Institute of Law Research and Reform

The University of Alberta

Edmonton, Alberta

RESIDENTIAL TENANCIES PROJECT

Background Paper No. 1

RENT CONTROL
SECURITY OF TENURE

November 1975

1. Introduction

The Institute has undertaken a study of the law relating to residential tenancies, that is, lease of apartments, suites and houses as dwelling units. The Institute's study will also include rental of sites for mobile homes.

One current issue is whether there should be some form of control of rents, or at least of increases in rents. Another issue which is related to the first or which may be considered by itself is that of security of tenure, that is, whether tenants should be given some legal protection against termination of the tenancy without cause. The Institute would like to engage in consultation about these two issues with those interested in them, and has decided to issue this background paper as a basis for its own discussion and consultation with interested parties and as a contribution to the public discussion now going on. The background paper is intended to set out both sides of the issues. The paper is based upon research done by the Institute's staff and consultants and not upon fact finding studies.

The Institute would be interested in receiving any comments and opinions which should be sent to:

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The Institute proposes to issue before too long further background papers covering other aspects of the law affecting landlords and tenants.

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1. Definition of Rent Control

No definition of rent control is found in the literature. In general it is understood that rent control is every regulation by the government (federal, provincial or municipal) which results in a restriction of the amount of rent a landlord is free to charge for his rental accommodation.

2. Different Systems of Rent Control

Because of the involved and varied nature of the elements entering into the landlord-tenant relationship, any system of rent control, however modestly conceived, must deal with many social, economic and legal factors and must establish rules capable of regulating many diverse types of situations. It is apparent, therefore, that no adequate regulatory formula can be devised which is simple in its terms and application. Complexities of administration, if not of terminology, will inevitably arise in any body of rules which imposes rent ceilings (often accompanied by restrictions on eviction for the protection of tenants) or furnishes landlords and tenants with rent adjustment procedures and other appropriate remedies for the protection of their rights.

In general we find four different systems of rent control:

a. a system, whereby the rents at a certain point of time are fixed by law and become standard rents for the future. In this system landlords are not allowed to charge a higher rent than the standard rent and cannot negotiate with the tenant about the rent. The standard

rents are connected with the rateable values of the property, which might be adjusted once in awhile. Sometimes increases are allowed where the landlord has incurred expenses for repair of the premises. This system exists in England under the Rent Act 1968.[1]

b. a system that provides for a rent freeze for a certain period, e.g., one year. This means that the landlord is not allowed to increase the rent more than once a year. The rent freeze is sometimes tied to the tenant, sometimes to the apartment. The latter is the fact in British Columbia.[2]

This provision is quite often combined with the fixing of a percentage as an annual maximum for rent increases.

c. a system that allows the landlord to increase the rent only, where he has to pay more property taxes (as in Prince Edward Island)[3] or where utility, maintenance and insurance costs went up (as in Quebec).[4]

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[1] Halsbury's Statutes of England Vol. 18, p. 777, as amended by Rent Act 1974, Halsbury's Current Statute Services, p. 531, see also Lewis and Holland on Landlord and Tenant.

[2] See section 27 Landlord and Tenant Act, S.B.C. 1974 c. 45.

[3] S.P.E.I. 1972, c. 25, section 101.

[4] See Quebec Civil Code, section 1664f.

d. a system whereby a special board (or a special officer) is appointed which is authorized to determine the fair rent or to review the rent of rental accommodation or who can make a decision on an appeal of a requested increase in rent. For example: In England under The Rent Act 1968 the rent officer or, in appeal cases, the rent assessment committee can determine the fair rent. In New South Wales the Minister of Housing may constitute a Fair Rent Board at such places as he thinks fit. The rent of the premises is usually the rent upon which is agreed by lessor and lessee. An application to a Fair Rent Board can be made when the lessee proves to the satisfaction of the Board that:

(1) the rent fixed by the agreement is harsh or unconscionable;

(2) the agreement was obtained by fraud, duress, intimidation or improper means.

The lessor of any prescribed premises may make an application in writing for an increase in fair rent upon which the Controller or the Clerk of the F.R.B. makes an assessment, considering an increase in interest rates, maintenance and renewal costs, repair costs and insurance premiums. If the last fair rent proves to be unjust the F.R.B. can establish a new fair rent.

Some Canadian jurisdictions provide also for institutions with the power to review rent. We will discuss those provisions in Appendix II.

Note: a rent control system is often accompanied by a security of tenure scheme. The two systems are sometimes confused with each other.

The purpose of a security of tenure system is to protect the tenant from unjustified eviction and it allows the tenant to stay in the rented premises after the tenancy agreement or the lease is terminated, unless certain grounds for possession by the landlord are established and proven. A rent control system in combination with a security of tenure system prevents the landlord from imposing exorbitant rent increases as a condition of renewing or continuing the tenancy and from so being able to effectively evict tenants.

3. Arguments for Rent Control

The interim report of the Ontario Law Reform Commission on Landlord and Tenant Law quotes, in discussing the common basis for instituting rent control, "Rent Control in New York City" (1967) where the book says:

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

4. Arguments against Rent Control[5]

Rent control measures were first introduced in its modern form in Great Britain and Europe during World War I as an element of a temporary system of price and wage controls, which were designed to forestall the inflation that would likely have resulted from shortages in key commodities brought on by the emergency of wartime conditions. The same situation pertained in the U.S. and Canada during World War II.

When the wartime was over rent controls were kept on in New York, the United Kingdom and other parts of Europe for purely political reasons.

The result however was that while the cost of maintaining existing buildings and building new ones soared in the newly inflated post-war conditions rent levels in these areas remained at their earlier artificially depressed levels, putting a damper on incentives to building maintenance and to new housing construction.

The continuing barrier against new building then acted to escalate the free-market price of any housing which managed to escape the controls, and this artificial inflation, which was the direct result of the continuation of rent controls, was in turn used as a justification for continuing the controls and extending the artificial shortage.

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[5] The text below is mostly derived from "The Case against Rent Controls" by the Urban Development Institute (Ontario), July 1974.

At a seminar about rent control, Philip H. White, former Dean of the Faculty of Commerce and Business Administration of the University of British Columbia, stated as follows:[6]

> Although rent control is politically convenient in a war economy, it does no more than conceal the symptoms of a housing shortage, and once building is resumed rent control aggravates rather than relieves the shortage of houses. It is manifest in those countries where rent control has persisted that as with other forms of price control, rent control leads to the creation of shortages, long waiting lists for housing, limitations of choice, black markets, disincentives to builders, and acute difficulties in finding equitable ways of distributing houses among consumers. In spite of these effects, rent control has the durability of other forms of economic protection and has been found difficult to remove once it has become established.

It is valuable to have a closer look at the arguments against rent control by White:

> (a) Rent Control leads to shortages in housing accommodation. The amount of rent the landlord receives from his tenants forms an important part of the landlord's return out of his investment. This return is likely to be used to cover the landlord's costs like paying off the mortgage and the interest on the mortgage, the property taxes, the utilities bills, the maintenance costs etc. Apart from that the landlord must be able to make a profit.

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[6] See "Is There a Case for Rent Control?", background papers and proceedings of the Canadian Council on Social Development seminar on rent policy.

Every decrease of rental income will put the landlord in a less attractive position, because in this time of inflation, the costs he has to pay out of his rental income will increase. As a result he will see his profit diminish to the point where he is not interested any more to invest in rental accommodation and will look somewhere else for investments.

New construction of rental accomodation is therefore likely to get a severe blow. But before this actually happens the landlord might try to keep his profit at the same level as before the rent control by cutting down on his costs of maintenance of the premises. The premises will deteriorate and housing standards will not be met and the building will after a number of years, when it is not economical anymore to restore it, be demolished. The final consequence is that the existing housing stock will drop.

(b) A logical implication of a housing shortage is a long waiting list for people who want to get accommodation. Their choice will be limited and when they can afford it, they might be willing to pay the landlords or rental agencies a substantial amount of money just to make sure that they get accommodation. The poor, the lower income groups and the people who live on fixed incomes will not be benefitted by the rent control measures, unless ways are found to distribute houses among consumers in an equitable way.

There are however more arguments against rent control than White enumerates:

(c) Statistics say that rent has not gone up as fast as other elements in the costs of living did in the last ten years.[7]

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[7] See Appendix I.

The same is to be said about rent compared to increase in costs of building components, like construction wages, mortgage interest rates, property taxes, costs of building materials.

It is therefore alleged that it is not justified to single out one element in the cost of living for control: rent. After all it has been proven that the competitive pressures of the market place are effective enough to keep the price of rental accommodation from rising in place with all the other elements of the cost of living. An adequate supply of housing is therefore likely to make rent control an unnecessary step.

If rent control measures are carried out even though they are intended to be a temporary solution, they will be hard to remove. Once established people will refuse to spend for example a quarter of their income on accommodation, a percentage that nowadays is considered to be quite reasonable. They assume a standard of living on which they, after awhile, cannot cut back. When a de-control program is set in and housing starts to increase again, due to the incentive, certain groups will not be able any more to "afford" decontrolled accommodation because of their changed spending habits.

(d) Rent control is often followed by a widespread withdrawal of the professional real estate industry from the ownership and management of controlled buildings. Speculators or inexperienced investors buy these properties with a small cash payment and the assumption of frequently burdensome mortgage indebtedness. The former group holds the buildings for whatever they yield and until they fall apart and then disappear. The inexperienced investor generally has neither the resources nor the experience to cope with

the management of such buildings.[8]

(e) The set up, costs and administration of a rent control system, will force provincial or municipal governments to incur substantial expenses.

(f) Landlords may be inclined to withdraw their property from the rental market and to convert it into condominiums. A further decrease in rental accommodation cannot be considered as desirable.

(g) Rent control would deny many landlords the return which they could get in the existing market, and it would be likely to deny at least some landlords a reasonable return on their investment. It is therefore said that landlords are being forced to "subsidize" their tenants and that if tenants as a group require a subsidy, then the subsidy should be a charge on public funds; there is reason why the law should prevent landlords from rent-gouging, but there is no reason why the law should require one group of citizens to provide a subsidy for another.

(h) The imposition of rent controls creates an artificially cheapened housing product and thereby immediately broadens the potential market for that housing. Cities with rent control tend to attract lower income families from areas that do not have controls. Not all of them can acquire this housing, of course, so there is a chance that they become a burden on the municipality's social assistance programs and create social problems beyond the simple provision of housing. Apparently Montreal experienced this.[9]

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[8] George Sternlieb: "The Urban Housing Dilemma -- the dynamics of New York City's rent controlled housing", published by the City of New York 1972.

[9] See supra, note 5.

(i) Tenants who are living in a rent controlled tenancy will be less willing to move to another place, even if they can afford it. This means reduced mobility in the housing sector occupied by tenants and reduced mobility in the labour market. It might also mean that tenants in controlled tenancies spent a substantially smaller part of their income on rent than other tenants do, although they might be in the position to afford more expensive accommodation. From a viewpoint of redistribution of income this is not desirable.

(j) Rent control will generally favour the long-established sitting tenant rather than newcomers:

Hence they tend to benefit the old rather than the young, childless middle-aged people rather than young families, who move more often, and the family long established in the neighborhood rather than immigrants and other newcomers in the district.[10]

5. Alternatives to Rent Control

Weighing the above-summarized disadvantages of rent control against the advantage that rent control makes it possible for people to find and keep decent accommodation at reasonable rents, while keeping in mind that low income tenants do not always profit from a rent control system and that fair distribution of available accommodation is not guaranteed, we should pay more attention to alternatives to rent control.

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[10] See supra note 6, paper delivered by David Donnison.

First of all the government might develop a program under which low income tenants and tenants who spend an unreasonable high percentage of their income on accommodation can apply for an individual rent subsidy.

Secondly the government may regulate the distribution of available accommodation in a sense that people with high incomes are forced to move out of inexpensive accommodation so that this accommodation can be made available to income groups who cannot afford high rents. This alternative is used in some European countries which have a severe housing shortage, but it is a serious intrusion on personal freedom.

The third alternative is the most sound solution to the problem of high rents: it is the increase of rental accommodation to diminish the shortage in this particular field of housing, so that rents stay at competitive levels. An increase in the housing stock can be achieved by a government housing policy directed at encouraging private enterprise to invest in rental accommodation together with public housing programs.

Government involvement in housing has been existing for decades. It began on a continuing basis with the Dominion Housing Act of 1935 and postwar housing policy and activity developed primarily from the National Housing Act (1944) and the Central Mortgage and Housing Corporation Act (1945).

Major studies have been carried out with regard to housing, of which we have to mention the Task Force Report on Housing and Urban Development (1969). The recommendations of the Task Force reflected clearly the trends, which had been traditionally followed by the government and can still be recognized in the present housing policy, i.e.,

private enterprise should play the main role in the housing field and direct government intervention in housing must be avoided. The role of the government has been mainly a financial and monetary one, encouraging or discouraging private (and to some extent public) investment in housing by direct lending programs, and loan and mortgage insurance programs. Because residential construction is not only a method of increasing and improving the nation's housing stock, but also is a sector well-suited to activities directed towards the maintenance of full employment, price stability and growth, the government used its housing policy mainly to stabilize the economy. People have often blamed the government for this and say the policy should be directed at more social and less economic goals, to protect the poor and the moderate income groups. Nevertheless it cannot be denied that economic stability has its social benefits and therefore it has been said that social and economical priorities cannot be divorced from each other.

At the moment a large percentage of Canadian population cannot afford home ownership because of the skyrocketing prices. As a result the demand for rental accommodation can only grow and there is already a threat of serious shortage in this field. As long as the government programs are only aimed at housing starts and not at distribution of stock and as long as it, for this purpose, solely relies on private enterprise, the basic human right to shelter will not be guaranteed. The builders and developers of residential accommodation will only be concerned about the amount of profit they are going to make out of their investment. The social objectives of a housing policy are not realized by them thus the government has to make sure that those are implemented.

An increase of rental accommodation will only work as an alternative to rent control, if the needs of the people are met. The building of expensive high rises with luxurious recreation facilities will not lessen the demand for rent control. Therefore a comprehensive plan should be developed which should form the basis for a program to encourage the increase of rental accommodation. The plan needs to contain information about

- the present stock of rental accommodations;
- the future demand for this accommodation;
- the particular needs of the different income groups;
- the number of family and non-family households;
- expected changes in income, prices, rents and credit terms;
- land available for residential construction and

and any other desirable item.

The collected information should also be a guideline for the role which the different levels of government have to play, for the choice of private enterprise with or without government intervention, and for the choice between housing priorities and stabilization priorities. A study of the impacts of the present monetary and fiscal policy and of the direct housing programs on residential construction should also be considered.

6. Issues

(a) Rent Control

(1) Should a new Landlord and Tenant Act for the Province of Alberta contain any rent control provisions?

(2) Should it be recommended that rent control provisions be part of the legislation only after a thorough study of the rental situation has proven that there is a serious shortage of rental accommodation in the province and that this situation leads to abuses by landlords, like exorbitant rent increases?

(3) Should, in the new Act, the possibility be created to increase the rent on a predetermined basis using for instance objective external factors as tax increases, interest rate adjustments, cost of living increases, etc.? Should this possibility only be open in cases of long term renting or in all cases?

(4) Should a new Act, even if it appears that the situation is not urgent, nevertheless provide the possibility of establishing rent control in the future, so that further legislation will not be necessary?

(b) Restriction on frequency and amount of rent increases

(5) Should the new Act, apart from the 90 day notice provision in the present section 21, provide that no increase in rent for residential premises shall be collected in the first year of the tenancy?

(6) Should the new Act contain a provision which says that, notwithstanding a change of tenant or landlord, no increase in rent is allowed until twelve months have expired following the last increase of the rent?

(7) Should a charge made by the landlord in respect of a service or a facility used or enjoyed before by a tenant at a lesser or no charge, be considered as a rent increase? This is relevant if Alberta decides that only one rent increase per year is allowed.

(8) Should, if it is provided for one rental increase per year, the new Act provide for a certain percentage as the allowable rent increase per year?

(c) Rent Review

(9) Should the Landlord and Tenant Advisory Board be invested with rent review powers?

(10) If the Board gets this power should they be able to review rent on their own or only upon a (written) request of the tenant or landlord?

(11) What exactly should their powers be? Should they be able to approve, vary or disapprove the rent charged for the residential premises? Should they have the power to make a binding award as between landlord and tenant like the power possessed by arbitrators?

(12) Should there be any sanctions for the landlord or tenant if they do not comply with the review decisions of a board and what kind of sanctions should we propose?

(13) Should the new Act establish Rent Review Boards, apart from Landlord and Tenant Advisory Boards?

(14) What kind of structure should the new Act propose for the Rent Review Boards and how will they be financed?

APPENDIX I

CANADIAN COST OF LIVING INDEX 1961-1973

Percentage increases - 1961 = 100

	Annual Average 1973	December 1973
Home Ownership	207.0	214.6
Health and Personal Care	156.4	161.1
Food	162.0	172.1
Clothing	138.6	144.9
Tobacco and Alcohol	136.3	136.9
Transportation	136.8	141.3
Rent	124.5	125.6

Source: Statistics Canada

COMPARISON OF AVERAGE CANADIAN BUILDING COMPONENTS 1961 - 1973

Percentage increases - 1961 = 100

	Annual Average 1973	December 1973
Construction wage rates	259.5	272.3
Mortgage interest rates	240.2	252.2
Property tax	164.2	163.1
Residential building materials	178.5	185.5
Rent	124.5	125.6

Source: Statistics Canada

APPENDIX II

STATUTORY PROVISIONS IN CANADA

A. Alberta

The Alberta Landlord and Tenant Act does not provide for any form of rent control. Section 21 however provides that a 90-day notice is required for a rental increase. The matter of rent control is topical in Alberta since the City of Edmonton has asked the Provincial Government to pass permissive legislation to allow the City to establish a rent review board. The board would provide an avenue of appeal for tenants who feel they are facing excessive rent increases. Although it is not clear what powers such a board would have we suppose that it would determine whether the rent be approved or varied. The criteria to judge if the rent is not excessive are not known. It is also not clear whether the Edmonton Landlord and Tenant Advisory Board would be invested with rent review powers. This board however is not in favour of rent control or review, unless there is a situation of exorbitant rent increases.

B. Ontario

There are no provisions in the Ontario reform legislation respecting residential tenancies in the area of rent control or increase in rent. The Ontario Law Reform Commission had decided not to touch rent control, as rent itself is only one element in the cost of living and should therefore, be a subject matter of a wider study relative to the cost of living in general.

The commission made however recommendations for a rent review procedure to be adopted on a local basis in those areas of the province where market conditions demand it. The recommendations read as follows:*

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

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

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

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

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*See pp. 71-72 Interim report on Landlord and Tenant Law applicable to Residential Tenancies, 1968.

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

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

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

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

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

None of these recommendations were however adopted in the new Ontario Landlord and Tenant Act.

However the Ontario Minister of Housing, Donald R. Irvine, recently promised to propose legislation in the fall session, which will make it possible for municipalities with low vacancy rates to establish Rent Review Boards. The Rent Review Boards will have broader powers than those given in the Landlord and Tenant Advisory Boards under the Landlord and Tenant Act. In particular, the boards will have the power to require the production of records to justify rent increases. While the boards will not have the power to roll back rent increases or rent control levels, they will be able to publicly expose unjustified rent increases, through the holding of public hearings and other appropriate methods.

The Minister also promised to propose legislation to require a landlord to give at least two months' notice of any rent increase and reasons for such an increase associated with a lease renewal.

C. British Columbia

We already mentioned in Chapter 2 the existence of a rent control system in British Columbia. Provisions with regard to rent control are laid down in Part IV of The Landlord and Tenant Act, sections 24-29(h).

Section 24 provides for the appointment of a Rent Review Commission by the Lieutenant-Governor in Council.

According to section 25 it is the function of the Commission:

(a) to conduct research or inquiries into any aspect of the rent of residential premises and to examine any factor affecting the determination or payment of rent;

(b) to report to the Minister the results of any research or inquiry undertaken under paragraph (a) or at any time at the request of the Minister; and

(c) to perform such other functions respecting the rental of residential premises in the Province as the Lieutenant-Governor in Council may order.

Where the Commission considers it advisable to do so it may appoint an Inquiry Officer and also ask him to investigate the matter of dispute within the Commission's jurisdiction and in so doing the Inquiry Officer may

(a) confer with the landlord and the tenant, together or separately;

(b) hold hearings; and

(c) make orders as he considers necessary or advisable and, without limiting the generality of the foregoing, may make orders

(i) referring any particular area of dispute to the Commission; or

(ii) settling the matter himself.

The order made by the Inquiry Officer is binding on the landlord and all the tenants involved in the dispute, but a landlord or tenant affected by the order may appeal to the Rent Review Commission. The Commission has then the power to confirm, reverse or vary the order of the Inquiry Officer.

For the purpose of making an order that settles the dispute the Commission, or the Inquiry Officer appointed by the Commission, may receive and accept such evidence and information on oath, affidavit, or otherwise as in its or his discretion is considered advisable, whether admissible as evidence in a court of law or not. The Commission may determine its own procedure, and that of Inquiry Officers, but an opportunity shall be given to any interested party to present evidence and to make representations.

Part IV of the B.C. Act deals further with allowable rent increases and notice for rent increases. Section 27 provides that the landlord has to give the tenant written notice of a rent increase not less than three months before the date the rent increase is to be effective. The section provides further that no landlord shall collect an increase in rent for residential premises until twelve months have expired following

(a) the date the last lawful increase in rent became effective; or

(b) where there has been no previous increase in rent, the date the existing rent was established.

Subsection 2 of section 27 sets the percentage of allowable rent increase for 1975 at 10.6%.

Section 28 forms an exception from the provisions of section 27 and deals with allowable rent increases after renovation. The section provides that where a landlord makes a renovation, commenced after May 3rd, 1974, he may

(a) with regard to a building containing not more than one residential premises increase the annual rent of the residential premises

by an amount not exceeding 12%, or such other amount as may be prescribed by regulations, of the cost of the renovation; or

(b) in respect of a building containing more than one residential premises, he may apportion the cost of the renovation among the residential premises affected by the renovation and may increase the annual rent of each residential premises by an amount not exceeding 12%, or such other amount as may be prescribed by the regulations, of the portion of the cost referable to that residential premises.

The landlord has to give the tenant three months' notice of such an increase and the tenant when he receives such a notice may, not more than a month after he receives notice, give to the landlord and to the Commission a notice requiring the landlord to apply to the Commission for approval of the increase for renovation. Where such notice is given by the tenant the landlord's notice of rent increase is stayed and he has to give the tenant and the Commission a notice of cancellation of the rent increase for renovation. Upon application for approval by the landlord the Commission investigates the matter and holds hearings when necessary. It may then approve the amount of the increase or order the landlord to reduce the amount of the increase or it may refuse the increase completely. For the purpose of the approval or refusal the Commission may determine whether or not renovations have in fact been made; whether or not the improvements are in fact renovations; and the actual costs of the renovations and the equitable apportionment to each residential premises affected by the renovations.

The landlord may apply to the Commission for an advance ruling in respect of a proposed increase in rent as the result of proposed renovations to residential premises, and the Commission may make an advance ruling in

respect of whether or not it will qualify as a renovation (Section 29).

The landlord may simultaneously give notice of rent increase under both sections 27 and 28. He has however to specify separately the amount of the increase claimed under section 27 and the amount of the increase claimed under section 28.

Any other increase than the ones mentioned in section 27 or 28 is void and unenforceable and the tenant may recover any amount that is in excess of the amount authorized under section 27 and 28 or he may set off the excess amount against any further money due by him to the landlord.

Section 29(c) provides that where a landlord

> (a) makes a charge in respect of a service of facility used or enjoyed, before the date the charge becomes effective, by a tenant at a lesser or no charge; or
>
> (b) discontinues a service or facility, and such discontinuance results in a substantial reduction of the tenant's use and enjoyment of residential premises or the service or facility,

such charge, or the value of such discontinued service or facility , shall be deemed to be a rent increase for the purposes of section 27. The Commission or an Inquiry Officer however may order that such a charge or discontinuance is not a rent increase for the purposes of section 27.

An exception to the provisions of Part IV of the B.C. Landlord and Tenant Act is section 29(e) which says that, when the landlord and tenant agree at the time of

entering the tenancy agreement, the landlord may make a charge in respect of one or more additional persons who might permanently occupy the residential premises after the time the agreement is made. In case of a dispute about whether or not a person is permanently occupying the premises the landlord may apply to the Commission or an Inquiry Officer for a determination.

Orders and decisions made by the Commission are binding on the landlord and all the tenants involved in the dispute.

The 10.6% allowable rent increase per year is not applicable

(a) to residential premises situated in a residential building containing only two residential premises, one of which is occupied by the landlord for his residential purposes;

(b) to residential premises in respect of which the rent payable, is more than $500 per month, or is more than such amount as may be prescribed in the regulations;

(c) during the term of the agreement, to residential premises owned by a landlord who has entered into an agreement with the Commission to regulate rents payable by tenants during a period of not less than five years; and

(d) to such residential premises or such classes of residential premises in all or part of the Province as may be designated in the regulations.

An exception is also formed for residential premises that are not in a mobile home park and are first occupied under a tenancy agreement on or after January 1st, 1974. Those premises are not subject to the 10.6% allowable rent

increase for a period of five years following the date of the first tenancy agreement pertaining to those premises.

A separate provision is made for the owners of a mobile home park in section 29(g) under subsection 4. It provides that upon application of an owner of a mobile home park the Commission may set a rate of rent increase greater than that specified in section 27(2) (the 10.6% provision) in respect of that park upon such terms and conditions as the Commission specifies.

D. Manitoba

There are two provisions in the Manitoba Landlord and Tenant Act relating to rent increase and rent control. Section 116 provides for the landlord to increase the rent only upon a notice to the tenant at least three months prior to the date on which the increase is to be effective. If the lease provides for a period in excess of three months then the lease provision is to override the statutory one. Section 121 provides that the Lieutenant Governor in Council may establish a Rent Review Board to carry out a rent review function and for this purpose the Lieutenant Governor may make regulations prescribing the rules, procedure and guidelines to be followed by the board.

The function of the Rent Review Board is set out in Manitoba Regulation 58/71 as follows:

> 1. The Rent Review Board function shall include the following:
>
> (a) An examination of the condition and availability of residential rental accommodations;

(b) An analysis of the costs of construction, and maintenance of residential rental accommodations;

(c) A review of landlord and tenant relationships;

(d) A study of the practicability and desirability of rent controls;

(e) Alternative solutions to high rental problems;

(f) A determination of the availability of tradesmen to construct and maintain dwellings;

(g) An investigation as to the extent to which local by-laws affect the quality and availability of residential rental accommodations.

2. For the purpose of fulfilling its functions the Rent Review Board has all the powers of a commission of inquiry under Part V of The Manitoba Evidence Act and Part V of that Act applies to the inquiry.

3. That from time to time, on the certification of the Minister of Consumer, Corporate and Internal Services, the Minister of Finance pay from and out of the Consolidated Fund

(a) living allowances and other travelling expenses of the board members;

(b) salaries and fees of such staff and employees as may be employed by the board;

(c) all other expenses incurred by the board in proceedings relating to the rent review;

(d) honoraria and remuneration to the board member in such amounts as the Lieutenant Governor in Council may direct.

There are no regulations describing how landlord or tenant proceed before a Rent Review Board. The Rent Review Board itself however has the power of a commission of inquiry under the Manitoba Evidence Act and has to apply the formal rules of evidence.

It is not clear whether the office of the rentalsman may arbitrate disputes about rent between landlord and tenant, in cases where it is not designated to carry out a rent review function (according to section 121,c). Section 120 (1)(b) says that the rentalsman may arbitrate any dispute between landlord and tenant. There is no arbitration except by written consent of both parties. This section gives reason to think that landlord and tenant may have the choice between rentalsman and Rent Review Board.

E. Saskatchewan

The Saskatchewan Act respecting Residential Tenancies contains in section 16, subsection 19, a provision for a three months' notice for a rent increase, unless the tenancy agreement provides for a longer period. In that case the three months' notice does not apply. The Act does not contain any rent control provisions.

Section 39, subsection 1, contains a provision that where there is a dispute between landlord and tenant with respect to a tenancy agreement or the residential premises occupied by the tenant, the landlord and the tenant may agree in writing to get the dispute arbitrated by the Provincial Mediation Board. It is not certain whether a dispute about a rental increase can be considered as one with respect to a tenancy agreement or the residential premises and the provisions of statutory condition 19,

especially subsection 8, can be interpreted in a way, when the correct notice provisions are complied with, there is no basis for bringing a dispute about rental increases before the Provincial Mediation Board.

F. New Brunswick

There are no provisions restricting or controlling the right of the landlord to increase the rent or to establish any measure of rent control under the existing legislation. The Sinclair Report suggested with regard to rent increase the following provisions:

(a) a section should be drafted to allow landlords to increase rent by providing for notice of such increase to be given at least three months in advance of the time fixed by the landlord;

(b) the section recommended in (a) should be so drafted as to make it impossible for landlords to evade its application by a one month's notice to quit coupled with a notice of increase if the tenant wishes to stay;

(c) with respect to fixed rent tenancies, those primarily in the category of term of years, the parties should be able to contract for rental increases, using objective external factors as the guides. Such factors as tax increases, interest rate adjustments, cost of living increases, etcetera, are those to be used as the standards for objectivity; and

(d) in any event, the section should provide for no increase in the agreed upon rent during the first year of a periodic tenancy.

Sinclair did not consider it wise to impose a system of rent control. Despite these recommendations the proposed

Residential Tenancies Act* does not regulate rent increases at all.

G. Newfoundland

Newfoundland is one of the provinces, that had legislative rent control in the past, brought in force by The Rent Restrictions Act.** This Act however was repealed by section 21 of the present Landlord and Tenant Act. Section 17(1) of the Newfoundland Act*** deals with the question of rental increase and provides that where a landlord wishes to increase rental payment, then he must give notice of intent to increase at least three months before he receives, demands or negotiates an increase in the rent payable by the tenant. Sinclair says in his comment that the section actually on the surface is applicable to all forms of tenancies, although it should be restricted to only the periodic tenancies. Section 17(2) says:

> No lease shall provide for increase in rent on a predetermined basis, but if it does so provide such provision is void and of no effect.

This subsection might, according to Sinclair, be too binding in the cases of a long-term renting situation, where the parties could provide that an external factor, like increased cost of living, may reflect in normal predetermined rental increases.

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* Bill 23, first session, 48 Legislature, New Brunswick, 1975.

** R.S.Nfld. c. 1970, c. 334, originally 1943 Statutes of Nfld. c. 45.

*** S. Nfld. 1973 c. 54.

Section 20(7) provides further that the Residential Tenancies Board may review the rent charged for the residential premises at the written request of a landlord or tenant and determine whether such rent should be approved or varied. The Board may issue an order for such variance or retention of the previous rent.

Any person, who feels aggrieved by any order, finding or decision of a Board may appeal therefrom to a Judge of the Supreme Court of Newfoundland, or a Judge of a district court within the territorial limits of which the appellant resides (section 20(16)).

H. Nova Scotia

The Nova Scotia Landlord and Tenant Act contains in section 8(1) exactly the same provisions as the one we discussed for Newfoundland with regard to increases in rent. Subsection (2) however is the exact opposite of the similar Newfoundland provision and provides that the landlord and tenant may agree in a written lease, which exist between them, for increase in rent on predetermined basis, where such a provision in a lease in Newfoundland was automatically deemed to be void. Sinclair thinks that the Nova Scotia provision reflects more the desires of the landlord and tenant,

> for it does extend to a landlord a method of providing adequate return on an investment over long periods and similarly provides protection to a tenant as for example, term insurance would.

The Residential Tenancies Board has the same power as the Board in Newfoundland has. It may review the rent charged for the residential premises at the request of a landlord or tenant and approve or vary the rent.

The Board and each member of the Board shall have the powers of a commissioner appointed under the Public Inquiries Act. Furthermore it is provided that a Board shall have with respect to the powers or functions of the Board the same power to make a binding award as between landlord and tenant that would be possessed by arbitrators under the Arbitration Act to whom a submission is made by the landlord and tenant.

I. Prince Edward Island

The Prince Edward Island Landlord and Tenant Act gives a number of the same provisions we have seen in other provinces relative to rental increase and also a number of quite different ones.

The same provisions relate to the three months' notice prior to the date of increase and to the prohibition of such notice during the first year of tenancy. The three months' notice may not be used if the lease provides for a period in excess of ninety days. There are also provisions for the case where a tenant refuses to pay the increase. All these provisions can be found in section 99 of the Act.

The different position the Prince Edward Island Act takes is shown in section 101. The section reads as follows:

> 101.(1) Where taxes payable by a landlord on real property leased by the landlord to a tenant increase in any year, the landlord may notwithstanding any terms to the contrary contained in a lease agreement between the landlord and tenant for such real property increase the rent of the tenant for such land in an amount being the difference between the taxes payable in the preceding taxation year on, or applicable to, the real property leased by the tenant, and the taxes payable in the current taxation year on such real property less ten percent of such difference.

> (2) Where taxes payable by a landlord on real property leased by the landlord to a tenant decrease in any year, the landlord shall notwithstanding any terms to the contrary contained in a lease agreement between the landlord and tenant for such real property decrease the annual rent of the tenant for such real property in an amount being the difference between the taxes payable in the preceding taxation year on or applicable to, the real property leased by the tenant, and the taxes payable in the current taxation year on such real property less ten percent of such difference.
>
> (3) Where rent is increased or decreased pursuant to subsections (1) and (2) hereof, the landlord shall give notice of such increase or decrease in rental to the tenant, and such notice shall be in such form and shall contain such information as shall be prescribed by section 114 hereof, and shall be delivered to the tenant not later than ninety days before the date stated in the notice as the date on which the landlord intends to change the rent.
>
> (4) Where there has been a failure to comply with the provisions of subsections (1), (2), and (3) hereof by a landlord or a tenant, a tenant or a landlord who thereby feels aggrieved may make application to a judge for an order directing such tenant or landlord to comply with the said provisions of this section.

Sinclair says in his comment on section 101 that although the section puts a right in a landlord to increase rent when taxes go up, the section leaves entirely untouched the whole area of other rising costs. It is, according to Sinclair more likely that the mortgage payments, in reflecting their increase in interest rates, go up and will form the major part of the landlord's expenses. Sinclair is afraid that if there are no provisions for the landlord to increase the rental income, the landlord will be at least deterred from either maintaining the property in its present condition or from further investment in rental accommodation. Sinclair advocates that it is therefore only practical to allow the parties to agree on increases

in rent based on not only an increase in taxation, but also on an increase in other external factors which affect a landlord's income position.

J. Quebec

Quebec is the only Canadian province in which a comprehensive system of rent control has been maintained since the phasing out of the federal wartime measures. Rent control has since 1951 operated under the Act to Promote Conciliation between Lessees and Property Owners.* Since that year the Act has been continued in force. The last amendment dates from December 1974** and provides that the application of the Act is prolonged until 30 June 1976.

Under the Act municipalities in the province may apply for coverage by the rent control program, or withdraw, upon a majority vote of the council. In general the control system is applicable to all residential rental properties, built not later than April 30th, 1968 and renting for under a specified amount (usually not over $100 - $125 per month).

The controls are administered by rental administrators throughout the province and a seven-member Rental Commission, in which lessees and property owners are represented. The Rental Commission acts as supervisor

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*S.Q. 1950-51, c. 20. Note that the Act was originally called An Act Respecting the Regulations of Rentals.

**S.Q. 1974, c. 76.

of the administrators, gives them advice and directions and attempts to see that "the Act is applied in a spirit of justice and fairness to lessees and property owners." The Commission may also revise, on appeal by an interested party, the decisions of local administrators, when these decisions exceed their jurisdiction, are contrary to law, or entail a severe injustice upon an interested party.

The local administrators are appointed by the Lieutenant Governor in Council and their function is "to pronounce upon matters of eviction, prolongation of leases and fixing of rents and to hear and decide such contestations as arise in respect thereof between lessors and lessees." The administrators, in carrying out their rent fixing functions, are directed by regulations made by the Commission. Section 11 of the 1951 Act (unamended) provides that the Commission may by regulation:

> . . . establish scales for the fixing of rents according to the particular types of houses, the period when they were built, their state of maintenance and repair, their situation, their rental value in normal times, their municipal valuation, the more or less extreme scarcity of dwellings and any other circumstances conducive to the fixing of a rent that is fair and reasonable for all concerned . . .

Because the rent has to be fair and reasonable for all parties, the rent administrator has the power to reduce the rent where it is manifestly abusive or where the premises are in a state of disrepair. If the administrator has granted a reduction for disrepair the lessor is entitled to re-establish the rent for the future from the moment he has remedied the defect.

The Act provides also that it is forbidden to extract from the lessee any disguised additional rent in the form

of a premium, commission, bonus, penalty, money payment to obtain the key, etc.

The Quebec rent control system is accompanied by an extensive security of tenure system, preventing evictions for the mere reason of expiration of the lease and enumerating the cases in which the lessor may regain possession (section 25).

In 1973 the Quebec Legislature passed the Act to prevent Excessive increases of Rent in 1973, to protect tenancies not covered by the Act to Promote Conciliation between Lessees and Property Owners. The Act, only meant to be in force in 1973, provided for notice provisions for rent increases and termination of leases. In cases where the parties do not agree the rent administrator may extend the lease and approve or disapprove the rent increase. The Act also contained extensive security of tenure provisions. It was not prolonged in 1974 or 1975 but some similar provisions are found in the Civil Code Amendment of April 25, 1975.

Articles 1659-1661 deal with notices for termination of leases and for rent increases.

> Art. 1659. (Am., 1974, Bill 79, s. 6.) Every lease for a fixed term of twelve or more months is, at term, extended of right for a term of twelve months.
>
> Every lease for a fixed term of less than twelve months is, at term, extended of right for the same term.
>
> The parties may however agreed to a different extension term.
>
> This article does not apply to the lease granted by an employer to his employee accessory to a contract of work.

Art. 1660. (Repl., 1973, Bill 2, s. 1.) A lessor wishing to avoid the extension of the lease contemplated in article 1659 or wishing to increase the rent or change any other condition for the renewal or extension of such lease must give notice of it in writing to the lessee.

A lessee wishing to avoid the extension of a lease contemplated in article 1659 must give notice of it in writing to the lessor.

Art. 1661 (Am., 1974, Bill 79, s. 7.) The notice contemplated by article 1660 must be given not later than three months before the expiry of the term in the case of a lease for a fixed term of twelve months or more and one month or one week before the expiry of the term in the case of a lease for a fixed term of less than twelve months according to whether the rent is payable by the month or by the week. If the rent is payable according to another term, the notice must be given with a delay equal to such term or, if it exceeds three months, with a delay of three months.

Such notices cannot be given beyond a delay exceeding twice the delay provided for in the preceding paragraph.

One of the parties may, for reasonable cause, and with the permission of a judge in chambers, give notice after the expiry of the delay provided for in the first paragraph of this article provided that the other party does not suffer serious prejudice therefrom.

In the case of a lease contemplated by fourth paragraph of article 1659, the lessor must give the lessee notice of at least one month to terminate the lease, whether such lease is for a fixed term or for an indeterminate term.

Furthermore article 1664f restricts the number of possible rent increases to one per year and regulates readjustments of rents in cases of a lease for more than twelve months. The article reads as follows:

> The following are without effect:
>
> 1. Every clause to forfeit the term of payment of the rent;
>
> 2. In a lease for a fixed term of twelve months or less, every clause that would directly or indirectly vary the rent during the term of the lease.
>
> In a lease for more than twelve months the parties may agree that the rent will be readjusted in relation with any variation of the municipal or school taxes affecting the immoveable, of the unit costs of fuel or electricity in the case of a dwelling heated or lighted at the cost of the lessor and of premiums for fire insurance and liability insurance.
>
> Such readjustment cannot be made during the first twelve months of the lease and cannot occur more than once during each additional period of twelve months.
>
> In case of contestation of the amount of the readjustment, the parties may apply to the tribunal by way of motion.

It is not quite clear how to read the provisions of the Civil Code in connection with the provisions of the Act to Promote Conciliation between Lessees and Property Owners. We may assume that the provisions of the Civil Code are applicable to all residential tenancies controlled or not controlled. In cases where the lease is for more than twelve months the parties may, according to the Civil Code, agree to a rent increase only for specific reasons, mentioned in article 1664f. It is therefore probably prohibited to agree upon a rent increase whenever the interest rate on a mortgage is raised. In cases of contestation of the amount of the increase the parties may apply to the tribunal. However nothing is said about the powers of the tribunal. May the tribunal approve, disapprove or fix the rent at an amount that it thinks fair and reasonable and should in any case the variation in e.g. taxes be accounted for

completely in the rent increase or only partially? Are the parties free to submit their dispute for resolution to a rent administrator, in case of a controlled tenancy? Neither the Civil Code or the Act to Promote Conciliation are clear about those points and nothing is found in Quebec regulations.

INSTITUTE OF LAW RESEARCH AND REFORM

RESIDENTIAL TENANCIES

SECURITY OF TENURE

TABLE OF CONTENTS

1. Introduction

The purpose of this paper is to discuss the concept of "security of tenure" as it relates to residential premises, that is, apartments and dwelling houses. Since the paper is intended for public consumption, traditional legal terminology and standard methods of legal citation have been avoided as much as that is possible. Hopefully, the format adopted will assist the layman in understanding one of the most complex problems of the landlord/tenant relationship.

To clarify problems of definition it may be said that a tenant has security of tenure to the extent that he cannot be evicted from his rented premises--at least without cause. Under the present law in Alberta, a tenant has some security--but very little. A landlord can terminate a month-to-month or other periodic tenancy by notice without cause and thereby evict the tenant. Unless the lease provides a right of renewal the landlord can refuse to renew a lease for a specified period.

The reader should be aware that this paper is one of a number completed by the Institute of Law Research and Reform and accordingly a number of matters intricately connected with "security of tenure" such as rent control, termination procedures, and failure of the tenant to pay rent have been dealt with elsewhere. In attempting to evaluate a variety of schemes of security of tenure in the following pages a certain amount of overlap with other areas of concern will be unavoidable.

An effort will first be made to outline various perspectives on the concept of "security of tenure" in order to set the perimeter of possible benefits and drawbacks which may result from such a scheme. A comparison

will then be made of selected systems which have been chosen to exemplify the variety of solutions which have been legislated in Canada, the United States and the United Kingdom. Specific problems respecting retaliatory eviction will then be considered, principally those circumstances that sometimes arise where a tenant reports violations of housing standards or where the tenant withholds rent because of a landlord's breach of such standards.

It is also appropriate at the outset to acknowledge that substantial assistance in the preparation of this paper was obtained from the previous work of others in the field, most notably the Ontario Law Reform Commission, the Law Reform Commission of British Columbia and Professor Alan M. Sinclair's report for the New Brunswick Department of Justice.

2. Perspectives on Security of Tenure

(1) The Possible Benefits

In a paper prepared by L. Stevens of the Law Reform Commission of British Columbia, on Security of Tenure, it was noted, at p. 1 that in nearly all the briefs submitted to that Commission by tenants' associations the need for security of tenure was stressed. The need was amplified by a variety of reasons:

> It was claimed that it is fundamentally unfair that the law should permit a landlord to terminate a tenancy without giving any reason whatsoever. When a tenancy is terminated the consequences for the tenant may be much more drastic than for the landlord and to retain the concept of mutuality concerning the termination of tenancies is to ignore the realities of modern landlord and tenant law which reveals a significant shift from contract to status. Furthermore, the potential

> threat of eviction is so great as to deter many tenants from complaining when a landlord has failed to fulfill . . . [his] . . . obligations. . . ."

In Alberta, the present law respecting the landlord/tenant relationship provides that tenants of residential premises rented for a fixed term have no right to remain on the premises beyond the expiry date. Those tenants leasing premises on a periodic basis can be evicted whensoever the landlord chooses, provided that the landlord complies with the provisions for termination as set out in the Act. Briefly stated, a notice to terminate a weekly tenancy must be given on or before the last day of one week of the tenancy to be effective on the last day of the following week of the tenancy; 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; and, notice to terminate a year-to-year tenancy shall be given on or before the sixtieth day before the last day of any year of the tenancy to be effective on the last day of that year of the tenancy. <u>There is no requirement that the landlord give any reasons in support of his termination action</u>.

Although statistical data is not at hand at the time of this writing it appears that week-to-week, month-to-month and year-to-year tenancies are on the increase. In such circumstances it may be concluded, in part, that a tenant's right to remain in and occupy his home may depend on the very will of the landlord. If this is so then it would appear that the present law is in need of long overdue reconsideration.

The Law Reform Commission of British Columbia, at p. 34 of the paper prepared by L. Stevens (hereinafter referred to as the <u>Stevens Paper</u>) states the following:

> Provided that adequate procedures are established by which disputes arising from a scheme of security of tenure can be speedily, efficiently and inexpensively resolved, there is no good reason why the introduction of a security of tenure should prove disruptive to landlord/tenant relations. If anything the reverse position should obtain.

The doctrine of freedom of contract and the concept of mutuality of termination rights have given impetus to the notion that a landlord is free to determine a periodic tenancy and that it is his right to refuse to renew a tenancy for a fixed term. It has been suggested by the Law Reform Commission of British Columbia as well as the Ontario Law Reform Commission that adherence to such concepts in the modern landlord/tenant relationship ignores the realities of the situation. The Ontario Commissioners have stated the following at p. 11 of their Interim Report:

> . . . the extent to which contractual provisions can equalize the position of residential tenants is limited by the disparity of bargaining power between the parties. It is attractive to assume that it is the availability of accommodation which distorts the balance of power either in favour of the landlord or the tenant. But it is not now possible to accept freedom of contract at any given time as a fact in the area of the landlord/tenant relationship anymore than it is in the mortgagor-mortgagee relationship.

In the major urban areas of Alberta, particularly the cities of Edmonton and Calgary, available land and housing are in a state of diminishing supply. In the light of low vacancy rates a re-examination of free economic competition is required. The argument of mutuality respecting the landlord/tenant relationship comes under serious attack when it is furthermore realized that, upon

the termination of a tenancy, the tenant generally suffers more serious consequences both socially and economically than the landlord. The costs of the move must be borne by the tenant as well as the variety of consequences of social upheaval. Coupled with the now dim prospects of finding suitable alternative accommodation in cities such as Edmonton, the arguments in favour of the principles of free competition are not sufficient to themselves to preclude serious consideration of a system of security of tenure for this province.

Although a landlord's interest in rented accommodation is generally an economic one, that is not necessarily so for the tenant. The tenant's principle concern will generally be to regard the premises as a home and, as noted in the Stevens Paper, at p. 36, "a tenant may have a special irrational attachment to the premises." A secure home has been argued to be a fundamental need of all families and all individuals. This need may fall far short of being fulfilled in those cases where eviction may occur without cause and within a short period of time.

Nevitt in, "The Nature of Rent Controlling Legislation in the U.K.", Centre for Environmental Studies: University Working Papers, 1970, at pp. 9-10, supports the view that attitudes to land and home are often irrational. That writer has criticized economists whose writings start and finish with the assumption that one house is the same as another of a similar size.

> This view ignores the sense of attachment which an occupier develops for his own particular piece of territory. Under private conditions the eviction of one man by another is a matter of physical strength and, all animals, including man, are capable of the ultimate absurdity of sacrificing their lives in defense of a piece of

> land. In a modern society the trial of strength is conducted through the pricing mechanism and the richer bid away property from the poorer. We have no reason to think that the defeated and dispossessed feel that this form of contest is any fairer than a shooting match.

Jerome Rose has observed that the status of tenant is in fundamental contradiction to man's innate quest for secure shelter and to his territorial instincts (see: Rose, Landlords and Tenants: A Complete Guide to the Residential Rental Relationship, 1973, at p. 3).

One Canadian writer has pointed out the similarities between security of tenure and security of employment. David Donnison, in a publication of the background papers and proceedings of the Canadian Council on Social Development seminar on Rent Policy, Is There a Case for Rent Control?, 1973, states the following at pp. 107-108:

> An increasing range of employers now assume that people must be given security in their jobs, possibly until retirement and certainly for a considerable period ahead. You cannot simply ride people out of their jobs anytime you want. For a family with children, whose education depends on continuing in the same school and whose welfare may depend upon preserving links between family and community, security of the home is just as important as job security. . . .

The need for a secure home is often aggravated when children of school age are involved. There is already in effect in some of the Canadian provinces legislation prohibiting eviction during the school year.

In practical terms the situation may be much more serious in the case of elderly persons upon whom the cost

of moving would be acute and the psychological effects most greatly felt.

There are many other consequences of insecure tenancies many of which are of concern to the landlord. Tenants of private and public landlords have little incentive to preserve, protect and maintain the structures that contain their units. Increases in the value of residential premises and property generally enure to the benefit of the landlord. Tenants of private and public landlords may be unwilling contributors to the costs of repair. The tenants' attitude is reinforced by the realization that their interest in the premises may be terminated by the summary and sometimes arbitrary determination of the landlord (see: Rose, supra, at p. 227).

The Law Reform Commission of British Columbia has observed that tenants who have no rights to remain in premises beyond a short-term period are less likely to be interested in maintaining their premises in good repair. The Stevens Paper, at p. 37, has stated that, ". . . it just does not seem worth it when the tenancy can be terminated at any time without cause."

Within the context of reform of the entire landlord/tenant relationship in this province, there is a possibility that new rights will be created for tenants of residential premises. Any extension of such rights would be futile unless the tenant feels secure in attempting to enforce such rights. Tenants may be reluctant to force an unwilling landlord to comply with health and safety standards as long as a comprehensive right of security is not provided. Retaliatory eviction is sometimes very difficult to prove.

The Law Reform Commission of British Columbia has also cited (a) hostility and (b) alienation towards landlords and society in general as additional possible

by-products of lack of security for tenants. Jerome Rose, in A Complete Guide to the Residential Rental Relationship, at p. 228 has put it this way:

> Tenants live under a continuing threat that they may be deprived of their shelter security by the autocratic whim of a private landlord or the impersonal institutional prescription of a public landlord. The insecurity that arises from the threat of eviction creates feelings of anguish and hostility towards the symbols of authority that support and perpetrate this threat. . . .

The landlord/tenant relationship may be improved upon the removal of fear of eviction and increased tenant security may particularly benefit racial and religious minorities and the poor. Of course, this would do little to prohibit discrimination at the time of entering into the tenancy agreement. This, of course, is a separate issue and will not be considered in detail here.

Tenants of public landlords tend to be the "have-nots" in Canadian society. The tenants' willingness to support the existing social structure and preserve it is diminished by the lack of any proprietory interest in the community. By extending some degree of security, Rose, supra, at p. 228, has suggested that tenants may be brought back "into the social system".

At the seminar conducted by the Canadian Council on Social Development, referred to above, Mr. Michael Cassidy, M.L.A. for Ottawa Centre, observed that security of tenure is essential given the low vacancy rate; it is also one of the best ways of approaching the subject of rent policy and rent regulation. Security of tenure, so stated Mr. Cassidy, is important in terms of human dignity, and the reduction of the status gap between landlord and

tenant. It is a more effective approach than looking at the economic aspects of rent policy alone, because the question of security of tenure affects middle class as well as low income tenants, although the latter are likely to suffer most.

The literature reveals little doubt that the benefits to be derived from a system of security of tenure will enure principally to the poor. Nevertheless, benefits may be derived by the community as a whole. The Law Reform Commission of British Columbia suggests that when tenants feel they have a right to remain where they live, they are more likely to become involved in the community and contribute to it (see: Stevens Paper, at p. 39).

In brief summary, the advantages for tenants of a scheme of security of tenure would appear to be the following:

(1) a saving in moving expenses;
(2) bargaining power with landlords would be strengthened;
(3) the protection of human rights would be enhanced particularly in regard to minorities and the poor;
(4) participation in community life would be increased;
(5) tenants would be entitled to remain in their homes (which, of course, is the object of the whole thing); and,
(6) the enforcement of new tenant rights created by legislation and thereby guaranteed would be solidified and the threat of retaliatory eviction minimized.

The landlord/tenant relationship is of course a two-way street and it is appropriate to consider what

benefits a landlord may derive from a security of tenure system.

The Law Reform Commission of British Columbia has suggested that a security of tenure scheme, if administered fairly and speedily should place landlords under no real disadvantage (see: Stevens Paper, at p. 39). Assuming that economic profit is the main or at least one of the principal objectives of the landlord it would not appear to be contrary to the landlord's interests to continue the tenancy of tenants who pay their rent and otherwise fulfil their duties and are not disruptive of the entire dwelling. This would appear to include most tenants. However, the rights of a landlord to evict tenants who are delinquent in their responsibilities must be guaranteed by efficient proceedings which would not unduly tax the landlord through high cost. Most security of tenure systems also allow for special circumstances. Those circumstances will be considered in section 3 below. Most jurisdictions which have legislated on security of tenure have provided a right for landlords to regain possession at least in those circumstances where the tenant has breached one of his obligations under the legislation or the tenancy agreement, where the landlord requires the building for his personal use or in those cases where the building is sold or is to be demolished.

Again, in brief summary, the advantages for landlords of a security of tenure scheme may be, at least, the following:

(1) since tenants would have a long-term interest in the accommodation they may tend to take better care of them and more strictly observe their obligations to repair; and,

(2) a more open landlord/tenant relationship may benefit the landlord who may find that, because tenants have a right to continue to live in the premises, they are thereby less antagonistic toward the landlord.

Although it was stated above that the landlord/tenant relationship is principally a two-way street, it cannot be divorced from the context of the community as a whole and it is therefore appropriate to consider the effect of a security system within this broader social context. The literature reveals an often expressed fear that a security system would have the effect of reducing private investment in rental housing. The Law Reform Commission of British Columbia gave consideration to this point and noted that there is no proof that this has ever actually resulted, and, if the security scheme is properly understood and works efficiently, there is no apparent reason why such a result should ever occur over a reasonable period of time (see: Stevens Paper, at p. 40). The fear that a security scheme would hamper private investment appears to be mere speculation.

The argument has also been made that faced with the prospect of a long term relationship with a tenant due to a security system landlords will become much more demanding in applying standards as to whom they will accept as tenants. Again, the Law Reform Commission of British Columbia noted that there is no proof of such happening even in those jurisdictions where security systems have been in existence for many years. If landlords do become more reluctant to rent to certain individuals or groups of individuals the possibility is that such action could be met by appropriate provisions prohibiting unjustified discrimination.

In conclusion the objectives of a tenant security scheme may be outlined as follows:

(1) to provide all tenants with a right to remain in their rental accommodation;
(2) to prohibit eviction without cause thereby protecting any new tenant rights created by legislation (specifically, retaliatory eviction by landlords could be more easily controlled particularly in those circumstances where tenants are evicted because of an attempt to enforce housing and health standards);
(3) to encourage tenants to fulfil their obligations under the legislation and any agreement respecting the premises, a by-product of which may be more involvement on the part of tenants as members of the broader community;
(4) to improve the status of "tenant";
(5) to ensure landlord's rights respecting the termination of tenancies of tenants who are delinquent in their obligations under the legislation and the tenancy agreement; and,
(6) to provide for the landlord's regaining of possession of the demised premises in special circumstances where it would be unfair to the landlord not to do so.

(2) The Possible Drawbacks

The Manitoba security of tenure scheme is one example of the variety of legislative attempts to cure the problem. It will be set out and discussed here for the purpose of describing the possible drawbacks or the case against a security of tenure system.

The concept of security of tenure is dealt with in the Manitoba legislation by subsection (6) of section 103 which provides as follows:

> (6) Where a tenant
>
> (a) is not in default of any of his obligations under this Act or his tenancy agreement; or
>
> (b) the landlord or owner does not require the premises for his own occupancy; or
>
> (c) the premises are not administered by or for the Government of Canada or Manitoba or a municipality, or any agency thereof, or otherwise administered under the National Housing Act, 1954 (Canada);
>
> a tenant shall have the right to renew the tenancy agreement, subject to subsection (1) of section 116 after the tenancy agreement has expired; but where a dispute arises under clause (a) or (b) the matter shall be referred to the rentalsman for determination.

During a period of acute inflation it is a fact that some provision must be made for rent increases. On the other hand, it seems clear that any system providing for security of tenure is somewhat dependent upon a system of rent control (see: Gorsky, "An Examination and Assessment of the Amendments to the Manitoba Landlord and Tenants' Act" (1972), 5 Man. L.J. 59, at pp. 60-61; and, Bass, "Manitoba Residential Tenancies from the Point of View of Potential Law Reform: Has the Promise Been Fulfilled?" (unpublished), at p. 3).

Subsection (1) of section 116, referred to in the above security of tenure provision, provides a device whereby a landlord may raise the rent. However, prior to so doing the landlord must give at least three months written

notice setting out the rental increase prior to the date upon which the increase is to take effect. Professor Gorsky has criticized this provision in pointing out that a landlord may easily circumvent the security of tenure provisions by giving notice of an unconscionable increase in rent.

Professor Bass has noted that the Manitoba scheme of security of tenure has brought favourable response from both landlords and tenants. Professor Bass admits in his paper that he has not conducted intensive empirical research into this response but nevertheless notes that the landlord's attitude appears to be summarized in the following manner:

> . . . it's the only reasonable thing to do. If a tenant proves satisfactory, we certainly want him to stay on. To do otherwise only results in unnecessary effort and expense in reletting, and, as is the usual case, redecorating at a new tenant's request.

Professor Bass has noted that the typical tenant's attitude is that there is a marked disparity in bargaining power between the landlord and the tenant, and security of tenure is the major weapon that a tenant has at his disposal in order to effectively equalize the relationship (see: Bass, supra, at p. 6).

In his analysis of the Manitoba system Professor Bass is not only critical of the scheme adopted in that province but is also critical of the entire concept. He notes that many private landlords are unaware of the security of tenure provisions and that numerous injustices have resulted. He has recounted one such circumstance which received comment in the Winnipeg Press:

> Acting in good faith, . . . [a] . . . landlord concluded a tenancy agreement with a

> tenant that was to rent his premises at a certain date. There was already in existence a previous tenancy agreement with another tenant. The landlord assumed that at the expiration of the previous tenancy his existing tenant would vacate, and as a consequence of this neglected to give notice to his existing tenant within the stipulated two month period. The existing tenant refused to vacate and in the interim the new tenant had made arrangements with his landlord to vacate the premises in which he was then staying. The new tenant's moving van arrived on the scheduled date but unfortunately he was unable to gain possession of his newly rented premises. His family had to seek temporary quarters in a hotel, and the tenant's goods had to be put into storage. Incensed at this turn of events, the tenant informed the newspapers, and communicated with the Rentalsman's Office. The Rentalsman's Office was, of course, unable to cope with the situation and could only advise that they were looking into the matter. It obviously created an undesirable set of circumstances for three parties, the landlord, the landlord's existing tenant, and the landlord's "new" tenant.

The argument has often been advanced that some system of tenant security is needed to protect those in the lower income strata. Professor Bass counters this argument by noting that under the Manitoba section those bodies that are most directly involved in the area of housing for the poor are specifically exempted from the operation of the legislation, i.e., the Governments of Canada, Manitoba, or a municipality; or, any agency thereof or otherwise administered under the National Housing Act, 154 (Canada).

Professor Bass also argues that the doctrine of freedom to contract is one firmly imbued in our culture. The landlord may with some justification find himself unable to agree with the proposition that the commodity which he is selling is not one which is freely marketable.

Furthermore, if a tenant exercises his security of tenure against the wishes of the landlord an "unhappy marriage" may result. A reluctant landlord is not the most desirable one for most tenants. There are numerous ways in which a landlord can exercise his displeasure by failing to provide adequate standards of service to the tenant. Legal recourse would be small compensation to a tenant thus affected.

In summary, Professor Bass, at pp. 15-16 of the above noted unpublished paper has recommended the abolition of security of tenure in Manitoba for the following reasons:

(1) Security of tenure is illusory in the absence of strict rental control, and strict rental control has proven itself unworkable;
(2) For the most part, landlords and tenants have to behave reasonably, and they themselves will perpetuate the concept of security of tenure in the absence of legislative sanctions;
(3) For those in the middle and upper income brackets, the free market economy has a far greater persuasive effect than a system of legislative controls;
(4) For those in the lower income brackets, their tendencies will be increasingly governed in the future by direct governmental intervention. For reasons of policy and otherwise, the various governmental agencies concerned have chosen specifically not to be bound by the constraints imposed by security of tenure;
(5) In order to allow for sufficiently workable system of security of tenure

dictated by the perimeters of a complex society an exhaustive legislative code must be drafted in order to deal with the various permutations that legally could arise. Even if such a code could be exhaustively drafted in a precise manner, the inevitable result would culminate in pitfalls for the unwary;

(6) There is a psychologically based incompatibility between the restraints imposed by security of tenure and the overall structure of our present legal system; and,

(7) Lastly, and perhaps most importantly, there has proven to be a wide diversity between the theory and the actual implementation of security of tenure. From this point of view alone, security of tenure would appear to be an undesirable legislative goal. What the legislature appears to have forgotten is that the landlord and tenant relationship could be likened to a marriage in that it is a continuing relationship.

3. A Comparison of Selected Schemes

In the subsections to follow an attempt will be made to assess a variety of security of tenure systems which have been adopted not only in Canada but in the United Kingdom and the United States. In the final analysis those systems which have been chosen may be divided into: (a) systems operating in conjunction with a system of rent control; and (b) systems which are operative independent of rent control.

Some consideration will be given to the various advantages and disadvantages of tenant security mentioned

above inasmuch as it is possible to identify them. Specifically, the various advantages and disadvantages of the different schemes will be considered. Since the principal purpose of this examination is to assess the various models no suggestions will be made for the implementation of a scheme in this province nor will any attempt be made to propose which scheme would best meet the needs of Alberta.

(1) Canadian Jurisdictions

Rather than consider all the landlord and tenant legislation in the various Canadian provinces only a select few have been chosen for consideration. The provisions of legislation in the following provinces will be considered: (a) Ontario; (b) British Columbia, and (c) Quebec. The provisions of the Manitoba scheme have already received attention above and will not be further dealt with here. Through an analysis of the legislation of the foregoing jurisdictions most, if not all, of the major considerations respecting security of tenure should come to the fore.

(a) Ontario

The Sinclair Report, at p. 182, has noted that one of the problems which has arisen in urban areas is that situation which arises where the tenant has chosen to exercise what he considers to be his rights in either joining a tenants' association or complaining to a body set up to receive such complaints, either municipally or provincially, and as a result of such action on behalf of the tenant the landlord has seen fit to require the tenant to vacate the premises in a form of reprisal.

In its Interim Report, at pp. 73-74, the Ontario Law Reform Commission noted that one serious difficulty with any law to provide for the protection of tenants is

that the tenant who takes advantage of it may receive a one month's notice to quit, if he is a periodic tenant, or may fail to have his lease renewed in the event that he has a tenancy for a fixed term. This is known, of course, as a retaliatory eviction. The Commissioners stated that unless some measure of protection from retaliatory eviction is enacted the purpose of remedial legislation may be frustrated. However, the Commissioners did not advocate the imposition of statutory tenancies, i.e., tenancies which can only be terminated for cause, but rather the adoption of controls without which the tenant's rights would be in jeopardy by retributive action on the part of landlords. Protective measures were therefore recommended covering periodic tenancies only and not tenancies for a fixed term which terminate automatically by the effluxion of time.

The Commission's recommendation found its way into subsection (2) of section 107, of the Ontario legislation which provides as follows:

> (2) In any proceeding by a landlord for possession, if it appears to the judge that,
>
> (a) the notice to quit was given because of the tenant's complaint to any governmental authority of the landlord's violation of any statute or municipal by-law dealing with health or safety standards, including any housing standard law; or
>
> (b) the notice to quit was given because of the tenant's attempt to secure or enforce his legal rights,
>
> the judge may refuse to grant an order or writ for possession and may declare the notice to quit invalid and the notice to quit shall be deemed not to have been given.

Respecting the above provision, the Sinclair Report, at p. 183, has noted a potential hazard in the following terms:

> It is tempting to provide in this type of section that there is a time limit beyond which the landlord may move so that if the tenant has complained to an authority of actions by the landlord, then the landlord may not make a move to dispossess the tenant within, say, a period of 60 or 90 days. It has been made clear to some legislators that beyond, say, a 90 day period the landlord should be free to do as he pleases, and a number of states in the United States, have, in fact, chosen this route. New Jersey, for example, has a 90 day provision so that the tenant only has a defense that he is being dispossessed because of complaint, if a complaint was made within the last 90 days. The situation has so worked out in New Jersey that complaint has to be made now every 90 days, say, to the Department of Health or some other municipal agency, in order to keep the tenant's rights alive and the landlord cannot proceed to remove him.

(b) British Columbia

Like the Manitoba security of tenure system which operates independent of a rent control system, a similar scheme was adopted in Surrey, British Columbia. It was a product of creation under by-law and operated by the Surrey Landlord and Tenant Advisory Board. It is provided that a notice to quit can be appealed by a tenant to the Board which will revoke the notice unless the landlord is capable of establishing one of the circumstances provided in paragraph 1 of the by-law. It provides as follows:

> Where a tenant received notice to quit from a landlord, he may appeal this notice to quit to the Board. The Board shall revoke the notice to quit unless the landlord proves that one of the following circumstances applies:

(a) occupancy by the tenant has resulted in deterioration of the premises beyond reasonable wear and tear;

(b) the tenant is in arrears for a period of 27 days;

(c) the tenant is a nuisance to his neighbours;

(d) the tenant is utilizing the premises for illegal activity;

(e) he, the landlord, requires the premises for occupancy either by himself or his immediate family;

(f) the tenant has deliberately misrepresented the premises to a potential buyer or tenant;

(g) the building is to be demolished;

(h) the building is to be held empty for sale.

The Law Reform Commission of British Columbia has made the following observations about the Surrey scheme:

(1) It appears to be limited to providing security of tenure only in the case of periodic tenancies;

(2) The onus is placed on the tenant to appeal a notice to quit rather than the landlord having to apply to a court or other tribunal for an order for possession, which is the case in other security of tenure schemes;

(3) The grounds upon which a landlord may show cause are limited--there is no ground based upon breaches of the legislation or upon breach of the tenancy agreement itself.

The British Columbia Commissioners have noted that the security of tenure system in Surrey has not been disruptive to landlord/tenant relations. Difficulties in obtaining evidence from tenants have not been acute and the question of pressure being placed on certain tenants due to closer scrutiny of prospective tenants by landlords does not appear to be a problem. Of course, this may be due to less demand for rental accommodation in smaller centres (see: Stevens Paper, at pp. 33-34).

The British Columbia Commissioners recommended the adoption of a tenant security scheme comparable to that operating in the District of Surrey. They were of the opinion that existing tenancies should not be disturbed unless the landlord could demonstrate that specified circumstances exist. Furthermore, when a tenant receives a notice from his landlord terminating a periodic tenancy, it should be subject to review at the option of the tenant by some person or authority having power to set aside the notice unless justifying circumstances exist. It was suggested by the British Columbia Commission that such a review function should be carried out by the Rentalsman.

At pp. 66-67 the Law Reform Commission of British Columbia in, Report on Landlord and Tenant Relationships: Residential Tenancies, outlined the circumstances which would justify the termination of the periodic tenancy by a landlord as follows:

> (a) the notice was served in accordance with recommendations relating to unpaid rent;
>
> (b) the tenant has failed to obey any court order related to his occupancy of the premises;
>
> (c) the conduct of the tenant, or persons permitted on the premises by him, is such that the quiet enjoyment of other tenants is disturbed;

(d) occupancy by the tenant has resulted in deterioration of the premises beyond reasonable wear and tear;

(e) the landlord bona fide requires the premises for occupancy by himself or his immediate family;

(f) the premises are in a building which is to be demolished;

(g) the tenant has failed to make an agreed statutory deposit with the Rentalsman within 30 days of the commencement of the tenancy;

(h) the tenant has deliberately misrepresented the premises to a potential buyer or tenant;

(i) the tenancy was for an "off-season" period only, of premises otherwise used as a hotel or for recreational purposes, and the tenant was aware of the fact at the time the tenancy commenced;

(j) the premises are permanently occupied by a greater number of minors than is permitted by an express limitation in the tenancy agreement; and

(k) the safety, or any other legitimate interest of neighbouring tenants or of the landlord is seriously impaired by any act or omission of the tenant or persons permitted on the premises by him.

Respecting the above circumstances the British Columbia Commissioners outlined a number of clarifying points the reconsideration of which is appropriate here.

It is often argued that if the tenant breaches a covenant of the tenancy agreement then just cause for termination has arisen. Little difficulty arises in such circumstances where the breach is sufficiently serious to establish a just cause for termination. However, termination for relatively trivial infractions may arise where a

breach is committed of a covenant which is outside of or beyond the legislation. It may be argued, however, that enforcement of the reasonable terms of the agreement is a legitimate interest of the landlord and such enforcement would be impossible without the sanction of termination. The British Columbia Commission noted that circumstance (b) protects that interest:

> In our view, the proper course for a landlord to follow upon breach of the tenancy agreement is to make an application to court for an order prohibiting the tenant from contravening the provisions of the Act or the terms of the tenancy agreement or ordering him to perform and carry out those obligations. if the tenant then disobeys the order, termination would be justified.

Circumstance (i) relates to premises which are let for only a portion of the calendar year such as motels and summer cabins.

Circumstance (j) relates to the situation where there is an increase in the number of children who occupy the demised premises. The Commissioners noted a number of difficulties associated with the introduction of children into a building which is "adult oriented". It was concluded that landlords should not be forced to accept families with children as tenants and thereby permitted to preserve the character of the building. It was suggested that this harsh ground of termination would be mitigated in the following ways:

> (a) Tenants contemplating an addition to the family will have ample notice that their security will be in jeopardy and will have ample opportunity to seek alternative accommodation;
>
> (b) Most such tenants will wish to seek larger premises.

Circumstance (k) is designed to cope with other types of misbehaviour by tenants which are not specifically enumerated.

Circumstances (e) and (f) provide for those situations where no "fault" can be attributed to the tenant. At p. 68, the Commission stated the following:

> In all cases involving demolition, and most cases where the landlord requires the premises for his own use, the necessity to give notice will be foreseeable by the landlord well in advance of the time at which it must actually be given. We have therefore concluded that, in those cases, it is not unreasonable to require that the landlord give the tenant two months' notice.

Implicit in a scheme of tenant security is the proposition that the tenant should have some available means of determining the landlord's reasons when he purports to terminate a tenancy. One alternative is to require that the reasons should be included in the notice of termination. The British Columbia Commission was of the opinion that to provide reasons in the first instance might lead to undesirable confrontations which would otherwise be avoided if this were handled in a different fashion and therefore a scheme similar to that in Ontario was suggested:

> We have concluded that where a landlord delivers a notice of termination the tenant should have the right to demand written reasons for the termination along with particulars of any alleged acts or omissions of the tenant which might justify termination. Those reasons and particulars should be delivered by the landlord within 48 hours of that demand. Moreover, all notices by landlords purporting to terminate a periodic tenancy should clearly inform

> the tenant that he has a right to demand reasons and particulars and that he has a right to apply to the Rentalsman for a review of that notice.

The British Columbia Commission also suggested that a speedy termination procedure be available to the landlord in exceptional cases to provide for immediate possession from a very undesirable tenant. Adequate safeguards to the tenant could be provided by permitting such termination only with the consent of the Rentalsman. Upon a landlord's application for speedy termination and immediate possession, the Rentalsman (or the court depending upon which system is adopted) would conduct whatever hearing would be required or, in the case of a Rentalsman an investigation, and the Rentalsman should be empowered to give his consent or the court to make an order upon such terms and conditions as circumstances may dictate.

If any scheme respecting tenant security is to work effectively and efficiently then it is important that disputes concerning the justification for giving notice of termination should be dealt with before the termination date. If a Rentalsman system were adopted in Alberta adjudication of disputes should be swift. Regardless it would still seem imperative that well defined limits for review should be set out. The British Columbia Commission concluded, at p. 69 of its Report, that those tenants who wished to request a review of a notice of termination should be required to take steps to that end not less than 15 days before the effective date of termination. That time limit would appear to be reasonable and should provide a sufficient period for all concerned.

In the final analysis, the Commission recommended that rent increases be allowed only once each year thereby preventing landlords from effectively evicting tenants by

the unreasonable rent increase technique. The legislation which ultimately enacted most of the Commission's recommendations however, went further and provided for a full-scale rent control system so that security of tenure in British Columbia is now linked to the rent control scheme.

(c) Quebec

The Province of Quebec has retained a full scale rent control system since the phasing out of the federal wartime measures. It has operated since 1951 under the Act to Promote Conciliation Between Lessees and Property Owners, S.Q. 1974, c. 76. Under this legislation municipalities in the province may apply for coverage by the rent control program, or withdraw, upon a majority vote of the council. The control system is applicable to all residential properties, built not later than April 30, 1968, and renting for under a specified amount. The controls are administered by rental administrators throughout the province and a seven member rental commission, in which lessees and property owners are represented (see: Background paper on Rent Control, at p. 35).

A security of tenure scheme accompanies the rent control system and provides that eviction can only occur in the following prescribed circumstances:

(a) when a tenant does not pay rent when ordered to do so by the Commission;
(b) when the landlord legitimately requires the premises for himself or a close relative or for a party that is financially dependent upon the landlord;
(c) when the tenant has engaged in or allowed immoral or illegal activities on the premises;

(d) when the dwelling has become over-crowded to a serious extent;
(e) when the tenant has converted the premises to a rooming house without the owner's permission;
(f) when the house is acquired for public purposes.

Recent amendments to the Quebec Civil Code now provide that every lease for a fixed term of twelve or more months is extended of right for a term of twelve months. If the lease is for a term of less than twelve months it is extended of right for the same term (Article 1659).

If the lessor wants to avoid the extension of the lease or wants to increase the rent or change any other condition for the renewal or extension of the lease he must give notice in writing to the lessee. As well, if the lessee wants to avoid the extension of the lease notice in writing must be given to the lessor (Article 1660).

Such notice must be given not later than three months before the expiry of the term in the case of a lease for a fixed term of twelve months or more and one month or one week before the expiry of the term in the case of a lease for a fixed term of less than twelve months according to whether the rent is payable by month or by week. If the rent is payable according to another term, the notice must be given with a delay equal to such term or, if it exceeds three months, with a delay of three months. One of the parties may, for reasonable cause, and with the permission of a judge in chambers, give notice after the expiry of the delay provided that the other party is not prejudiced thereby (Article 1661).

(2) United Kingdom

In Britain, most premises are subject to some sort of government regulation or control and all such regulated or controlled dwellings are subject to a security of tenure scheme. In the Report of The Committee on the Rent Acts, 1971, it was observed that the present legislation in effect in Britain has a two-fold purpose: (1) the provision of security of tenure; and (2) protection against excessive rent.

Regardless of the term the leasing of regulated or controlled dwellings provides the tenants with rights of occupation which may continue for the rest of their lives. In addition, the rights of occupation may continue for the lives of the tenant's spouse and/or another family member bona fide residing with the tenant at the time of his or her death. The tenancy can only be terminated against the wishes of the tenant upon establishing one of the enumerated grounds for possession. Regardless of whether one of the specified grounds is established a court may still refuse to make an order respecting possession if it is "reasonable" to do so (see: The Rent Act, 1968, c. 23, s. 11).

Upon application to the court for possession by the landlord the court may grant the order in the following circumstances: (a) where it is "reasonable" to do so; (b) where suitable alternative accommodation is available; or, (c) where one of a number of grounds is established, namely:

(a) there has been nonpayment of rent lawfully due, or any other breach of an obligation of the tenancy;
(b) any of the following acts has occurred on the part of the tenant, any person residing

or lodging with the tenant, or a sub-tenant: conduct which is a nuisance or annoyance to adjoining occupiers; conviction for using or allowing the premises to be used for an immoral or illegal purpose; acts of waste, neglect or default, causing the conditions of the premises to deteriorate (and the tenant has taken such steps to remove the offender if he or she is a lodger or sub-tenant);

(c) in consequence of the tenant having given notice to quit, the landlord has contracted to let or sell the premises or taken some other step whereby he or she would be seriously prejudiced if possession were not obtained;

(d) the tenant has assigned or sublet the whole, or a part, of the premises without the landlord's consent;

(e) the landlord reasonably requires the premises for the residence of a whole-time employee of the landlord, or a tenant of his or hers where the tenant was formerly in his or her employ, or the dwelling was let in consequence of that employment;

(f) the landlord reasonably requires the premises as a residence for himself or herself, any son or daughter over 18 years, his or her mother or father, or the mother or father of his or her spouse. A qualification exists to this ground that an order will not be made where the court considers that greater hardship would be caused by making it than by refusing it;

(g) a sub-tenant has been charged more than the recoverable rate for the sublet premises.

If the landlord establishes one of the following grounds then the court has no discretion and must grant an order for possession:

(a) The landlord formerly lived in the premises and requires them for himself or herself or any member of the family residing there with the landlord when he or she was last living there. This is subject to the qualification that written notice that possession must be required was given before the start of the tenancy.
(b) The premises have been held for the purpose of being available for occupation by a minister of religion as a residence from which to perform his or her duties and are now required for such occupation. Again, written notice must have been given of this possibility before the start of the tenancy.
(c) The landlord requires the premises which were at one time occupied by a person employed in agriculture under the terms of his or her employment for the occupation of a person whom the landlord employs or will employ in agriculture.
(d) The premises are overcrowded in such circumstances as to render the occupier guilty of an offense.
(e) The premises are unsanitary.
(f) The premises are required by a development corporation or a local highway authority for new town purposes.
(g) The premises are a part of a house in which an undertaking has been given that it will not be used for human habitation because of inadequate means of escape from fire.

If a landlord attempts to regain possession and thereby deprive a tenant of occupation section 30 of The Rent Act makes it a criminal offense to take such action without first obtaining a court order. It is also an offense to withdraw services unreasonably or to harass a tenant in order to force him out of occupation. It should also be emphasized again that the security of tenure system is only applicable to controlled or regulated dwellings (see: Cheshire's Modern Law of Real Property, 11th edition, 1972, at p. 459).

(3) United States

A number of jurisdictions in the United States have implemented security of tenure schemes some of which are dependent upon rent control and others operating independent of rent control.

The City of New York has a comprehensive security of tenure system which operates together with a rent control system in relation to those dwellings which are designated as "controlled dwellings". Landlords are prohibited from refusing to renew leases of tenants in occupancy with a very limited number of exceptions.

In 1970, the State of Massachusetts implemented legislation enabling rent control to be established by municipalities. Landlords are permitted to evict tenants from controlled accommodation for "just cause". A landlord may take eviction action provided that his purpose for so doing does not conflict with the provisions or purposes of the legislation. Eviction must be approved by the Municipal Rent Control Commissioner. The following types of premises are exempted from the system: (a) premises used by transients; (b) premises owned by a public institution; (c) those premises that are a part of a two-

or three-unit building in which the owner resides; and, (d) cooperatives.

Jurisprudence in the United States reveals an emerging response to problems encountered by the urban poor. Security of tenure is one aspect of this response which has been substantially increased by American courts in relation to public housing projects. As well, the Department of Housing and Urban Development (HUD) has issued a number of directives the principal aim of which is to prohibit public housing authorities from terminating leases arbitrarily. In the past, higher standards were not imposed upon public landlords vis-a-vis a private landlord. In Rudder v. U.S., 226 F. 2d 51 (D.C. cir. 1955), however, it was held that, ". . . the government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process."

Until recent years the impact of the HUD directives was not determined. It has now been held by such decisions in Escalera v. New York City Housing Authority, 425 F. 2d 85 (1970), and Rolle v. New York City Housing Authority, 425 F. 2d 853 (1970), that the directives are binding on public authorities. These decisions have also indicated that the Fourteenth Amendment requirement of due process is applicable to the actions of such authorities and officials. Accordingly, a citizen may not be evicted or otherwise deprived of a continued tenancy or required to pay an additional rent or fine without first being afforded the minimum procedural safeguards such as the right to a hearing, the right to be represented by counsel and the right to cross-examination.

Now, in the United States, it appears clear that eviction can only be supported where it is for "just cause".

While security of tenure schemes have not been adopted in all of the states in the private sector at least tenants of public housing cannot be evicted at the will of the landlord and this development is seen to be one important step in ameliorating the problems of the urban poor. In "Administrative Law: A Tenant May Not Be Deprived Of Continued Tenancy In Public Housing Without First Being Afforded The Minimum Procedural Safeguards Guaranteed By Due Process", (1970), 37 Brooklyn L. Rev. 184, the following comment was made at p. 192:

> The governmental interest approach may well provide the necessary vehicle to transport the beneficiaries of public assistance out of the category of constitutional non-persons. In the field of public housing, the avowed goal has been to free the poor from the disease, danger, and anomie rampant in the urban slum; to free them so that they may develop their talents and interests to the fullest extent, and by so liberating them, to allow for their assumption of productive roles in . . . society. Can this goal be realized as long as a tenant may never feel secure from unjustifiable eviction?

4. A Consideration of Specific Problems Respecting Retaliatory Eviction

In this section two aspects of retaliatory eviction will be considered: (a) that situation which sometimes arises when a landlord evicts a tenant who has reported housing and health standard violations; and, (b) eviction action by a landlord of a tenant who has withheld rent because of the landlord's breach of housing or health standards. Specifically, the decision of the United States Court of Appeals, District of Columbia Circuit

in Edwards v. Habib, 397 F. 2d 687 (1968) and some of the provisions of the American Bar Foundation Model Residential Landlord-Tenant Code, will be discussed.

(1) Eviction of Tenant who Reports Housing or Health Standard Violation

(a) Edwards v. Habib

Edwards v. Habib is a relatively recent decision from the United States Court of Appeals, District of Columbia Circuit which allows tenants in month-to-month tenancies a defense against actions by landlord to regain possession of demised premises. In this case the tenant had complained to local authorities that his dwelling did not meet the minimal housing standards in that jurisdiction and was thereafter punished by the landlord through eviction. Now, in the District of Columbia, the tenant is permitted to assert as a defense to eviction the illegal retaliatory motive of the landlord. The decision has been hailed as an important judicial attempt to bring landlord tenant law into conformity with the reality of a continuing domestic housing shortage and the necessity to enforce municipal housing codes (see: Report of the National Advisory Commission on Civil Disorders (1968), at p. 257).

The Report on Civil Disorders, supra, noted the following:

> [S]ince 1960 . . . [t]here has been virtually no decline in the number of occupied dilapidated units in metropolitan areas, and surveys in New York City and Watts actually show an increase in the number of such units. These statistics have led the Department of Housing and Urban Development to conclude that while the trend in the country as a whole is toward less substandard housing, there are individual neighbourhoods and

areas within many cities where the housing situation continues to deteriorate.

The Habib case was decided in a jurisdiction in which housing problems are among the most acute in the United States. Yet the inadequacy of housing for the poor in the District of Columbia is only a small part of the continuing national crisis. It has been noted by some writers that despite the fact that these housing problems have been widely reported in recent years, efforts to meet them have been inadequate (see: Gribetz and Grad, "Housing Code Enforcement: Standards and Remedies", (1966), 66 Col. L.R. 1254, at p. 1255).

American statistics demonstrate a need for additional units and for renovation of existing units in urban areas, but they do not reveal the effects that housing conditions have on the lives of individuals who are forced to live in overcrowded and substandard units.

During those times when there is a slowdown in the construction industry and an inadequate program to build new housing units for the poor results, an inadequate present supply of suitable accommodations must be buttressed by a program of rehabilitation. The basic instrument in any rehabilitation program has been the housing code which sets minimum standards for dwelling units. One commentator has noted that since codes are less expensive and politically more feasible than large scale building programs, more cities and municipalities continue to adopt them (see: Housing and Home Finance Agency, Office of the Administrator, Division of Housing Research, Local Development and Enforcement of Housing Codes (1953)).

The American experience reveals that even in those jurisdictions where housing codes have been adopted they

have not always been uniformally and effectively enforced. One fact which has been cited as contributing to the retardation of code enforcement is that very often more than one agency is responsible and the overlapping jurisdiction has resulted in inefficiency. Staff size has been noted as being inadequate and the budgetary limitations in some jurisdictions have precluded hiring of well-trained personnel (see: Note, "Enforcement of Municipal Housing Codes", (1965), 78 Harv. L. Rev. 801).

Due to these problems many municipalities are now relying almost exclusively on citizen complaints. Looking at the situation ideally, tenant complaints would be an important and probably the principal source of information --if tenants were aware of the existence of codes and had confidence in their enforcement. An effective and efficient complaint procedure would permit tenants to involve themselves in altering illegal housing conditions.

There is little doubt that tenants will be deterred substantially from making any such complaints when a landlord can evict a tenant because he has complained to the authorities about conditions. In urban areas in Alberta such as Edmonton which is now suffering a housing shortage, the threat of eviction is an overwhelming weapon which the landlord can wield.

The decision in Habib is but a partial answer to the critical need for providing housing for the poor. To the degree that citizen complaints will be encouraged and code enforcement attained, some improvement in housing conditions may be expected by adoption of such a rule in this jurisdiction. Even if successful enforcement can be improved the tenant still faces a persistent housing shortage, a possibility of future retaliatory action, and a continued weak bargaining position with his landlord.

Respecting this, Mr. Justice Wright, who wrote the decision in the Habib case, made the following comment in the New York Times, March 9, 1969 (magazine) at p. 116:

> Though our most pressing social, moral and political imperative is to liberate the urban poor from their degradation, the courts continue to apply ancient legal doctrines which merely compound the plight of the poverty stricken. These doctrines may once have served a purpose, but their time has passed. They must be modified or abandoned.

Finally, it is important to note that in the Habib case, the court concluded, in a generalized fashion, that the law and public policy favours the interests of the tenant rather than the landlord. Of course, courts in this jurisdiction may not arrive at the same conclusion if presented with the opportunity to do so both because of different statutory law and possibly an unwillingness to depart from the well established doctrines. On the other hand, it has been argued that the Habib case supports a more universally expanded view of tenant's rights and that while such a view, in and of itself, will not bring immediate change in housing conditions, increased judicial recognition and acceptance of these rights would be an important step in modifying or abandoning a system of landlord oriented law.

(b) The American Bar Foundation Model Residential Landlord-Tenant Code

Another relatively recent development in the field of landlord/tenant law is the publication by the American Bar Foundation of the Model Residential Landlord-Tenant Code (tentative draft, 1969). While the express purpose of the Model Code is not to serve as a proposal for legislation, but rather as a vehicle for the promotion of

discussion toward possible reforms, it is worthy of consideration by any legislature contemplating a reform of existing law. The section of the Model Code relating to retaliatory evictions (s. 2-407) is more comprehensive than any existing statutes examined in this study.

The Code provides that for as long as the tenant tenders payment of rent or receipts for rent lawfully withheld, the landlord may not bring an action against the tenant to recover possession or otherwise cause the tenant to abandon the premises involuntarily. The landlord may not increase the tenant's rent or decrease the services to which the tenant is entitled. These actions are prohibited within six months of any of the following occurrences:

(1) a good faith complaint by the tenant of a violation of a housing or sanitary code to the authority charged with the enforcement of such code;
(2) the filing of a notice or complaint of a housing or sanitary code violation by the enforcement agency; or,
(3) a good faith request for repairs made by the tenant to the landlord.

The model Code also delineates the respective rights of the landlord and tenant concerning the reporting of housing code violations. Besides stating the circumstances under which the tenant will not be subject to acts of retaliation, the Code, with respect to the landlord's right to deal with his own property and to contract freely, enumerates those situations in which the landlord will be able to evict the tenant or raise the tenant's rent, regardless of prior actions which under these provisions would render the tenant immune to evictions or rent increases. Notwithstanding that the eviction may be one

which the code would ordinarily classify as retaliatory, the landlord would be able to regain possession of the premises if:

(1) the tenant is committing waste or is a nuisance, using the premises for an illegal purpose or using the premises for other than dwelling purposes in violation of the rental agreement;
(2) the landlord in good faith seeks to recover the premises for immediate use for his own dwelling;
(3) the landlord in good faith seeks to recover the premises to substantially alter or demolish them;
(4) the landlord in good faith seeks to recover the premises to terminate their use as a dwelling for a period of at least six months;
(5) the complaint or request for repair relates to a condition that was caused by the tenant or another person in his household;
(6) the condition of the premises was in compliance with the applicable codes, statutes, and ordinances at the time the complaint was made;
(7) the landlord in good faith has contracted to sell the premises and the purchaser desires to use the premises in accordance with (1), (2), or (3) above; or
(8) the notice to terminate was given prior to the time when the complaint was made.

The Model Code also provides a sanction against a landlord who is unwilling to comply with its mandates.

A tenant, against whom action is taken in violation of the provisions of the Code, would be entitled to recover the greater of three months' rent or treble damages, including the costs of the suit and solicitor's fees.

(2) Eviction of Tenant Who Withholds Rent Because of Landlord's Breach of Housing or Health Standards

In Robinson v. Diamond Housing Corporation, 463 F. 2d 853 (1972), the plaintiff had entered into a month-to-month lease of a house in the District of Columbia with Diamond Housing Corporation. Diamond sued for possession when rent was withheld due to the unsafe and unsanitary condition of the premises. Robinson was able to successfully assert a defense which had been previously established in Brown v. Southall Realty Co., 237 A. 2d 834 (1968), which held that a lease purporting to convey property burdened with substantial housing code violations was void and that the landlord was not entitled to regain possession from the tenant because of the tenant's non-payment of rent. Following a second unsuccessful suit, Diamond sued for possession on the basis of a thirty-day notice to quit given a tenant at sufferance and alleged that the corporation was unwilling to make repairs and intended to remove the unit from the market. Robinson claimed that the eviction action was filed in retaliation for the assertion of the defense established in the first suit, and, therefore, could not be maintained. The trial court, however, granted Diamond's motion for summary judgment and was affirmed by the District of Columbia Court of Appeals which held that, as a matter of law, the retaliatory eviction defense was unavailable. On further appeal, the United States Court of Appeals for the District of Columbia Circuit reversed, holding that in view of the legislative policy enunciated in the District of Columbia housing regulations, and the accompanying reliance on private

enforcement, Mrs. Robinson should have been given the opportunity to prove the facts necessary to establish a retaliatory eviction defense.

The court in the Diamond case appears to have taken the next logical step after Habib in protecting the rights of tenants. The impact of the Diamond decision remains speculative, and, in the context of the increasing deterioration of urban areas in the United States, such a holding may be a final factor in driving borderline landlords from the business, thus injecting even greater state control and regulation into what was once the private sector. On the other hand, it may be the one necessary step left to keep the landlord, even with the burden of proof he bears, from evicting a tenant in the face of legislative prohibition.

The Habib position forbidding retaliatory eviction has been accepted by other jurisdictions, but whether Diamond will enjoy such support remains to be seen (see: Aweeka v. Bonds, 20 Cal. App. 3d 278 (1971); and, Silberg v. Lipscombe, 117 N.J., super. 491 (1971)).

One of the most important factors that will influence the response to the Diamond case is whether landlords will adjust to the decision, a view which was shared by the majority, or whether landlords will then flee from the market, a view that was expressed by the dissenters. If the former, Diamond may stand as the vanguard of future housing policy--if the latter, then it may well be the high water mark in the struggle to control the blight which has affected urban housing in American cities. Nonetheless, it appears that the Diamond case will be either an end or a beginning of major developments in landlord/tenant law for some time.

(3) Some Recent Trends

During recent years a number of jurisdictions in the United States have attempted statutory reform of their landlord/tenant law in order to aid in the attack on slum housing. Other methods, untried as yet, have been promoted by legal commentators. Three types of reform have received principal attention: (a) improved housing code enforcement; (b) rent withholding; and, (c) tenant repairs.

(a) Improved Housing Code Enforcement

Those who advocate improved housing code enforcement envisage a fundamental change in the administration of such codes. They call for increased inspections and larger fines imposed through civil liability to government instead of criminal sanctions. In this way the economic advantage of code violation would be diminished through increased liability for infraction. The attendance of the defendant landlord at trial would not be necessary to impose "civil damages", provided the landlord was properly advised and served with notice. Moreover, the burden of proof and other procedural safeguards incidental to criminal trials could be dispensed with (see: Gribetz and Grad, supra).

However, improved housing code enforcement offers some difficulties. First of all, there is little doubt that it is controversial and many observers feel that it is too expensive for the return. It would require increased staff on the payrolls of cities whose budgets are already swollen. The money thus spent would not itself pay for any repairs. Furthermore, code enforcement is dependent on those whose interest is not directly involved, i.e., building inspectors. The most effective aspect of the

proposal is the coercive effect of increased potential liability for code infraction--a benefit which could possibly be obtained elsewhere.

(b) Rent Withholding

The potential advantage of rent withholding seems to be twofold: (1) it can provide an economic incentive to repair the premises; and, (2) it can create a small potential fund, accumulated rent, to pay for repairs.

Rent withholding differs from rent escrow in that withholding means that the tenant keeps the rent and escrow means that he pays it to a third party stakeholder. Rent withholding is distinct from rent abatement in that withheld rent would be paid when repairs are made, but abated rent would not. A defensive remedy is one which may be employed only after a landlord starts eviction proceedings, while an offensive remedy permits judicial determination before the tenancy is jeopardized. In addition, offensive remedies may be divided into tenant initiated and agency initiated remedies. Tenant initiated remedies permit the tenant to bring his own affirmative action, while agency initiated remedies require a health, housing, welfare, or similar bureaucratic agency to bring the action on the tenant's behalf. Adding differing procedural settings to these variables, it can easily be appreciated that rent withholding and rent escrow present rather interesting possibilities.

Defensive rent withholding and escrow exist in several jurisdictions, most notably New York. With these remedies the aggrieved tenant withholds rent if the landlord refuses to repair. Proof of the defect and of the landlord's refusal to repair after notice constitutes a

defense to eviction for failure to pay rent. In the sense that the tenant takes the initiative by withholding rent when repairs are not forthcoming, it appears to be an offensive remedy. However, the eviction action is the landlord's suit, and should the defense fail, the tenant is evicted. This demonstrates one problem with a defensive remedy: the tenant may be required to guess, at his peril, whether the defect for which he withheld rent was justified.

The defensive nature of the remedy has certain advantages. Placing the burden of commencing legal action on the part of poor, unsophisticated tenants who are, for the most part, unfamiliar with or untrusting of lawyers, will inhibit the use of the remedy. For such tenants, the danger of a defensive remedy is outweighed by the relative ease of giving notice and withholding rent until an eviction action is commenced. If rent withholding becomes an operative part of the landlord/tenant relationship, real bargaining between the parties may emerge. Then the defensive remedy would appear to enable less sophisticated tenants to take part in this bargaining process with greater ease.

On the other hand, where a tenant has a more doubtful case, requiring him to wager his tenancy to give definition to a new statutory procedure would inhibit him from exercising what may turn out to be a well founded complaint. Where the grounds for withholding are vague standards, the problem for the tenant becomes quite real. It would appear important that both offensive and defensive remedies appear in any well planned statutory scheme.

Rent withholding, as a remedy, does not seem to be as desirable as rent escrow. However, it does have a place in a well organized statutory setup because it serves

the legitimate function of initiating "defensive" rent escrow. Since an unpaid landlord can reasonably be expected to start eviction proceedings quickly, withholding rent is a relatively simple way for an aggrieved tenant to "get into court". Once he is there, it is not unfair to require him to pay both back and future rent into court where it will be held in "escrow" until the necessary repairs are made. Requiring him to do so eliminates the potential economic incentive to commit waste. Without this type of withholding, the burden would be on the tenant to commence the action.

Bill No. 17 in British Columbia, the Tenants' Collective Bargaining Rights Act, 1975, has obviously recognized the utility of the rent withholding technique. Section 2 of Bill No. 17 provides that whenever the majority of tenants in residential premises which are owned by the same landlord, join a Block Tenants Association, and this fact is registered with the local Landlord and Tenant Advisory Bureau, then the Association has the legal right to bargain with the landlord on behalf of those tenants on all rental matters. If an agreement on rents and conditions cannot be reached through negotiations, then either party may call on the Landlord and Tenant Advisory Bureau to provide mediation services. The Bureau will conduct hearings and make its recommendations public.

Section 6 of Bill No. 17 provides that if the landlord does not implement the terms of an existing collective agreement or the recommendations of the Bureau, the tenants have the right to withhold rent. If the tenants do not comply, the landlord may commence notice to quit action.

(c) Tenant Repair

In addition to the remedies outlined above, there are lesser remedies the most notable among these being

those provided in the California Civil Code (Cal. Civ. Code, ss. 1941-42 (West, 1954)).

After receiving notice from a tenant that the leased premises violate the housing code, a landlord has a reasonable time to make repairs. If the landlord fails to repair, the tenant may vacate the premises and thereby be released from paying rent, or have the repairs made himself and deduct the expense from the next rent payment.

The right to vacate does not seem to be much of a remedy for poor tenants who are likely to have week-to-week or month-to-month tenancies; for practical purposes they already have that remedy and it does them no good. The trouble and expense of moving, including time lost from work makes it too expensive. The right to vacate may do something for middle class individuals whose written lease purport to relieve the landlords of the obligation to repair.

Of course, the most interesting part of this plan is the right to repair and deduct. Limited to a maximum of one month's rent in some jurisdictions, such as California, this remedy is suited to inexpensive repairs which may be quite important. Many electrical, plumbing and heating repairs may fall within this category, disputes over which should not require the tenant to institute legal action. If the landlord elects to contest the deduction, he may do so by bringing an action for rent or eviction for failure to pay rent, contending that the condition did not exist, or that it was the tenant's fault.

The repair and deduct remedy is not useful for large repairs. It also has the disadvantage of requiring an expenditure of "rent" money before rent is due in order

to pay for the repairs. Nevertheless, "repair and deduct" is a sensible complement to other tenants' remedies (The Model Residential Landlord-Tenant Code, supra, places considerable reliance on the remedy of repair and deduct. See: s. 2-206).

5. Conclusion

In the foregoing pages an attempt has been made to outline the concept of security of tenure and to articulate the implications of such a scheme if adopted in this province. In the final analysis the purpose of the paper has been nothing more than descriptive. No solutions have been proposed nor recommendations made respecting the course which should be followed in Alberta.

Clearly the concept is controversial. Clearly also, the arguments in support of a security of tenure scheme and the arguments against are equally damned and blessed in many respects.

Not only will the Institute of Law Research and Reform have to deal with the continuous debate over this issue, but as well, landlords, tenants and the people of Alberta will have to find a way in the very real tension created by one of the most pressing problems of the landlord/tenant relationship.