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ENTRY BY LANDLORD
LOCKS AND SECURITY DEVICES
TRADESMEN AND POLITICAL CANVASSERS

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INSTITUTE OF LAW RESEARCH AND REFORM

RESIDENTIAL TENANCIES

ENTRY BY LANDLORD

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1. Common Law

Under the common law premise of an estate in land as the basis of the landlord-tenant relationship, the granting of an estate in land to establish the tenurial relationship serves to vest in the tenant the right of exclusive possession of the demised premises. This right of exclusive possession is made enforceable by the covenant of quiet enjoyment given by a landlord to a tenant upon the creation of the tenancy. It has been held that the covenant of quiet enjoyment is automatically implied into a landlord-tenant relationship (see: Warren v. Keen, [1954] 1 Q.B. 15).

The obligation to leave the tenant in quiet possession of the demised premises does not mean quiet in the acoustic sense. Should the tenant be inconvenienced by noise, for example, as a result of the landlord carrying out repairs outside the demised premises, the tenant's remedy will not lie in an action for breach of the covenant of quiet enjoyment, but rather, will sound in tort as an action for nuisance.

The common law covenant of quiet enjoyment is an assurance against the following:

(a) it protects a tenant from the consequences of a landlord's defective title to the premises; and,

(b) assures against any substantial interference by the landlord of his agents with the tenant's use and enjoyment of the premises.

It has been held that anything less than actual physical interference with a tenant's use and enjoyment of the premises will be insufficient to found an action based upon breach of the covenant of quiet enjoyment. The

English case of Browne v. Flower [1971] Ch. 219, being illustrative of the necessity for actual physical interference, held that a tenant had no cause of action under the covenant for quiet enjoyment even though the landlord had erected an external staircase which passed the tenant's bedroom so as to seriously affect the tenant's privacy.

From the foregoing, it may be said that, at common law, the landlord has no right to enter the demised premises without the tenant's prior consent.

Although numerous jurisdictions in Canada have enacted legislation to strengthen or give statutory recognition to the tenant's right of privacy, which will be considered below, there have also been attempts to alter the common law relating to a landlord's right of entry through the mechanism of the written lease. An example of such alteration or derogation from the common law right of quiet enjoyment can occur where a landlord covenants in a lease to make repairs. In such a situation a landlord will have a license to enter the premises for a reasonable time to execute the repairs (see: Williams, Canadian Law of Landlord and Tenant, at p. 417, and reference therein to, Saner v. Bilton (1878) 7 Ch. D. 815; and, Manchester Bonded Warehouse Co. v. Carr (1880), 5 C.P.D. 507).

In the studies conducted by the Ontario Law Reform Commission and Professor Sinclair, evidence appeared that some landlords were entering residential premises occupied by tenants without the tenant's permission. These entries were sometimes made for the purpose of executing repairs and sometimes for no discernable reason except to check up on the tenant and the state of the rented premises (see: Sinclair Report, at p. 103).

2. Statutory Provisions in Canada

The situation at common law may be summarized by saying that unless the parties, most commonly in a written lease, have agreed on the terms of a landlord's entry, a landlord may not enter the demised premises without first having obtained the tenant's permission.

From a practical standpoint, and in view of the increasing activities being carried out by landlords or their agents in large apartment buildings, there is evidence to suggest that landlords consider that they have not, by giving a right of occupation to a tenant, relinquished all rights of possession or entry into the demised premises. It would seem that such a situation is in existence in most Canadian provinces as they appear to have dealt with the problem of the landlord's right of entry in a fairly uniform manner. Another possible reason for the legislative provisions is a desire to set out the possible times and circumstances of entry by statute in such a manner as to clearly delineate the encroachments on the tenant's right to exclusive possession and quiet enjoyment of the demised premises (see: Sinclair Report, at p. 104).

(1) The Present Law in Alberta

The Landlord and Tenant Act, R.S.A. 1970, c. 200, has made provision for regulating a landlord's right of entry in section 20, which provides as follows:

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

> first given written notice to the tenant at least 24 hours before the time of entry, and the time of entry shall be during daylight hours and specified in the notice, except that nothing in this section shall be construed to prohibit entry with the consent of the tenant given at the time of entry.
>
> [1970, c. 64, s. 3]

A number of comments may be made with respect to the above provision. The section is cumbersome and would greatly benefit from a tabular or point form for ease of reading and understanding the various aspects of the section.

The entry provisions may be summarized in the following manner if one takes the premise that the landlord may not enter except:

(1) in an emergency;

(2) when the landlord has the right of entry to show the premises to prospective tenants during reasonable hours (it is to be noted that this right only arises after a notice to terminate or notice to quit has been given or received by the landlord);

(3) where the landlord has given twenty-four hours written notice and subsequently makes an entry during daylight hours; and,

(4) when the tenant gives his consent to the landlord prior to or at the time of entry.

These areas were set out in the form of exceptions as listed above by Professor Sinclair in his analysis of the Ontario legislation which is an exact copy of the Alberta provisions (see: Sinclair Report, at p. 105).

With respect to the emergency provision for entry,

there is little doubt that such a provision is both worthwhile and necessary in modern residential tenancy situations.

The second exception, arising after there has been a notice to terminate or a notice to quit, appears reasonable, but it might be extended to include prospective purchasers of the property in addition to prospective tenants. British Columbia has added this provision in s. 33(2) of the new Landlord and Tenant Act, S.B.C. 1974, c. 45. Also Professor Sinclair felt that mortgagees could be included here for purposes of gaining entry to make appraisals, but concluded that they could gain entry under that part of the section allowing entry after 24 hours written notice.

When considering the 24-hour written notice provision, the problem of "daylight hours" has been mentioned by Professor Sinclair. Such a phrase could work some difficulties, particularly when the shortness of daylight hours in the winter months is considered. A more acceptable regulation of time might be through the use of the phrase "reasonable hours". This would, if the word reasonable were to be considered as reasonable for both the landlord and the tenant, provide the maximum degree of latitude in this part of the section and would provide maximum fairness for all concerned (see: Sinclair Report, at p. 106).

The provision for entry where consent is given by the tenant at the time of entry seems reasonable at first sight, although situations of potential abuse are not hard to find (e.g., the overly nosy landlord or a landlord wishing to make repeated checks on the way the tenant is maintaining the demised premises).

It is to be noted that there is no provision for entry by a landlord where a tenant has abandoned or is believed to have abandoned the premises. This has been

provided for in s. 33(2) of the new British Columbia legislation considered below.

(2) Ontario

Ontario has a verbatum reproduction of the Alberta provision relating to a landlord's right of entry such that the same observations as those noted above would be applicable.

(3) British Columbia

In its recently enacted residential tenancy legislation, British Columbia has made provision for a landlord's right of entry in s. 33 which states:

> 33.(1) Subject to subsections (2) and (3), except where
>
> (a) an emergency exists; or
>
> (b) a tenant consents at the time of entry; or
>
> (c) a tenant abandons the premises in accordance with section 45,
>
> no landlord shall exercise a right to enter residential premises that a tenant has a right to occupy under a valid and subsisting tenancy agreement, unless the landlord gives written notice of entry to the tenant not less than twenty-four hours before the time of entry.
>
> (2) Where a landlord is entitled to show residential premises to prospective purchasers or tenants after notice of termination of a tenancy is given, no landlord shall enter, or permit purchasers or tenants to enter, the residential premises unless
>
> (a) the landlord gives notice of entry to the tenant not less than eight

hours before the time of entry; or

(b) the tenant consents, at the time notice of termination is given, to the landlord entering the residential premises upon giving no notice, or upon giving such shorter notice than eight hours as the tenant may specify in his consent.

(3) Where a landlord gives to a tenant

(a) notice of termination of a tenancy; and

(b) not more than forty-eight hours after the time of notice of termination is given, notice of entry, for the purpose of inspecting the residential premises for damage,

he may, upon giving such notice of entry to the tenant not less than eight hours before the time of entry, unless the tenant consents to no notice, or such shorter notice than eight hours as he may specify in his consent, enter the residential premises for that purpose during the thirty-six hours following the time notice is given under clause (b).

(4) A notice of entry shall specify the hour during which the landlord intends to enter residential premises, and such hour must, unless the tenant otherwise consents, be between eight in the forenoon and nine in the afternoon.

(5) No landlord shall enter residential premises more than once under subsection (3).

The British Columbia legislation has overcome the problems of form contained in s. 20 of the Alberta Act. Also to be noted is the particularity of provision for entry to inspect premises after notice of termination has been given.

With respect to notice of entry for showing the demised premises to prospective tenants or purchasers, there is no requirement that a notice of entry from the landlord be made in writing.

(4) Saskatchewan

It may be seen from the provisions and form of statutory condition 10 under s. 16 of the Saskatchewan legislation that an attempt has been made at setting out the entry provisions in point form. The condition reads as follows:

> 10.(1) Except in cases of emergency or where the landlord has the right to show the residential premises to a prospective tenant during reasonable hours after notice of termination of the tenancy has been given by the tenant to the landlord, the landlord shall not enter the residential premises unless he has first given at least twenty-four hours written notice to the tenant of his intention to enter the premises.
>
> (2) Subject to subsection (1), the landlord may enter the residential premises on any day during daylight hours except on a Sunday, a holiday or during a temporary absence from the premises of the tenant and the other occupants, if any, of the premises.
>
> (3) Nothing in this condition shall be construed to prohibit entry by the landlord with the consent of the tenant given at the time of or immediately before the entry.

Subsection (2) is interesting in that it makes additional restrictions upon the conditions and times of entry by the landlord. The statutory restriction against

the right of entry during a tenant's absence from the demised premises seems meritorious in trying to overcome a problem of potential unauthorized entry notwithstanding that entry during a tenant's absence is made subject to the notice requirements of subsection (1).

A further interesting aspect of subsection (2) is the use of the term "daylight hours" which is inconsistent with and less preferrable than the "reasonable hours" provision in subsection (1).

(5) Manitoba

Section 95 of the Manitoba Landlord and Tenant Act, S.M. 1970, c. 106; as amended by S.M. 1971, c. 35 and S.M. 1972, c. 39, contains provisions regulating a landlord's right of entry in the following terms:

> 95. Except in cases of emergency and except where the landlord has a right to show the premises to prospective tenants at reasonable hours after notice of termination has been given, the landlord shall not exercise a right to enter the rented premises unless he has first given written notice to the tenant at least twenty-four hours before the time of entry which shall be during daylight hours and specified in the notice; but nothing in this section shall be construed so as to prohibit entry with the consent of the tenant given at the time of entry, or where a tenant voluntarily gives consent in writing for a specific purpose or occasion.

The above provision is substantially the same as s. 20 of the Alberta Landlord and Tenant Act and the comments pertaining to the Alberta legislation are applicable here. The last phrase of the section, "or where a tenant voluntarily gives consent in writing for a specific purpose or occasion", --which has been added by the amendments to the Manitoba

residential tenant legislation in 1971 (S.M. 1971, c. 35, s. 8) is the only addition to the Alberta and Ontario provisions. The doubtful benefit of this clause for a tenant has been described in the Sinclair Report, at pp. 108-109, as follows:

> I would be very hesitant about adding this last condition, on the basis that a landlord may well interpret it to mean that the tenant may give such voluntary consent in advance in writing in a lease at the time that the lease is signed, and thus should be able to contract out of the prohibitions contained within section 95, and do away with the protection which has, in fact, been extended to him. As most of these Acts provide that a tenant may not be forced to contract out of his rights as given by the statute, unless the legislation in a particular section provides otherwise, it can well be argued, . . . that these last few quoted words do give to the landlord the ability to require the tenant to contract out of his rights, and to do so in advance, so long as there is a listing of those specific purposes or occasions on which a landlord may enter.

Whether one agrees or not with the foregoing interpretation of the last phrase of section 95 of the Manitoba legislation, it would appear to cast some doubt upon the merit of the phrase which does not appear to have provided any substantial benefit to a tenant.

(6) Quebec

The Province of Quebec has requested entry to the demised premises by the landlord in the Civil Code. Statutory condition 7 reads as follows:

> 7. Except in case of urgency and subject to his right to have a prospective lessee visit the dwelling, under article 1645 (clause number 6), the lessor must give

> the lessee notice of at least twenty-four hours of his intention to visit the premises in accordance with article 1622.
>
> The lessor must also give notice of at least twenty-four hours of his intention to have the dwelling visited by a prospective purchaser.

The above provisions respecting notice of intention to enter are dependent, for their application, upon the terms of Articles 1645, 1622 and 1656 of the Civil Code which are set out below:

> Article 1645. (Repl., 1973, Bill 2, s. 1.)
>
> In leases with a fixed term of a year or more, the lessee must, for leasing purposes, allow the premises to be visited and signs to be posted, during the three months preceding the expiry of the lease.
>
> In leases with a fixed term of less than one year, the delay is one month.
>
> Where the lease is for an indeterminate term, the lessee is bound to that obligation.
>
> Article 1622. (Repl., 1973, Bill 2, s. 1.)
>
> The lessee must permit the lessor to ascertain the condition of the thing.
>
> The lessor must exercise this right in a reasonable manner.
>
> Article 1656. (Repl., 1973, Bill 2, s. 1.)
>
> Except in case of urgency and subject to his right to have a prospective lessee visit the dwelling, under article 1645, the lessor must give the lessee notice of at least twenty-four hours of his intention to visit the premises in accordance with article 1622.
>
> The lessor must also give notice of at least twenty-four hours of his intention to have the dwelling visited by a prospective purchaser.

The above provisions are substantially the same as those in the common law provinces. It is to be noted that prospective purchasers are included, similar to the British Columbia legislation. However, there is no requirement in any of the Articles regulating entry by a landlord, that notice of an intention to enter the premises after notice of termination has been given must be in writing.

Furthermore, the provisions of Article 1622 do not place any limits on the number of times that a landlord may enter to ascertain the condition of the demised premises other than the requirement that the landlord's right must be exercised in a reasonable manner. This analysis of the Quebec provisions respecting privacy, diverges substantially from that of Professor Sinclair (see: Sinclair Report, at pp. 107-108, which employs analogy reasoning which, it is submitted, is unnecessary).

(7) Nova Scotia

Nova Scotia has attempted to regulate a landlord's right of entry to the demised premises by making the conditions of entry a statutory condition. This condition set out in section 6(1) reads as follows:

6. Entry of Premises

Except in the case of an emergency, the landlord shall not enter the premises without the consent of the tenant unless

(a) notice of termination of the tenancy has been given and the entry is at a reasonable hour for the purpose of exhibiting the premises to prospective tenants; or

(b) the entry is made during daylight hours and written notice of the time of the entry has been given to the

tenant at least twenty-four hours in advance of the entry.

With the exception of its more tabular form, the Nova Scotia provisions relating to entry may be seen to be very similar to those in Alberta and Ontario.

(8) New Brunswick

The New Brunswick Landlord and Tenant Bill has followed the recommendation of Professor Sinclair and the results may be seen in the provisions of s. 16 of the Bill which state:

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16.(1) Except as provided in this section, a landlord shall not enter the demised premises during the term of a tenancy.

(2) Where

(a) a tenant has abandoned the demised premises; or

(b) an emergency is present;

a landlord may enter the demised premises at any time without notice.

(3) Where the landlord wishes to enter to carry out normal repairs or redecoration on the premises he may do so only after having given the tenant a minimum of seven days notice.

(4) Where the landlord desires to enter to

(a) show the premises to prospective purchasers or mortgagees; or

(b) carry out an inspection of the premises;

he may do so only after having given the tenant a minimum of twenty-four hours notice.

(5) During the last rental period of the tenancy agreement and where the lease so provides the landlord may enter to show the premises to prospective tenants without any notice requirement.

(6) Except with respect to subsection (2), an entry by a landlord is to be made on a day other than a Sunday or a holiday and between eight o'clock in the forenoon and eight o'clock in the afternoon.

(7) Notwithstanding any provision of this section, where the tenant consents at the time the landlord may enter without any notice requirement.

The provision of section 16(1) is of interest because it gives statutory recognition to the common law principle that a landlord does not have a right of entry into the demised premises during the term of the tenancy. Subsection (5) should be noted as it provides for entry without any notice during the last rental period of the tenancy after notice to terminate has been given. This provision did not appear in the recommendation of Professor Sinclair and, it is submitted, could result in considerable interference with a tenant's privacy during the last rental period (see: Sinclair Report, at p. 111).

Subsection (6) is to be noted as it follows the recommendation of Professor Sinclair and the comparable legislative provision in Saskatchewan.

(9) Prince Edward Island

Prince Edward Island employs a point form to set out the exception to a tenant's privacy whereby a landlord may enter the demised premises. The provisions for entry are found in section 103 which states:

103. Except

(a) in cases of emergency; or

(b) with the consent of the tenant given at the time of entry; or

(c) where the tenant abandons the premises,

the landlord shall not exercise a right to enter the rented premises unless he has first given written notice to the tenant at least twenty-four hours before the time of entry, shall be between the hours of eight o'clock in the forenoon and nine o'clock in the afternoon and specified in the notice.

The reference to abandonment of the premises by the tenant should be noted as a circumstance under which a landlord may enter the demised premises without the requirement of notice in writing.

It is interesting to note from the Prince Edward Island section that there is no provision specifically relating to a right of entry in the landlord to show the premises to prospective tenants or purchasers after notice to terminate has been given.

(10) Newfoundland

Statutory Condition 5 under section 7, subsection (1) of the Newfoundland residential tenancy legislation is substantially the same as that in Ontario and Alberta. From the provision which is set out below, it can be noted that there has been an attempt to place the terms of entry in a point or tabular form which makes them more easily discernable than is the case in Alberta or Ontario.

5. Entry of Premises

Except in the case of an emergency, the landlord shall not enter the premises without the consent of the tenant unless

(a) notice of termination of the tenancy has been given and the entry is at a reasonable hour for the purpose of exhibiting the premises to prospective tenants or purchasers; or

(b) the entry is made during the daylight hours and written notice of the time of the entry has been given to the tenant at least twenty-four hours in advance of the entry.

3. Issues

(1) Should the landlord have an unqualified right to go into the rented premises in cases of emergency?

(2) 1. Should the landlord have the right to go into the rented premises to show them to prospective tenants?

2. Should he have that right only after a notice to terminate or notice to quit has been given or received by the landlord?

3. Should the right be restricted to certain hours? If so, should they be "daylight hours", or "reasonable hours" or something else? If "reasonable hours", should these be defined as being reasonable to both the landlord and the tenant?

(3) 1. Should the landlord have the right to go into premises to show them to prospective purchasers of the property?

2. Should he have that right only after a notice to terminate or notice to quit has been given or received by the landlord?

3. Should the right be restricted to certain hours? If so, should they be "daylight hours", or "reasonable hours", or something else? If "reasonable hours", should these be defined as being reasonable to both the landlord and the tenant?

(4) 1. Should the landlord be entitled to go into the premises to allow a mortgagee to make an appraisal?

2. Should he have that right only after a notice to terminate or notice to quit has been given or received by the landlord?

3. Should the right be restricted to certain hours? If so, should they be "daylight hours", or "reasonable hours" or something else? If "reasonable hours", should these be defined as being reasonable to both the landlord and the tenant?

(5) 1. Should the landlord be required to give notice before going into the premises for any of these reasons?

2. If so, what period of notice should be given? Should it be 24 hours or some other period?

3. Should the notice be in writing?

(6) Should the landlord be permitted to go into the rented premises at any time with the tenant's consent?

(7) Should the landlord be able to go into the rented premises when he believes that the tenant has abandoned the premises?

(8) If the landlord's right to go into the premises is to be regulated by law, should the landlord and tenant be permitted to contract out of the regulation?

INSTITUTE OF LAW RESEARCH AND REFORM

RESIDENTIAL TENANCIES

LOCKS AND SECURITY DEVICES

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1. Introduction

The alteration of locks or other security devices on demised premises has been used in the past by landlords as a means of excluding a tenant from the demised premises. The most prevalent reason for such action would appear to be dissatisfaction on the part of the landlord with a particular tenant. The act of changing locks without the knowledge of the tenant is without legal authority and amounts to constructive eviction (see: Sinclair Report, at pp. 117-118).

The alteration of locking devices or adding of security devices by a tenant to the demised premises can produce problems such as inability of the landlord to gain access in the case of an emergency such as fire, or the inability to reach a tenant who, through illness or mental instability, locks him or herself in the demised premises.

2. Statutory Provisions in Canada

Most jurisdictions in Canada have recognized the above-mentioned problems concerning locks and security devices and have legislated against a landlord being able to unilaterally change the locking devices during the term of a tenancy. The following analysis indicates the manner in which various provinces have attempted to deal with this problem.

(1) The Present Law in Alberta

There is no provision in the Landlord and Tenant Act in this province relating to the alteration of locks or other security devices.

(2) Ontario

Section 94 of the Ontario Landlord and Tenant Act provides as follows:

> A landlord or tenant shall not, during occupancy of the rented premises by the tenant, alter or cause to be altered the locking system on any door giving entry to the rented premises except by mutual consent.

In analyzing this statutory provision, the following features may be noted:

(a) neither the landlord nor the tenant may alter the locking devices without the consent of the other;

(b) the phrase "during occupancy of the rented premises by the tenant" is, logically, to be interpreted as the term of the tenancy. This lack of precision in the legislation was criticized in the Sinclair Report, at p. 119:

> It perhaps would have been preferable if the legislation had more clearly stated this, and if it is deemed necessary to include such a provision in potential . . . legislation, then it is suggested that the terms 'occupancy of the rented premises' be changed so as to read 'during the demised term while the premises are being occupied by the tenant'.

(c) a further confusing aspect of the Ontario reform is the use of the terms "any door giving entry to the rented premises." In relation to multi-unit buildings, there is usually a locking device on the doors giving access to the common areas of the building followed by the locking device or devices giving access to the tenant's premises. Professor Sinclair feels that the Ontario legislation could be improved

by making it clear that the restriction against alteration of locking devices applies to both forms of entry.

(3) British Columbia

The new residential tenancy legislation in British Columbia has made provision for alteration of locking devices in section 32(1) and (2) which read as follows:

> 32.(1) Subject to subsection (2), no landlord or tenant shall, except by mutual consent, alter or cause to be altered, the locking system on a door that provides access to residential premises.
>
> (2) Where there is a reasonable threat to security, a landlord, in an emergency, may alter the locking system on a door, other than a door that provides direct access to residential premises, that provides access to a residential building.

The provisions of subsection (1), notably the reference to "the locking system of a door" appear to come under the third criticism made by Professor Sinclair which was referred to in the preceding analysis of the Ontario provisions.

Subsection (2) would appear to contain several possible difficulties. What constitutes a "reasonable threat"? There is no guideline within the subsection itself except through the use of the words "in an emergency" and there is nothing in the subsection to indicate who makes the determination that an emergency exists and whether there is a reasonable threat to security. If the person making these determinations is the landlord, there would appear to be no recourse for the tenant who finds himself out of his

apartment building and without means of access to his rented premises.

(4) Saskatchewan

Section 11 of the Saskatchewan Residential Tenancies Act provides for the control of alteration of locking devices as follows:

> Neither the landlord nor the tenant shall, during the term of the tenancy agreement, alter or remove or cause to be altered or removed the locking system on any door giving entry to the residential premises except by mutual consent.

Here again, we see the mutuality of the statutory obligation and the satisfaction of the criticism of Professor Sinclair in regard to the use of the phrase "during the term of the tenancy agreement" instead of "during occupancy of the rented premises."

(5) Manitoba

In its legislation to reform the landlord-tenant relationship respecting residential tenancies, Manitoba has made provision for locks and security devices in section 97(1) and (2) which reads as follows:

> (1) Subject to subsection (2) a landlord or tenant shall not, during occupancy of the rented premises by the tenant, alter or cause to be altered the locking system on any door giving entry to the rented premises except by mutual consent or except where the rentalsman is of the opinion that the alteration is reasonable.
>
> (S.M. 1970, c. 106)

> (2) Every landlord who rents residential premises to a tenant shall install or cause to be installed on the premises, including the door giving entry to the premises, devices necessary to make the premises reasonably secure from unauthorized entry.
>
> (S.M. 1971, c. 35, s. 9)

Whereas the opening phrases of section 97(1) appear to copy the comparable provision in the Ontario legislation, the latter part of the subsection represents a significant change as do the provisions of subsection (2). As stated in the Sinclair Report, at p. 120:

> . . . the section concludes by stating that the alteration may, in addition to mutual consent, take place where 'the rentalsman is of the opinion that the alteration is reasonable'. It would appear that this allowance to a landlord based on the rentalsman would be most efficacious with reference to exterior doors admitting to common areas rather than into the demised premises themselves. This, however, must be considered along with subsection (2) of section 97 which puts a mandatory requirement on a landlord to install on the premises both exterior and interior locking devices to 'make the premises reasonably secure from unauthorized entry'.

Although subsection (2) of section 97 would appear to be aimed at preventing unauthorized entry to rented premises the mandatory language of the subsection can be seen to place a large burden on a landlord of a dwelling house converted to suites or an old apartment building if compliance with the subsection were to require structural alterations to the premises. This problem would probably not effect any highrise construction which has featured interior and exterior locking systems for sometime. The Sinclair Report, at p. 120, takes a negative view of this obligation on a landlord:

> . . . [it] would appear to be an inordinate obligation, and one the writer does not feel is to be recommended.

(6) Quebec

Article 16641 of the Civil Code provides for mutual consent of the landlord and tenant prior to any alteration of the locks giving access to demised premises (see: Repl., 1973, Bill 2, s. 1).

> Article 16641
>
> Locks allowing access to the dwelling may be changed only with the consent of the parties.

This article takes on the form of a statutory lease condition which is mandatory in residential premises leases.

(7) Nova Scotia

Nova Scotia employs a statutory condition in its residential tenancies legislation to regulate the use and alteration of locks and security devices. Section 6(1) states:

> Entry Doors
>
> Except by mutual consent, the landlord or the tenant shall not, during occupancy by the tenant under the tenancy, alter or cause to be altered the lock or locking system on any door that gives entry to the premises.

This is similar to previously discussed provisions and does not merit further comment.

(8) New Brunswick

Prior to the introduction of the Residential Tenancies Bill in New Brunswick, there was no statutory provision dealing with the alteration of locks or security devices. Section 18 of the New Bill, though not yet the law of New Brunswick, indicates the direction of reform in that province and is as follows:

> 18. Except
>
> (a) by mutual consent; or
>
> (b) upon the written authorization of a rentalsman;
>
> the landlord or the tenant, during occupancy under the tenancy agreement, shall not alter or cause to be altered the lock or the locking system on any door that gives entry to the demised premises.

This section is an incorporation of the views and recommendations contained in the Sinclair Report. at pp. 118-119, and also includes reference to the rentalsman similar to the provisions of the Manitoba legislation.

(9) Prince Edward Island

There is statutory regulation of the alteration of locks contained in section 105 of the Prince Edward Island legislation. This provision is a copy of the Ontario provision and need not be reproduced here.

(10) Newfoundland

Section 7 of the Newfoundland residential tenancies legislation reads:

Entry Doors

> Except by mutual consent the landlord or the tenant shall not during the occupancy by the tenant under the tenancy alter or cause to be altered the lock or locking system on any door that gives entry to the premises.

The above section may be seen as having the same essential elements as the Ontario provisions respecting locking devices. However, the reference in the section to a locking device on "any door" would appear to make the section more clear than the comparable Ontario provision.

3. Issues

(1) Should the law prohibit the landlord and/or tenant from altering locks and security devices?

(2) Should the prohibition relate to all doors (including the main entrance, entrances to common areas, and entrances to parking and recreation facilities) or should the prohibition be restricted only to the alteration of locks giving access to the tenant's premises?

(3) If there is a prohibition, should an exception be made in cases of emergencies such as a threat to security? If so, who should decide whether the emergency or the threat to security exists?

(4) If there is a prohibition, should provision be made for the alteration of a lock with the consent of some official such as a rentalsman if he is satisfied that the alteration is reasonable?

(5) Should the law distinguish between the alteration of locking devices and the addition of other security mechanisms such as chain locks?

(6) If there is a prohibition, should there be a distinction between the alteration of locking devices in large high-rise complex and in such premises as dwelling houses which have been converted to suites and other types of rental accommodation such as rooming houses?

(7) If there is a prohibition, should the landlord be permitted to change locks and other security devices if he immediately provides all tenants with new keys?

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1. Introduction

With the increase in size of multi-unit rental accommodation in major centres in Canada during the past decade, there has been a corresponding increase in the security measures employed by landlords both for the protection of tenants against unwarranted intrusion by burglars, vandals, etc., and to protect the building itself against excessive wear and tear which could result from unlimited access to the building.

A number of Canadian provinces have given consideration to the effect of security provisions upon two groups of people; tradesmen who are soliciting business in apartment buildings and canvassers for candidates in municipal, provincial and federal elections.

2. Tradesmen

A practice has emerged in some jurisdictions whereby landlords of multi-unit buildings restrict access to their buildings for persons making deliveries of such items as bread, dry cleaning and heating fuels. Although this practice has not attracted a great deal of attention in other jurisdictions, there is a possibility of its existence in Alberta in the future. Therefore, it is advisable to set out the problems, both real and imagined of such a practice, should consideration be given to its regulation. The practice is referred to by Professor Sinclair in his report on the landlord-tenant relationship in New Brunswick, at pp. 111-112, and by the British Columbia Law Reform Commission, at p. 117. It is to be noted from the British Columbia Report that no submission was received by the Commission which referred to such a practice, indicating that it was either uncommon or not a matter of concern in British Columbia.

The most comprehensive study of restrictions against tradesmen in a Canadian jurisdiction appears to have been carried out by the Ontario Law Reform Commission (see: Ontario Report, at pp. 48-50). Submissions received by the Ontario Commission from tenants indicated the existence of restrictions against tradesmen by landlords of multiple accommodation buildings. Where the building was a highrise complex, the majority of restrictions appeared to involve bread and milk deliveries and cleaning services. In the case of row houses or town houses where tenants might be responsible for supplying heating fuel, there was evidence from tenants of such accommodation of restrictions being imposed to require the purchase of heating fuel from a particular supplier or to prevent the transfer from one type of fuel to another (e.g., from fuel oil to natural gas).

From the tenant's point of view, two objections have been raised relating to the practice of restricting access to tradesmen: first, the practice constitutes an unwarranted intrustion upon a tenant's freedom of choice, and: second, and more seriously, such a practice may involve the gaining of financial advantage for a landlord or his agents through the requirement of kick-backs from tradesmen in return for granting a particular tradesman exclusive access to the building. In regard to this latter situation, the Ontario Law Reform Commission stated, at pp. 49-50:

> It may be that many landlords do not receive such payments, although acknowledgement of their receipt has been admitted publicly by one landlord association. There is ample evidence to support the fact that they are received by building superintendents, frequently surreptitiously . . . payment is either fixed or based upon a percentage of the dollar value of the goods and services supplied. In the case of fuel requirement, the advantage to the landlord will usually

> be related to second mortgage terms, which terms are more advantageous than those available on the open market.

From the landlord's perspective, the granting of unrestricted access to numerous tradesmen offering similar wares or services causes too many people to be in the premises during the course of a day. The Ontario Law Reform Commission noted, at p. 49, that such a situation creates:

> . . . additional maintenance and repair expenses, inconveniences in elevator services at peak periods of use and an increase in the risk of theft and break-ins.

It is generally conceded that, given the realities of highrise accommodation, there is some merit in the foregoing position of landlords. However, in considering the ideal of freedom of contract, the British Columbia Law Reform Commission felt that a large step towards fairness could be achieved in this area by having a statutory provision which would make it clear:

> . . . that a landlord does not have the right to restrict the access to rented premises of <u>persons whose visits are solicited</u> by tenants of those premises.
>
> (<u>B. C. Commission Report</u>, at p. 117, emphasis added)

Not only would a provision such as the above make it clear that a tenant has the right to invite any guest to his premises, but it would also permit the tenant to contract directly with the tradespeople of his choice for the delivery of goods and services to his premises.

The Ontario Law Reform Commission on the other hand, has indicated a support for the reasonableness of such

restrictions when viewed in the context of urban high-density living. In this regard, the Commission states, at p. 49, the following:

> To leave the general situation as it is, it is submitted, does no great injustice to tenants . . . [but] in fairness to tenants, the provisions relating to limitations on the freedom of trade with whomsoever the tenant wishes, should be brought to his attention in the lease. It is suggested, in the case of fuel purchases, the vendor company should have to charge prices which are competitive with those of other suppliers in the municipality. If this latter condition is not met then this restriction should not be binding on the tenants. Restrictions on tradespeople imposed for legitimate purposes are acceptable realities of high rise apartment living. Tenants made aware of such restrictions in advance and unable to accept the nature and quality of the services offered with respect to particular accommodation are free to seek more agreeable arrangements elsewhere.

It is arguable that this last statement by the Ontario Commission neglects the realities of current housing and rental accommodation shortage which all but nullifies any freedom to seek "more agreeable arrangements elsewhere."

Returning to the matter of kick-backs being given to landlords or their agents or employees in return for granting exclusive access to buildings, the Ontario Law Reform Commission felt that such a practice went beyond the reasonable restrictions which landlords might impose on access to multi-unit building and recommended, at p. 50 that:

> . . . the practice of tradesmen making payments to [owners or superintendents] of buildings in exchange for the privilege of exclusive access should be made illegal and subject to penalty.

3. Political Canvassers

There has been some evidence to indicate, particularly where landlords are actively engaged in politics, that restrictions have been placed upon entry to high-rise and other multi-unit dwellings by canvassers for school board, municipal, provincial and federal elections. It has been pointed out, and forcefully, by tenants and tenant groups that such a restriction is an unwarranted intrusion upon a person's freedom of choice in relation to political activities which is biased against citizens who choose to make their homes in multi-unit dwellings.

The British Columbia Law Reform Commission recommended that the legislative prescription against such restrictive activities be retained in any new legislation in British Columbia, and the Ontario Law Reform Commission, at p. 50, recommended that legislation be enacted in Ontario to provide:

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

4. Statutory Provisions in Canada

The recent development in urban Canadian centres of multi-family dwellings, both the highrise and walkup variety, has resulted in the emergence of restrictions on tradesmen and canvassers; a phenomenon that is outside the contemplation of the common law relating to the landlord-tenant relationship.

There have been attempts in some jurisdictions to

deal with the problem of political canvassers, with the matter of restrictions against tradesmen receiving less attention.

(1) The Present Law in Alberta

There is no provision in the Alberta Landlord and Tenant Act or in other legislation regulating, permitting or prohibiting the restriction of access to residential buildings for either tradesmen or political canvassers.

(2) Ontario

(i) Tradesmen

Although reference was made by the Ontario Law Reform Commission to the problem of kick-backs being paid to building managers, or superintendents for granting a monopolistic right of access to certain tradesmen, the Ontario Legislature has not seen this problem to be of sufficient concern to warrant prohibitory legislation. It appears that the view of the Ontario Commission that limitation of access to tradesmen was part of the reality of high-rise living, was accepted by the Ontario Legislature in its omission of any statutory provisions to either regulate or prohibit the practice in its 1970 residential tenancies legislation or the amendemnts made thereto in 1972.

Furthermore, the recommendation of the Ontario Commission that there be an offense created for landlords found guilty of accepting kickbacks from tradesmen, did not find its way into the Ontario legislation.

(ii) Political canvassers

The reform legislation in Ontario has sought to prohibit the practice of restricting access to buildings by political canvassers; the prohibition being found in section 94 which reads as follows:

> No landlord or servant or agent of a landlord shall restrict reasonable access to the rented premises by the candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly, any office in a municipal government or a school board for the purpose of canvassing or distributing election material.
>
> (R.S.O. 1970, c. 236, s. 94)

(3) British Columbia

(i) Tradesmen

As noted previously, the British Columbia Law Reform Commission did not receive any representations concerning restrictions upon entry by tradesmen when conducting its public inquiry during its residential tenancies study, and did not consider the problem to be of sufficient concern to warrant legislative intervention.

(ii) Political canvassers

With regard to political canvassers as well as any persons who might be invited onto the premises by a tenant, there was a recommendation by the British Columbia Law Reform Commission that the essence of the existing legislation be retained plus a provision that "a landlord does not have the right to restrict the access to rented premises of persons whose visits are solicited by tenants of those premises" (B.C. Report, at p. 117).

This latter recommendation and the provisions of the previous British Columbia legislation are found in s. 32(3), (a) and (b) of the new residential tenancies legislation in the following terms:

> No landlord shall impose restrictions respecting access to a residential building,
>
> (a) by candidates or their authorized representatives who are seeking election to a federal, provincial, municipal or school board office and who are canvassing electors, or are distributing or causing to be distributed election material; or
>
> (b) by persons who are invited by a tenant of the residential premises.

The reasoning behind the inclusion of subsection (3), clause (b) is set out by the British Columbia Law Reform Commission, at p. 117, in the following statement, which was based upon a submission to the effect that a legislative provision placing a positive duty on landlords to permit access to political candidates or canvassers might imply power in the landlord to exclude persons from the building whose presence had been solicited by the tenant:

> . . . we are not aware of any decision of a court which would support [such an interpretation]. We do not, however, endorse the view that a landlord should be given the freedom to exclude solicited visitors from rented premises, and, assuming that there is substantial doubt about the matter, we are prepared to recommend that it be set out in the proposed Act that this freedom is not implied by the existence of a provision of the nature of section 47.

(4) Saskatchewan

(i) Tradesmen

The 1973 Saskatchewan legislation dealing with residential tenancies contains a statutory condition respecting access by tradesmen. However, this provision is not a prohibition against the limitation of access to the premises. Rather, it is a prohibition against the demand or receipt of money by a landlord in return for granting exclusive access to premises to a particular tradesman, and is set out in section 16 creating the conditions. The condition reads as follows:

> 12. The landlord shall not demand or receive any payment or advantage from any merchant, salesman, tradesman, delivery man or other persons in exchange for the privilege of access by the merchant, salesman, tradesmen or delivery man or other persons to the residential premises or to the premises in or on which the residential premises are situated.

(ii) Political canvassers

Saskatchewan has seen fit to follow the recommendation of the Ontario Law Reform Commission relating to political canvassers by prescribing the denial of their access to rental premises through section 18(1) in the Residential Tenancies Act, 1973, which reads as follows:

> 18.(1) The landlord shall not restrict access at reasonable times to the premises in or on which the residential premises are situated to any candidate or his authorized agent or representative, during a campaign to elect a member to the House of Commons or the Legislative Assembly or to an office in municipal

> government or school board, for the purposes of canvassing or distributing election material.
>
> (2) A candidate mentioned in subsection (1) shall, before entering the premises in or on which the residential premises are situated, give his name and address to the landlord if requested to do so by the landlord.
>
> (3) An authorized agent or representative of a candidate mentioned in subsection (1) shall, before entering the premises in or on which the residential premises are situated, give his name and address to the landlord if requested to do so by him and shall also produce to the landlord written authority from the candidate whom he represents if requested to do so by the landlord.

The addition of subsections (2) and (3) to the basic prohibition against restricting entry to canvassers found in statutory condition 18(1) appears to be in contemplation of abuse of the freedom of access which is granted by condition 18(1), and indicates a legislative attempt to balance the need for freedom to access to multi-unit residential buildings by political candidates and their canvassers, with the need of landlords to maintain a reasonable degree of security with regard to the common areas of their buildings.

(5) Manitoba

(i) Tradesmen

It is evident from the provisions of s. 115 of the Manitoba legislation dealing with residential tenancies that an attempt is being made to deal with the problem of monopolistic trading rights being granted in exchange for payments to the landlord or his agent or employee. Section 115 is as follows:

> No landlord shall demand any payment or advantage of any tradesmen or delivery men in exchange for the privilege of exclusive access to any residential premises.

The effect of this section is to prohibit only the practice of taking money or some other advantage in exchange for exclusive access. There is no restriction against granting exclusive or monopolistic access to the residential premises where no money or advantage is being given to a landlord in exchange for the privilege.

Such a provision hits at the abusive part of this restrictive practice by landlords, but does not deal with the complaints made by tenants to the Ontario Law Reform Commission that such restrictions unduly limited their freedom to deal with the tradesmen of their choice.

Professor Sinclair feels that the Manitoba provision is a worthwhile precedent for inclusion in legislation to reform the residential tenancies laws if there is evidence in the jurisdiction indicating the existence of monopolistic practices by landlords in exchange for reward (see: Sinclair Report, at p. 115).

(ii) Political canvassers

Manitoba has enacted legislation relating to access for political canvassers. The provision is found in section 96 which reads as follows:

> No landlord or servant of a landlord shall restrict reasonable access to the rented premises by candidates or their authorized representatives for election to the House of Commons, the Legislative Assembly, any office in a municipal or metropolitan government or school board for the purpose of canvassing or distributing election material.

There are two potential problems arising from the words used in section 96. The first possible problem could arise out of what meaning is to be applied to the words "reasonable access". Would reasonableness be determined by the landlord, the tenant, or both? Problems could arise if "reasonable access" was to be regarded as between 9 o'clock in the morning and 5 o'clock in the afternoon. Such limitation could constitute a bar to access to political canvassers for those persons whose employment kept them away from their suites during the day time.

A second potential problem in the wording of section 96 is the use of the word "rented premises". It is unclear whether these words refer to the building in which the suite is located or to the individual suites contained within the building itself. If it is the former, then there should be no problem in the section having the intended affect of insuring access by political canvassers to apartment buildings. If the latter interpretation is given to the words "rented premises", then it would appear that the Legislature is interfering with the privacy of the tenant.

It is doubtful whether this latter interpretation would be the probable one given to the words "rented premises", but the possibility exists that such could be done in contradiction to the apparent intent of the section.

It would seem preferable to use the terminology employed in section 32(3) of the British Columbia residential tenancies legislation; that is, "access to a residential building." These words make it clear that access to the building for the purposes of making contact with the tenants is the object of the section and not access to the suites themselves. The words "rented premises" are found in the Ontario legislation which seems to have been copied by Manitoba. The same may be said for Newfoundland in its new residential tenancies legislation considered below. Saskatchewan also makes clear the object of the duty to permit access contained in section 18(1) through the use of the terms ". . . the premises in or on which the residential premises are situated . . ."

(6) Nova Scotia

There are no provisions in the reform legislation in Nova Scotia dealing with either access by tradesmen or political canvassers.

(7) Quebec

The Civil Code articles relating to the lease of residential premises do not contain any provision for entry by tradesmen or political canvassers.

(8) New Brunswick and Prince Edward Island

This situation holds true for New Brunswick and Prince Edward Island. With regard to New Brunswick, the failure to insert a provision respecting political canvassers in the new residential tenancies bill indicates an unwillingness to follow the recommendation of the Sinclair Report. at p. 117, although the lack of statutory provisions relating to trades-

people is in accord with the view expressed therein that, considering the practical realities of New Brunswick:

> . . . it is not felt that there is a problem here to be solved, and even the Manitoba control is not felt necessary.

(9) Newfoundland

(i) Tradesmen

Reform legislation in Newfoundland has not dealt explicitly with the matter of restricting entry to tradesmen in return for some monetary or other benefit. However s. 14(1) of the Newfoundland Act would appear to cover the restricted access situation. The subsection is as follows:

> A landlord or servant or agent of a landlord shall not restrict reasonable access to the rented premises by members of the public for reasonable purposes.

Not only is the terminology employed in the above subsection extremely broad, but it suffers from the same problems in relation to such terms as "reasonable access", "reasonable purposes", and "rented premises" as were pointed out with respect to the Manitoba legislation.

(ii) Political canvassers

The provision for political canvassers in the Newfoundland Act is substantially the same as that contained in the Ontario reforms. The provisions which are found in section 14(2) are subject to the same criticisms in regard to "reasonable access" and "rented premises" as were made in the consideration of the Manitoba legislation.

For ready reference, the Newfoundland provision for political canvassers is reproduced below.

> Without limiting the generality of subsection (1), a landlord or servant or agent of a landlord, shall not restrict reasonable access to the rented premises by candidates or their authorized representatives, for election to the House of Commons, the House of Assembly, or any office in a municipal or similar government for the purpose of canvassing or distributing election material.

5. Issues

(a) Tradesmen

(1) Should the law prohibit a landlord, building manager or superintendent, from allowing certain tradesmen access to rental accommodations in exchange for money or other benefit? If so, should it be an offence to accept such a payment?

(2) Should the law prohibit a landlord, building manager or superintendent, from allowing certain tradesmen access to rental accommodations if no money or other benefit is received?

(3) If the landlord is prohibited from giving exclusive access to certain tradesmen, should he be able to limit access by tradesmen generally.

(b) Political Canvassers

(1) Should the law prohibit landlords from restricting canvassing and orderly distribution of election literature by candidates or their authorized representatives in federal, provincial, municipal or school board election campaigns?

(2) Should the landlord or his agent be entitled to demand evidence of identity of political canvassers before granting access?

(3) Should the landlord be required to give "reasonable access" to candidates or their authorized representatives? If so, should the term be defined and if so how? Should "reasonableness" be determined by the landlord or his agent, or by the tenant, or both?

(c) Other Matters

(1) Should the law prohibit a landlord from restricting access to rented premises by persons whose visits are solicited by tenants of the premises?

(2) Alternatively, should the law set out the circumstances in which the landlord or his agent may restrict access to such persons?