept it or terminate the tenancy).

FOR MORE COMPLETE INFORMATION:

1. obtain a copy of the Tenancies of Mobile Home Sites Act;
2. obtain legal advice;
3. consult the Landlord and Tenant Advisory Board if there is one in your area;
4. consult the nearest office of the Provincial Court if you wish to commence legal proceedings.

Note that this notice is a summary of important parts of the Act, which must itself be consulted for a precise statement of the law. The notice is designed to assist you with some of the provisions which may affect you.

APPENDIX C  
SECURITY OF TENURE

The plan which we have described may be summarized as follows:

- (1) *A periodic tenancy may only be terminated under the following procedures:*
  - (a) *Those provided by recommendation #18, except that*
    - (i) *if the landlord proceeds under subsection (1) of recommendation #18, his statement of the particulars of the alleged breach under subsection (2) of recommendation #18 is absolutely privileged in any action for defamation or injurious falsehood brought by the tenant, and*
    - (ii) *if the landlord proceeds under subsection (6) of recommendation #18, the landlord may establish proper cause for termination by proving that he has reasonable grounds for believing that the tenant committed a substantial breach of obligation under the tenancy agreement or under the proposed Act, and the tenant may rebut the landlord's cause by proving that he did not commit such a breach.*
  - (b) *Those applicable in the absence of security of tenure, but subject to the following additional provisions:*
    - (i) *The tenancy may only be terminated if*
      - A. *the tenant has committed a substantial breach of obligation under the tenancy agreement or under the proposed Act, or*
      - B. *the landlord requires possession of the mobile home site for the purpose of*
        - (A) *demolition;*
        - (B) *occupation by himself, his*



spouse, or a child or parent of either, or by an employee;

- (C) a proposed change of use;
  - (D) a bona fide sale of the property;  
or
  - (E) carrying out extensive repairs that make continued occupation by the tenant not feasible.
- (ii) The notice of termination must state the reasons which the landlord will rely on to justify the termination.
  - (iii) The tenant may apply to the court, within 14 days of receipt of the notice of termination, for an order setting aside the order of termination, which application shall be returnable not less than 10 days before the termination date stated in the notice of termination.
  - (iv) The court may extend any time specified in subsection (1)(b)(iii) upon such terms as it deems appropriate.
  - (v) The landlord may establish proper cause for termination under subsection (1)(b)(i)A. by proving that he had reasonable grounds for believing that the tenant committed such a breach, which cause may be rebutted by the tenant's proof that he did not commit such a breach.
  - (vi) The notice of termination is absolutely privileged in any action for defamation or injurious falsehood brought by the tenant.
- (2) (a) Upon the expiration of a tenancy agreement for a fixed term the landlord and tenant would be deemed to have entered into a month to month tenancy agreement upon the same terms and conditions as are provided for in the expired tenancy, except for the term.
  - (b) Subsection (1) would not apply if the landlord and tenant enter into a new agreement before the expiration of the term specified in the old tenancy agreement, or

if either the landlord or the tenant gives to the other, not less than 30 days before the expiration date specified in the old tenancy agreement, notice that no new tenancy agreement is to be implied upon the expiration of the old tenancy agreement.

(c) The landlord's notice under subsection (2)(b), and the rights of the parties, are subject to all of the provisions of subsection (1)(b) applicable to termination by notice.

(3) (a) A landlord would be prohibited from

(i) increasing the rent payable under a tenancy agreement and from recovering any additional rent resulting from such an increase, or

(ii) changing any other term of the tenancy agreement and from enforcing any changed term,

unless he gives to the tenant a written notice of the increase in rent or change of any other term at least 90 days before the date on which the increase or change is to be effective.

(b) A tenant under a periodic tenancy who receives a notice under subsection (3) and who fails to give to the landlord notice of termination effective on or before the date of the rent increase, or other change in terms, would be deemed to have accepted the same.

(c) A landlord who gives a notice of termination of a periodic tenancy would not, for a period of 90 days after the date the notice is given, be entitled to demand or retain

(i) any rent for the mobile home site in excess of that payable under the tenancy agreement at the time of the notice, or

(ii) any benefit arising from any other term in the tenancy agreement relating to the mobile home site which is more favourable than the terms of the tenancy agreement in force at the date of the notice.

- (d) A tenant who
  - (i) pays rent in excess of that permitted by subsections (3)(a) and (c) would be entitled to recover such excess rent from the landlord, or
  - (ii) confers a benefit not permitted by subsections (3)(a) and (c) would be entitled to recover compensation from the landlord for the value of the benefit.
- (e) That subsection (3) not apply if the tenancy agreement provides for a period of notice longer than 90 days.
- (4) The court could annul a rent increase or other change in terms imposed by the landlord for the purpose of evicting the tenant.
- (5) The assignee of a tenant's rights would not have security of tenure as against the landlord unless the landlord has agreed to grant him security of tenure.
- (6) These provisions would apply to tenancies in existence at the commencement of the proposed Act.

## APPENDIX D

## RECOMMENDATIONS NOT INCLUDED IN PROPOSED ACT

- (1) That maintenance and establishment of Landlord and Tenant Advisory Boards be encouraged.
- (2) That an official of the Department of Consumer and Corporate Affairs be designated to advise and assist the Landlord and Tenant Advisory Boards and to promote the adoption by them of uniform policies, having due regard to differences in local conditions.
- (3) That the province make funding available to municipal bodies who establish and maintain Landlord and Tenant Advisory Boards.
- (4) That officials on the staff of the Provincial Courts be given training in assisting landlords and tenants in following procedures involved in prosecution and defence of claims under the Tenancies of Mobile Home Sites Act.

## APPENDIX E

## 1. THE LANDLORD AND TENANT ACT

*(Note: This Act is reproduced from an office consolidation which includes amendments up to and including June 25, 1975. It is followed by the amendments made by the Temporary Rent Regulation Measures Act and by the Rent Decontrol Act.)*

**Short title**      **1. This Act may be cited as *The Landlord and Tenant Act*.** [R.S.A. 1970, c. 200, s. 1]

**Mineral leases exempt**      **2. This Act does not apply to minerals held separately from the surface of land or any dealings in minerals.** [R.S.A. 1970, c. 200, s. 2]

**Termination of Tenancies**

**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. [R.S.A. 1970, c. 200, s. 3]

**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 15 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 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 neverthe-

less 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. [R.S.A. 1970, c. 200, s. 4]

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 289 of *The Companies Act*.

[R.S.A. 1970, c. 200, s. 5]

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.

[R.S.A. 1970, c. 200, s. 6]

Notice to  
terminate  
monthly  
tenancy

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.

(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.

[R.S.A. 1970, c. 200, s. 7]

Notice to  
terminate  
yearly  
tenancy

**8. (1) A notice to terminate a year-to-year tenancy shall be given on or before the 60th day before the last day of any year of the tenancy to be effective on the last day of that year of the 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.

[R.S.A. 1970, c. 200, s. 8]

Compensation when  
premises  
not vacated

**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.**

(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. [R.S.A. 1970, c. 200, s. 9]

Application  
for order  
for  
possession

**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.**

(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.

[R.S.A. 1970, c. 200, s. 10]

**Claim for  
arrears  
in rent  
and com-  
pensation**

**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. [R.S.A. 1970, c. 200, s. 11]

**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 Court 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 Court 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 Court 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.

[R.S.A. 1970, c. 200, s. 12]

**Terms 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.

[R.S.A. 1970, c. 200, s. 13]



Writ of  
possession

14. 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.

[R.S.A. 1970, c. 200, s. 14]

Proceedings  
after tenant  
vacates

15. 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.

[R.S.A. 1970, c. 200, s. 15]

#### Tenancies of Residential Premises

Tenancies of  
residential  
premises

16. (1) In this section and sections 17 to 22,

(a) "residential premises" means

- (i) premises used for residential purposes, or
- (ii) land leased as a site for a mobile home used for residential purposes, whether or not the landlord also leases that mobile home to the tenant,

but does not include premises occupied for business purposes with living accommodation attached and leased under a single lease;

(b) "security deposit" means money or any property or right paid or given by a tenant of residential premises to a landlord or his agent or to anyone on his behalf to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant or to be returned to the tenant upon the happening of a condition;

(c) "tenancy agreement" means an agreement between a landlord and a tenant for possession of residential premises, whether written, oral or implied.

(2) The provisions of sections 3 to 15 in so far as they apply to tenancies of residential premises are subject to this section and sections 17 to 22.

(3) Sections 17 to 22 apply only to tenancies of residential premises and tenancy agreements notwithstanding any other Act and notwithstanding any agreement or waiver to the contrary except as is specifically provided in sections 17 to 22. [R.S.A. 1970, c. 200, s. 16; 1971, c. 59, s. 2]

Tenancy  
agreements

17. (1) Where a tenancy agreement in writing is executed by a tenant, the landlord shall ensure that a fully executed duplicate original copy of the tenancy agreement is delivered to the tenant within 21 days after its execution and delivery by the tenant.

(2) Where the copy of the tenancy agreement is not delivered in accordance with subsection (1), the obligations of the tenant thereunder cease until such copy is delivered to him. [R.S.A. 1970, c. 200, s. 17]

**Security  
deposit**

**18.** (1) A landlord holds each security deposit paid or given to him or his agent, or to anyone on his behalf, as trustee for the tenant but subject to the provisions of this Act and the tenancy agreement and any other agreement pertaining to it.

(2) Where the security deposit consists of money, the landlord may invest the money in investments authorized by *The Trustee Act* for the investment of trust funds.

(3) Subject to subsection (4), a landlord shall pay annually to the tenant interest on a security deposit consisting of money held by him or his agent or anyone on his behalf at the rate of 6 per cent per year.

(4) Where the security deposit consists of money, a tenant may notify his landlord in writing that he elects not to have the interest on the security deposit paid annually as provided in subsection (3) and in that case the interest shall be payable on the termination or expiration of the tenancy, unless otherwise agreed between the landlord and the tenant.

(5) The landlord is entitled to retain any interest and profit resulting from the investment of a security deposit in excess of the amount of interest payable under subsection (3) or (4).

(6) Where the landlord and the tenant agree that interest shall be payable under this section at a rate of interest higher than 6 per cent per year, subsections (3), (4) and (5) shall be deemed to refer to the higher rate.

(7) This section applies to security deposits paid or given before, on or after July 1, 1970.

[R.S.A. 1970, c. 200, s. 18]

**Return of  
security  
deposit**

**19.** (1) Where a landlord holds a security deposit, then, upon the expiry or termination of the tenancy,

(a) the landlord shall return the security deposit to the tenant within 10 days after the tenant delivered up possession of the premises, or

(b) if all or part of the security deposit may be deducted in accordance with the conditions agreed to by the tenant, the landlord shall

(i) deliver a statement of account therefor, and

(ii) return the balance of the deposit, if any, to the tenant within 10 days after the tenant delivered up possession of the premises,

or

(c) if the landlord is entitled to make a deduction from the security deposit for repairs to the premises but is unable to determine the correct amount thereof within 10 days after the tenant delivers up possession of the premises, the landlord may make an estimate thereof, and in that case the landlord

(i) shall

(A) deliver an estimated statement of account, and

(B) return the estimated balance of the deposit, if any,

to the tenant within 10 days after the tenant delivered up possession of the premises, and

(ii) shall

(A) deliver a final statement of account, and

(B) return the final balance, if any,

to the tenant within 30 days after the tenant delivered up possession of the premises.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$100.

(3) Where a landlord fails to return all or part of a security deposit to a tenant in accordance with subsection (1), then, whether or not a statement of account was delivered to the tenant, the tenant may take proceedings under *The Small Claims Act* to recover the whole of the deposit or that part of the deposit to which the tenant claims to be entitled, if the amount claimed is within the monetary jurisdiction of the court.

(4) In proceedings taken under subsection (3) the magistrate or judge

(a) shall determine the amounts, if any, which the landlord is entitled to deduct from the security deposit in accordance with the conditions agreed to by the tenant, and

(b) where the deductions so determined are less than the amount of the deposit, shall give judgment in favour of the tenant for the balance.

(5) In this section, "security deposit" includes any amounts owing to the tenant as interest by virtue of section 18 at the time of termination or expiration of the tenancy.

[R.S.A. 1970, c. 200, s. 19]

Entry to  
premises

20. Except in cases of emergency and except where the landlord has a right to show the premises to prospective tenants at reasonable hours after notice of termination of the tenancy has been given, the landlord shall not exercise a right to enter the rented premises unless he has first given written notice to the tenant at least 24 hours before

the time of entry, and the time of entry shall be during daylight hours and specified in the notice, except that nothing in this section shall be construed to prohibit entry with the consent of the tenant given at the time of entry.

[R.S.A. 1970, c. 200, s. 20]

Notice of  
increase  
in rent

**21.** (1) A landlord shall not increase the rent payable under a tenancy agreement, or be entitled to recover any additional rent resulting from such an increase, unless he gives to the tenant a written notice of the increase in rent at least 90 days before the date on which the increase is to be effective.

(2) Subsection (1) does not apply where the tenancy agreement provides for a period of notice longer than 90 days before the increase in rent is effective.

(3) Any notice of termination of a tenancy of residential premises given by a landlord to a tenant is void if the landlord, either before or after giving the notice, initiates negotiations with that tenant towards an agreement to increase the tenant's rent effective as of a date prior to the expiration of 90 days from the date of giving the notice of termination.

(4) Subsection (3) applies only to a notice of termination given on or after November 1, 1974.

[R.S.A. 1970, c. 200, s. 21; 1974, c. 73, s. 2]

Notice of  
termination  
re condo-  
minium units

**21.1** (1) In this section, "condominium plan" and "condominium unit" mean respectively a condominium plan and unit as defined in *The Condominium Property Act*.

(2) Where, after the commencement of a tenancy or residential premises,

(a) a condominium plan is registered or is proposed to be registered in the Land Titles Office and includes or is proposed to include those residential premises, and

(b) a notice of termination of that tenancy is given to the tenant for the purpose of obtaining vacant possession of the residential premises in order that the residential premises or any part thereof may be sold as a condominium unit or as part of a condominium unit,

the notice of termination is void unless it provides that the tenancy is to terminate as of a day not less than six months after the day on which the notice is given to the tenant.

(3) This section applies only to a notice of termination given on or after May 21, 1975.

Landlord  
and Tenant  
Advisory  
Board

**22.** (1) The council of a city, town, village, municipal district or county, or the board of administrators of a new town, may by by-law establish a Landlord and Tenant Advisory Board and provide for the remuneration of its members and any other matters pertaining to its procedures or incidental to the exercise of its functions.

(2) The functions of a Landlord and Tenant Advisory Board are

- (a) to advise landlords and tenants in tenancy matters,
- (b) to receive complaints and seek to mediate disputes between landlords and tenants,
- (c) to disseminate information for the purpose of educating and advising landlords and tenants concerning rental practices, rights and remedies, and
- (d) to receive and investigate complaints of conduct in contravention of legislation governing tenancies.

[R.S.A. 1970, c. 200, s. 22]

#### Regulations

Regulations

**23.** 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.

[R.S.A. 1970, c. 200, s. 23]

LANDLORD AND TENANT

SCHEDULE

FORM A

NOTICE TO TENANT

TO (Name of Tenant)

I hereby give you notice to deliver up possession of the premises ..... which you hold  
*(identify the premises)*

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)*

[R.S.A. 1970, c. 200, Sched. Form A]

FORM B

NOTICE TO LANDLORD

TO (Name of Landlord)

I hereby give you notice that I am giving up possession of the premises ..... which I hold  
*(identify the premises)*

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)*

[R.S.A. 1970, c. 200, Sched. Form B]

## 2. AMENDMENT TO THE LANDLORD AND TENANT ACT

*(Note: This amendment is reproduced from The Temporary Rent Regulation Measures Act, S.A. 1975, c. 84).*

R.S.A. 1970.  
c. 200

**42. The Landlord and Tenant Act is hereby amended**

- (a) as to section 10, subsection (3)
- (i) by striking out the word "and" at the end of clause (c), and
  - (ii) by striking out clause (d) and substituting the following clauses:
    - (d) stating the reasons for the termination of the tenancy, and
    - (e) stating any other relevant facts.
- (b) as to section 12, subsection (1)
- (i) by striking out clause (a) and substituting the following clauses:
    - (a) if he is satisfied that the tenancy has expired, give an order for possession,
    - (a1) if he is satisfied that the tenancy has been terminated for a reason other than that the tenant has
      - (i) made any application or filed any statement under *The Temporary Rent Regulation Measures Act*, or
      - (ii) made any complaint, assisted in any investigation or inquiry or given any evidence at a hearing under *The Temporary Rent Regulation Measures Act*,
 give an order for possession,
  - and
  - (ii) by adding the following subsection after subsection (1):
    - (1.1) Where it appears to a judge that a landlord has terminated a tenancy for more than one reason and the judge considers that the principal reason was that the tenant had
      - (a) made any application or filed any statement under *The Temporary Rent Regulations Measures Act*, or
      - (b) made any complaint, assisted in any investigation or inquiry or given any evidence at a hearing under *The Temporary Rent Regulation Measures Act*,
 the judge shall make an order declaring the notice of termination void.
  - and
  - (c) section 21 is amended by adding the following subsection after subsection (4):
    - (5) Notwithstanding anything in this section, any increase in rent or notice of increase in rent is subject to *The Temporary Rent Regulation Measures Act*.

(Note: *This amendment is reproduced from The Rent Decontrol Act, S.A. 1977, c. 41.)*

R.S.A. 1970,  
c.200

**45. *The Landlord and Tenant Act is amended***

- (a) *as to section 12 by adding after the words "The Temporary Rent Regulation Measures Act" wherever they appear the words "or The Rent Decontrol Act", and*
- (b) *as to section 21, subsection (5) by adding after the words "The Temporary Rent Regulation Measures Act" the words "and The Rent Decontrol Act".*



## APPENDIX F

## THE JUDICATURE ACT

Execution  
of writ of  
possession

**36.1 (1)** For the purpose of executing a writ of possession respecting any premises, it is not necessary to remove any goods or chattels from the premises.

(2) Where the sheriff in his discretion removes and stores any goods in executing a writ of possession, the party at whose suit or instance the writ is issued and the solicitors who issue it, are severally liable to pay to the sheriff his taxable costs, including transportation and storage costs, for executing the writ.

(3) Where goods have been stored under subsection (2), the owner may, upon the written authorization of the sheriff, obtain the goods from storage upon

- (a) paying to the sheriff the costs, including transportation and storage, paid by the sheriff or the person on whose behalf the writ was executed, and
- (b) paying to the warehouseman any further outstanding storage charges.

(4) In the event that the owner does not redeem the goods within 30 days after they have been placed in storage, the person on whose behalf the writ was executed may apply by originating notice of motion to the court which issued the writ for an order directing that the goods be sold.

(5) The court may direct that the goods be sold either by the sheriff or by the applicant, and by public auction or private sale, as he considers appropriate in the circumstances.

(6) The proceeds of the sale shall be applied

- (a) firstly, to the costs of the sale, and
- (b) secondly, to payment of storage, transportation and other costs incurred in removing and storing the goods and making the application for the order for sale.

(7) Where the sale is effected by a person other than a sheriff, that person

- (a) shall within 30 days after the sale file with the sheriff a statutory declaration setting out
  - (i) the particulars of the sale,
  - (ii) the amount realized by the sale, and
  - (iii) the necessary and proper disbursements and fees in connection with the sale, which shall not exceed those which the sheriff would have been entitled to charge if the sale had been effected by the sheriff,
 and
- (b) shall pay the balance, if any, to the sheriff on behalf of the former owner of the goods.

(8) Where the sheriff comes into possession of the balance of the sale price, either pursuant to subsection (6) or upon the conclusion of the sale effected by him, he shall deliver that balance to the persons lawfully entitled thereto.

(9) In the event that goods are not removed by the sheriff in executing a writ of possession and the owner thereof does not within 30 days after the writ has been executed remove the goods, the person on whose behalf the writ was executed may apply by originating notice of motion to the court which issued the writ for directions as to the disposition of the goods remaining on the premises and upon such application the judge may make any order which appears appropriate in the circumstances.

(10) If it is made to appear to the court in an application under subsection (4) or (9) that it is not practicable to serve a notice required to be given by this section on any person, either personally or by registered mail, the court may, on an application ex parte by or on behalf of the applicant, make any order for substituted or other service or for the substitution for service of notice by letter, public advertisement or otherwise, or may dispense with service.

## APPENDIX G

## SUBMISSIONS

I. Meetings and Interviews

1. The Mobilehome Owners of Alberta; Andrew Carlson, President and Vernal Poole, ex-President.
2. Don Fender, Western Mobile Dealers' Association.
3. Canadian Mobile Home Association, Western Region. Allan K. Montgomery, Western Regional Manager.
4. The Landlord and Tenancy Advisory Boards of Alberta.
5. Norman Chiles, Chiles Mobile Homes Ltd., Red Deer.
6. Merilyn N. Dodds, Managing Director, deMer Consultants Ltd.
7. Perry Jarvis, Town and Country Mobile Home Sales Ltd.
8. Hank Kully, Marketing Manager, Town and Country Mobile Home Sales Ltd.
9. Mr. and Mrs. Sinclair Coghill, Managers, Calgary Cascade Mobile Home Community.
10. Bill Kozak, Manager, Westview Village Mobile Home Community.
11. Ted Orydzuk, Westview Village Mobile Home Community.
12. S. van Heel, President, Shelco Developments Ltd.
13. N. Cristall, Shelco Developments Ltd.
14. Carl Scheibelhofer, Owner, Willow Park Estates, Leduc.
15. Jim Thompson, President, Western Mobile Home Dealers' Association.
16. Chinwe Okelu, Housing Registry, Alberta Housing and Public Works.

II. Written Submissions

R. N. Wood, Executive Vice-President, Safeway  
Shelter Systems, Ltd., Calgary

C. Rossler, Manager, Knight Schmidt Industries Ltd.

R. S. Hegan, General Manager, Atco Homes, Calgary

Mrs. D. A. Norton, Add Space Industries, Airdrie

R. W. Bowman, Carmichael Trailers Co., Edmonton  
Homes Canada Inc., Medicine Hat

H.N. Iwanicki, Manager, Medicine Hat Home Sales Ltd.

J. M. Look, President, Jack Look Holdings, Coalhurst  
Tenant, Belmont Trailer Park, Edmonton

Ken Haggarty, Trochu Mobile Home Park

F. Donald James, Manager, Kolstar Mobile Home Park

Vera Lane, Bluebird Trailer Camp, Peace River

Tweten Enterprises Ltd., Lloydminster

John L. Keinick, Restwell Trailer Park and Cabins,  
Canmore

E. Lewis, Wainwright Mobile Home Park, Wainwright

A. Lemire, Manager, South View Village, Medicine Hat

S. B. Coghill, Manager, Calgary Cascade Mobile Home  
Community

W. A. Tapuska

John L. Berget, J. L. Berget's Realty Ltd.,  
Whitecourt

E. L. Wilson, Mobile Home Court, Eckville

D. Wayne Brow, Vegreville

Dale Pengelly, Calgary

Clara Muscott, Edmonton

Kay Dunkley, Calgary

C. Hollingworth, Calgary

D. Spehan, Edmonton

Marilyn Nicholas, Winterburn

Wilma H. Cochrane, Calgary

Ken Jones, Calgary

Fred Engels, Calgary

Jim Thompson, President, Western Mobile Home  
Dealers' Association, Calgary

Marion Kelly, President, Alberta Home Economics  
Association, Calgary

Tenant, Midfield Mobile Home Park

Tenant, Westview Village Mobile Home Community

Tenant, Trailer In Village of Westlock

Tenant, Canadian Trailer Park, Swan Hills

Tenant, Maple Ridge Park

Tenant, Western Trailer Parks 1976

Tenant, Mustang Acres Ltd.

## APPENDIX H

## RESEARCH SUMMARY

Throughout the course of our work on tenancies of mobile home sites we have been conscious that the subject is one of more than mere legal technicality and is of very real interest and concern to a significant proportion of the population of Alberta. For this reason we have sought to give maximum publicity to the existence of our project and to the issues as we have perceived them. We have also attempted to collect facts relevant to the subject, particularly where we have been in doubt as to the prevalence of a particular practise, and to obtain the comments and opinions of interested parties.

In May, 1977, the Institute published and circulated a memorandum for discussion. The memorandum outlined the problems associated with tenancies of mobile home sites as we believed them to exist and indicated some possible solutions to those problems. In addition, a part of the memorandum set out the Institute's proposals for reform of the Landlord and Tenant Act (as put forward in Report No. 22, Residential Tenancies) and showed how these proposals could also be applied to tenancies of mobile home sites. Our intention in producing this memorandum was both to inform and to obtain information and accordingly we requested readers to return to us their opinions and comments.

Copies of the memorandum were sent to all owners and landlords of mobile home parks, plus mobile home manufacturers, dealers and agents, whom we could contact in Alberta. Over 450 individuals and companies were approached, including 252 mobile home park landlords (who were requested to pass a copy of the memorandum to the park owner, if appropriate);

174 mobile home dealers and agents; and 18 mobile home manufacturers.

Our problem throughout the research was the difficulty we faced in attempting to give information to and seek the opinions of tenants of mobile home sites themselves. Direct mailing was impractical because names and addresses of tenants were not available. Landlords of mobile home parks were requested to give us lists of their tenants, or to distribute the material personally, but only 16 did either. However, publicity in local newspapers encouraged over 50 persons to contact us personally and the material was then sent to them directly.

We hoped to collect specific factual information in addition to personal opinion and to that end two questionnaires were designed, one to be completed by landlords of mobile home parks and one by tenants of mobile home sites. From the questionnaires we hoped to gain information from all parts of the province on topics including entrance fees, tenancy agreements, restrictions on sale of the mobile home on site, and rules and regulations. The landlords' questionnaires were mailed together with the memoranda and, as mentioned above, landlords were requested to distribute the tenants' questionnaire to their own tenants. At a later point we also employed students to visit mobile home parks in areas where we were short of information, and sample groups of tenants in these parks were requested to complete the questionnaire.

As a result of these efforts we obtained facts and comments from over 700 tenants of mobile home sites from many parts of the province, plus written submissions from landlords and owners of mobile home parks, mobile home manufacturers, mobile home dealers and agents, mobile home

owners and associations. In addition, we have had meetings with interested parties of all categories.

The information gained from this research, while because of practical difficulties not a scientific sampling, has given us a valuable insight into problems associated with tenancies of mobile home sites in Alberta and enabled us to compose a report making proposals which we think are both appropriate to meet the circumstances, and fair. We are grateful to all those who assisted us, in answering our questions; in completing and returning questionnaires; in making written submissions; and in attending our meetings.



## ACKNOWLEDGMENTS

The Institute acknowledges the continuing grant from the Alberta Law Foundation which, together with the funds provided by the Attorney-General and the University of Alberta, makes the Institute's work possible.

In our Report No. 22, Residential Tenancies, we referred to many persons and groups who helped us in the work which led to that Report. While we are pleased to acknowledge that much of that help is reflected in this Report also, we will not refer to them by name here.

We do wish to record our continuing gratitude to the Landlord and Tenant Advisory Boards and we are grateful also to the various persons and groups who made written submissions or attended meetings with us. We acknowledge also the assistance of Dr. M. James Dunn for his advice and help in connection with the questionnaire directed to mobile home owners.

Gerry van der Ven, formerly of the Institute's legal staff, had the carriage of our project until her departure. The Report and draft legislation were prepared by Melanie Towle of the Institute's legal staff.