

AN EXAMINATION AND ASSESSMENT OF THE AMENDMENTS TO THE MANITOBA LANDLORD AND TENANT ACT

PART II

THE CONTINUING SAGA OF THE AMENDMENTS TO THE MANITOBA LANDLORD AND TENANT ACT

In the last issue of the *Manitoba Law Journal*,¹ I attempted an examination of some of the amendments to *The Manitoba Landlord and Tenant Act*.²

At about the time the article was submitted for publication the Manitoba Legislature enacted further amending legislation.³ In order to complete the record, the most recent amendments will, here, be commented on.⁴ At the outset it should be emphasized that (as will be subsequently discussed) the most recent amendments make no pretence at doing more than introducing mainly technical adjustments to the Act. With a single exception the most recent amendments do not seriously treat the fundamental criticisms, of the Manitoba Act set out in Part I.⁵

Because of the urgency, in landlord and tenant matters, of providing inexpensive remedies, which can quickly be realized, it is unfortunate that the amendments have largely ignored the need for creating an efficient vehicle for delivering the promise of the Act.

Given the fundamental alteration of the common law, by the intro-

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1. (1972), 5 Man. L.R. 59.
 2. S.M. 1971, c.35, which amended S.M. 1970, c.106, (being R.S.M. 1970, c.L70 C.C.S.M. Cap. L70) which latter amendments introduced Part IV, being the major changes to the law of landlord and tenant, applicable to residential tenancies. The earlier article "An Examination and Assessment of the Amendments to the Manitoba Landlord and Tenant Act" (supra n.1), will be referred to as "Part I".
 3. S.M. 1972, c. 39, which was assented to on July 6, 1972, five days after Part I, was submitted for publication.
 4. Appendix A, to this Part, contains the text of the sections of the Manitoba Act, which were amended by S.M. 1972, c.39. Not every amendment will be commented upon, as this was felt to be unnecessary in the case of those changes, the impact of which is clear from an examination of the text of the amendments.
 5. While it may represent a form of hubris to expect legislators to pay heed to a law review article, in fairness, Part I was not published until well after the introduction of the most recent amendments. However, my *Working Paper on The Standard Form of Residential Property Lease in Perspective*, prepared for the Ontario Law Reform Commission, which contained, as Appendix K, at pp. 134-154 "The Manitoba 'Standard Residential Tenancy Agreement' an Examination of an Experiment", was sent to officials of the Manitoba Government, well before the introduction of the most recent amendments. Some of the commentary, found in Part I, applicable to S.M. 1971, c.35, was contained in the Working Paper.

Such criticism of the Manitoba Act, as appears in Parts I and II, should not be seen as an attempt to especially single out the Manitoba amendments for their deficiencies. In fact, there has been no greater interest in the reform of the landlord and tenant laws, applicable to residential tenancies, anywhere in Canada, than in the Manitoba Legislature. Manitoba has been chosen by me, for attention, precisely for this reason. Nor do I criticize the apparent underlying purpose of the legislation. Such criticism, as is forthcoming, is directed at whether the promise of the Manitoba Act, as amended, can be delivered, given, what I perceive to be, the inadequate machinery created for bringing the apparent purposes of the Legislature to life.

duction of a tenant's statutory right to minimally safe and healthy residential premises,⁶ it is imperative that such right be protected practically and not merely in theory. This would include the right (in a proper case) to have the tenancy terminated or to obtain a reduction in the rent payable, based upon the failure of the landlord to perform his statutory duty.⁷ It is essential that the plight of the landlord not be overlooked, and it is submitted that concomitant rights be available to landlords and that the state not rely on private landlords as unpaid instruments of social welfare policy.⁸ In order to achieve the statute's potential, it must be accepted that almost all tenants, and some landlords, have the greatest difficulty in obtaining the necessary trade witnesses to testify as to evidentiary questions which relate to the performance of statutory duties.⁹ There is evidence that the intervention of the rentalsman has not significantly

6. R.S.M. 1970, c.L70 (C.C.S.M., Cap. L70), s. 98(1).

7. At common law, in those rare cases where a landlord had covenanted to repair, one of the remedies available to a tenant, for breach of this covenant, was a reduction in rent, while the landlord was in breach of his covenant to repair. Certainly, a not unfair treatment. See, *Hewitt v. Rowlands*, (1924), 93 L.J. K. B. 80 (C.A.) referred to *infra*, n.39, where *Banks, L.J.*, at p. 1082, stated, that the prima facie measure of damages for breach of the obligation to repair was "... the difference in value to the tenant during that period (of non-compliance) between the house in the condition in which it . . . is and the house in the condition in which it would be if the landlord on receipt of the notice had fulfilled his obligation to repair."

In Manitoba, section 119, only provides for payment of rent to the rentalsman until the breach of the repair obligation is remedied. Why must the tenant's obligation to pay rent remain unabated in such cases? (See n.71 Part I). The statutory conditions, of which the obligations under section 98 are one example, are not new to the law of landlord and tenant, and can be enforced accordingly. See, *Ryall v. Kidwell and Son* [1914] 3 K.B. 135 (C.A.) per Lord Reading, C.J., at pp. 138-139, in commenting upon the right of action, of a tenant, following a breach of the warranty as to fitness contained in *The Housing of the Working Classes Act*, (1890) 53 and 54 Vict. c.70, s.75, as amended; and see n.46, Part I. A purchaser of goods, which do not meet the contractual standard of fitness, can obtain relief in the nature of a reduction in the purchase price, based on the reduced value of the commodity. With the diminished emphasis on the artificial concept of the leasehold interest, as an estate, and the developing concept of it as something intended for use and enjoyment, (in fact a consumer commodity), why is it necessary to preserve intact, the landlord's ultimate right to payment in full, before the tenant can obtain full redress. If this is not the intention of the Manitoba Act, then the true intention has been carefully disguised.

8. It is too easy to view landlord and tenant reform legislation as an exercise in anti-landlord animus. Such a view does not apply to the recent reforms introduced by the amendments to the landlord and tenant statutes, throughout Canada, following the introduction of the first such statutes, in Ontario, (R.S.O. 1970, c. 236 (Part IV)). In this regard the provincial legislatures have, in almost every case, adhered to the admonition of the Ontario Law Reform Commission, in its *Report on Review of Part IV, The Landlord and Tenant Act 1972*, against using the landlord and tenant statutes as a means of casting upon the private sector, obligation to tenants who cannot pay their rent, obligations which are, more properly, a public responsibility. (at p. 14)

9. Small claims court procedures and summary procedures, where they are to do more than provide the appearance of a forum for the exercise of doing justice, in landlord and tenant matters, are not often capable of truly doing justice; certainly under the landlord and tenant acts, unless the court or other official, charged with powers of adjudication, has a means of adequately assessing the evidence and the applicable law. This is especially true where conflicting claims are raised as to the state of repair and fitness for habitation, cleanliness and the existence of a nuisance or disturbance. Such issues often raise complex legal and evidentiary questions. In the absence of competent witnesses and a professional treatment of the substantive legal issues, the standard of justice must be reduced. In fact, how can a proper adjudication be made, in the absence of essential evidence from a credible independent source? To say that the system "works well enough", is just not good enough. Adjudication, in the absence of vital evidence, of the kind discussed, means that in many cases the tenant's evidence, especially where he represents himself, is of an insufficient standard to be accepted, especially where the landlord is, as is so often the case, professionally represented and is possessed of necessary trade witnesses. Where legal issues are involved, the tenant is at a further disadvantage, and it is not enough to say that the court will protect him in such cases.

altered the situation.¹⁰ Nor has the vagueness of the Manitoba Act on the subject of rent reduction, based on a landlord's breach of statutory obligation, assisted in resolving this problem.¹¹ Attorney-General Mackling, when speaking to the most recent amendments, at the time of second reading, on June 20, 1972, indicated the limited scope of the amendments ". . . (T)he object of this bill is to introduce such changes as are considered necessary to clarify certain provisions and procedures."¹²

The amendments will be dealt with according to subject heading:

At this time many complex matters of the new statutory law remain unresolved. It is only through professional representation that the law can adequately develop. Under our system of justice, this means representation for tenants as well as landlords. Legal aid has not, as yet, scratched the surface of the real need. A continuance of, and apparent satisfaction with, the *status quo* can, for a brief period of time, submerge the real problem. However, it will not go away merely because it is treated as either nonexistent or unimportant. The continuing naive belief that small claims courts, as presently constituted, are ideally set up to permit self-counsel, is false. It is easy to physically appear alone and unrepresented, in the sense that it is not considered unusual. However, given the real problems, as above outlined, it is usually impossible for the amateur counsel, in his own landlord and tenant case, to adequately present the necessary evidence, which is essential to his case. Nor can he be expected to be capable of arguing the legal issues. There is a considerable difference between the physical right to appear and argue one's own case and the ability to do so in a manner which is even remotely adequate. Confusion between the two realities has resulted in the perpetuation of a myth which can only undermine the development of a law which can work for those who are to resort to it. (See Part I, p. 60-81, n.49 and n.50 thereof).

10. See "Addendum" to Part II.
11. In fact, the Manitoba Act is silent on this point, and whatever development of such right does occur will depend on the arguments which can be made for its existence because of the enactment of section 91, dealing with the interdependence of lease covenants (see Part I n.71). (See, "Case Against the Doctrine of Independent Covenants: Reform of Oregon's F.E.D. Procedure", Clough, Ore L. Rev. 52: 39 Fall '72). As the common law already provided for rent reduction, in the case of the landlord's failure to carry out his covenant to repair (See *Hewitt v. Rowlands* n.7, *supra*), and as a breach of a statutory duty, to the same effect, was actionable (See *Ryall v. Kidwell and Son* n.7, *supra*), it is a pity that such right was not clearly included in the Manitoba Act. As presently established, section 119 of the Manitoba Act appears to remove such a claim from the tenant's arsenal. Moreover, section 119(6) sets the stage for a lengthy delay in ascertaining the responsibility for performing repairs. Sections referred to and not included in Appendix "A", are included in Appendix "B".
12. Debates and Proceedings, Legislative Assembly of Manitoba (1972) pp. 3189-90. I do not propose to go into the Attorney-General's explanation of the law, in any detail. I would wish, however, to comment on the fact that the law cannot be assisted by incorrect statements as to the nature of the law which is being changed. At p. 3190 it is stated:

" . . . Perhaps one notable change is in respect to the giving of notice to vacate by a landlord where the tenant is damaging the property. At present the landlord must give the tenant one or two full month's notice, depending on the nature of the tenancy agreement, and during the period of notice the tenant can cause further extensive damage. An amendment proposed in this Bill will enable the landlord to act quickly to protect his property, but he will still require a court order for possession and he will not be empowered to take unilateral action against the tenant without the tenant having an opportunity for a fair hearing."

As in the case of a non-residential tenancy, where an application for a writ of possession is made under section 70(1), it was always possible to terminate a tenancy for breach of a condition (see section 18(1)). It was therefore incorrect to state, as the then Attorney-General did, that short notice only became available in such cases, as a result of amendment to section 98. Previously it would have been open to a landlord to serve a notice giving a reasonable time to remedy the breach and then move for relief under section 108(1) (see section 18(1)). In fact such procedure had the merit of even further reducing the notice period, in case of a serious breach requiring urgent action, as where the tenant was engaged in continuing acts causing willful damage. The amendment (section 98(3)) now fixes a five day period. It is submitted that, in a proper case, a notice to take effect immediately would have been sufficient, as would now be the case under section 70(1) in case of non-residential tenancies. If the Attorney-General, and those responsible for drafting the Act had so much difficulty with the state of the law, what chance is there for the unrepresented tenant or landlord? Also see n.20 *infra*, as to the difficulties now facing a tenant wishing to terminate a tenancy agreement pursuant to section 98(3).

1. *Return of the Security Deposit to the Tenant*

The time which a landlord has, under s.86(1) of the Act, to return a damage security deposit has been increased to 14 from 7 days.¹³ Given the power of the landlord to force the issue to a court proceeding, and given the inordinate expense entailed by a tenant, who may be so forced to defend an action for forfeiture of the deposit,¹⁴ the change can only cause a further deterioration in the tenant's position.¹⁵

2. *Disposal of Worthless Chattels*

Section 94(2.1) is, in a very literal sense, a housekeeping provision. It is unlikely that such an amendment was necessary, as no one can be forced into being a bailee of goods against his will.¹⁶ In addition, the landlord would require no authority to abate a nuisance caused, in the circumstances described.¹⁷

It should also be noted that section 94(2.1) does not, by its terms protect the landlord where the tenant has not abandoned the rented premises, and where the landlord has acted in the erroneous belief that such is the case. There would have been greater merit in providing protection for

13. S.M. 1972, c.39, s.1.

14. See *Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies*, Ontario Law Reform Commission, 1968, pp. 21-28 and *Report on Review of Part IV, the Landlord and Tenant Act* Ontario Law Reform Commission 1972, pp. 23-27. Under the provisions of the Manitoba Act, a landlord who does not consent to arbitration could easily make the tenant's costs of recovery exceed the amount of the deposit. Prospect of a multiplicity of proceedings tends to place a damper on enthusiasm for court action. Failure on the part of tenants to pursue impractical remedies ought not to be construed as an example of the successful operation of the statutory provisions. Often a doctor believes his patient has been cured, when in fact the patient may have correctly concluded that the cure is worse than the disease.

15. Landlords, in Ontario, have recently blamed rent increases on the abolition of the right to take damage security deposits. Similar rent increases, throughout the rest of Canada, where such deposits are legal, no doubt have a different basis. That some tenants cause damage is true. However, any scheme to civilize the taking of such deposits, has the deficiencies noted in the reports cited in n.14, *supra*. If the positions of landlords and tenants could be made more equal, in case of dispute, and thereby be protected equally well, a system of security deposits might work without the present injustices. Night courts and a system of trained assessors for use in on-site examination, represents one possibility for achieving such a goal. See, "Landlord-Tenant-Security Deposits — Colorado's, A Wrongful Withholding of Security Deposits Act — Colo. Rev. Stat. Ann. para. 58-1-26 to 28," (Denver L.J., 49: 433, '73. Experience in the operation of student legal aid societies, with which I have been involved (at Queen's University and The University of Western Ontario), discloses the existence of many defences, based on alleged failure to carry out the statutory repair and fitness obligations, which cannot be pursued because of the absence of necessary trade witnesses. Court assessors could be trained, as are law clerks, at community colleges, in this case, to assess the cause and cost of repairs to rental premises. Such a proposal may be unusual and open to the traditional response that it represents a dangerous and, perhaps, foolish suggestion. The alternative is a system which best serves the interests of only a minority of those to whom it is directed. Implementation of such a system of adjudication, as a form of pilot project, could test its potential without much risk. Use of the rentalsman's undermanned staff, with a provision for what amounts to a re-hearing, poses, particularly for the tenant, the old problems of delays, expense and the securing of witnesses, which can destroy the effectiveness of the remedy. As most leases do not exceed a one year term, the necessity for quick and final adjudication is apparent. See Addendum to Part II for a statement concerning the office of the rentalsman.

16. See Part I, n.26.

17. The admonitions against the abatement of a nuisance by "summary removal . . . by the party injured . . ." referred to in 28 Hals (Third edn.), p. 150 para. 202, would not seem to apply with equal force to a private nuisance. *Ibid.* para 209 at p. 152.

a landlord who, in good faith, has so acted, even if later events disclose that the tenant had not "abandoned the premises" or had not "gone out of possession of the premises upon termination or expiration of the tenancy agreement." Such a result is not now provided for.

3. *Responsibility for Repairs*

Section 98, as amended,¹⁸ established the landlord's responsibility to repair; the tenant's responsibility for fitness and cleanliness; and a tenant's obligation against causing a "nuisance or disturbance". Section 98(3) was amended to establish that, in the case of a tenant's breaches of his obligations, with respect to the causing of wilful damage or causing a nuisance or disturbance, notice to terminate the tenancy, given by the landlord, takes effect five days after the giving of notice to terminate.¹⁹

It is difficult to understand why a tenant's right to terminate, where the landlord is in breach of his obligation to provide and maintain the rented premises in "a good state of repair and fit for habitation", should not also have provided for short notice. Why a tenant should be placed in a less advantageous position than a landlord, in the two cases provided for, and be obliged to resort to the usual notice provisions and to continue to reside in unsafe and unhealthy premises, is not in any way clarified by the explanation of the bill which occurred during debate.²⁰

Section 98(4), as amended, includes, among persons given a right to complain to the landlord for the creation of a "nuisance or disturbance" by a tenant or any other person, any "other residents in the building". The former sub-section was limited to complaints by tenants.²¹

18. Section 98(1), (landlord's responsibility); section 98(2) (responsibilities of tenant).

19. S.M. 1972, c.39, s.3.

20. See n.12, *supra*. It is provided, in section 98(3) that a tenant might terminate the tenancy agreement, where the landlord fails to fulfil his repair and fitness obligations under section 98(3). Such termination to be "in accordance with section 100". Section 100 requires that, *inter alia*, the notice "shall be given in sufficient time to give the period of notice required by section 103". Sections 103(3.1) and 103(4) require notice to expire at the time of the "predetermined expiry date". In the result, section 98(3) means nothing to a tenant for a term certain. There is an inescapable conclusion that this was not the result intended by the Legislature. Yet, the wording of the applicable sections is abundantly clear. In the previous amendments (S.M. 1971, c.35, s.10), the notice was to be given pursuant to sections 101 and 102. This, at least, avoided the absurd conclusion brought about by the most recent amendments. It would have been better to provide a period for short notice, with some equivalent to section 96(3) of the Ontario Act, to relieve the landlord from the effect of the breach in a proper case. Unfortunately, the Manitoba Act does not (as is presently also the case in Ontario, (see Part I, n.70), provide for a procedure, where a tenant wishes to terminate the tenancy agreement, except for that found in section 124, which permits an application for "a declaratory order setting out his rights under (the) Act". Because of the traditional difficulty of "sucking and whistling" at the same time, it would have been preferable to enable a tenant to apply for adjudication of his right to terminate, because of a breach of condition, statutory or otherwise before he makes the decision to leave the rented premises. At present the tenant who "terminates" for such a breach, and departs the rented premises, might face the unpleasant prospect of being proved wrong in an action for rent, brought by the landlord. If the tenant makes an application under section 124, for a declaratory order, before departing, he may be faced with challenge to the court's jurisdiction to adjudicate. That is, it is unclear whether a tenant can presently terminate and retain possession subject to his right to obtain a court ruling.

21. S.M. 1971, c.35, s.10. Also see Part I. n.23.

It is surprising that the laying of an information²² for a breach of the section, is limited to cases where a request to discontinue the nuisance or disturbance, is made by the landlord, there being no provision for a request to discontinue the nuisance or disturbance by the tenant or any other resident who complains to the landlord. Therefore, if the landlord chooses not to act, the tenant is left without a remedy under the section.²³ It is not an uncommon occurrence for landlords to ignore such complaints, from one tenant, involving the behaviour of another tenant. It would appear that the Manitoba Legislature has created landlords as the undisputed arbiters of which matters ought to be proceeded with, under the section, thus displaying a not so subtle social bias.²⁴

Section 98(5) has been amended to provide for an increased fine for subsequent offences for breaches of the "nuisance or disturbance" provision.

Section 98(7), which refers to cases where a landlord fails to furnish certain vital services, such as heat, water and electric power, is derived from a section of *The Ontario Landlord and Tenant Act*,²⁵ and deals with the disposition of rent, paid to the rentalsman, where there has been a breach of such obligation. The section fails to take cognizance of the case where there is insufficient monies to pay arrears for utilities, etc. An alternative would have been to give the rentalsman a lien on the rental property, for monies expended by him to restore and maintain the vital services contemplated by the section. Not only would such a provision better protect the interest of tenants caught up in such a situation, but it could also preserve rental housing, which might otherwise have to be abandoned.

22. Section 98(4) enacted, S.M. 1972, c.39, s.3.

23. It would be fanciful to suggest that the landlord is under a statutory duty to "request the tenant or other person causing the nuisance or disturbance to discontinue the nuisance or disturbance."

24. The provisions of sections 98(4) and (5) could provide a useful safety valve for many "tenant and tenant" disputes. One question whether the criminal courts represent the best place for dealing with such disputes, at least in the first instance. Such disputes can give rise to matters of some urgency. Therefore, in order to avoid criminal proceedings, at least in the first instance, (and not after the commencement of proceedings), it might have been advisable to provide for the initial intervention of the rentalsman's staff. Hopefully, their experience (and the mandate to achieve settlement, under section 120(1)(a)) should be called on first. If the services of the office of rentalsman were operated on other than a 9 to 5 basis (landlord and tenant problems do not end at 5 p.m.), many disputes could be mediated and adjusted. (See Part I, n.19). If the representative of the rentalsman was of the opinion that immediate intervention was necessary, then many unfortunate incidents might be avoided. As the present section is written, the police will often be called in, where quite a different approach to the problem would be indicated.

While some cases of "nuisance or disturbance" are sufficiently serious to warrant the creation of an offence, many do not call for such an extreme remedy. Why conduct, which in another context would be treated as a civil matter, is here characterized as quasi-criminal behaviour, is not apparent. Screening of cases by the rentalsman would avoid such a result as is now almost inevitable. A landlord who creates a "nuisance or disturbance" to "residents in the building" would, in most cases, only be subject to civil proceedings. There again appears to be a display of social bias in the legislation against tenants. Here, a landlord's conduct, which might be qualitatively identical to that of a tenant, is not made subject to the same legal treatment.

25. S.O. 1972, s.4, c.123 s.4, being Landlord and Tenant Act R.S.O. 1970, c.236, s.107(3).

The callous withholding of vital services, often employed as a device for illegally regaining possession, is a fit matter for being treated as an offence under section 117(1). It is difficult to see why coercing a tenant to provide post-dated cheques and requiring payment from tradesmen or deliverymen for the exclusive privilege of access to the residential premises, were considered as more suitable subjects for the creation of an offence, than the deliberate withholding of necessary services.²⁶ It is also not apparent why electric power was included as a vital service while gas service was excluded, when they are often alternate services. The present provisions may be tolerable during a Manitoba summer, but when it is forty below the provision may prove to be cold comfort for a beleaguered tenant.

4. *Termination of Tenancies*

As was noted, in Part I, the amendment made to the Manitoba Act, by section 103(3) which read:

“Where the term of a tenancy agreement is less than twelve months a notice to terminate shall be given by the landlord on or before the last day of any rental payment period to be effective on the last day of the ensuing rental payment period.”

was partially ineffective, as the statutory language employed could not fit the case of a tenancy from period to period, which had no expiry date.²⁷ In an apparent attempt to meet this deficiency, a new section 103(3) has been enacted and former section 103(3) repealed. Section 103(3.1) was enacted to meet the case of a tenancy for a term of less than twelve months, which case was formerly included as part of Section 103(3).

Where the term of the tenancy exceeds twelve months, section 103(4) was amended to substitute the words “predetermined expiry date of the tenancy agreement” for “expiry date of the tenancy agreement”. The date when the notice is to become effective is the “predetermined expiry date”.²⁸

It is difficult to imagine why it was necessary to add the word “predetermined”, before the words “expiry date”. If a person ignorant of the difference between tenancies from period to period, or a term of years examines the statute, as presently written, he is not likely to be any better informed of the intended obligations imposed by section 103. Section 103(3) could have referred to the specific kinds of periodic

26. A breach of section 107(3), of the Ontario Act, referred to in n.25, *supra*, is an offence punishable on summary conviction by R.S.O. 1970, c.236, s.108.

27. That is: a date when the tenancy agreement would expire by effluxion of time. See, Part I, n.13. For a brief description of non-freehold estates, see Laskin, *Cases and Notes on Land Law*, Revised Edition, 118.

28. Similarly, new section 103(3.1) employs the term “predetermined expiry date”.

tenancies. It is also not clear whether the drafting of section 103(3) was a conscious endeavour to create one class of tenancy from period to period. As neither tenancies from month to month or year to year (the most common of such tenancies) have a predetermined expiry date, an identical procedure for terminating them has been adopted (where the rent is payable monthly). In addition those rarities; tenancies at will and tenancies at sufferance, have no "predetermined expiry date". Where no rent is payable when can they be terminated? Although the likely result will be that the common law rules for terminating such latter tenancies will be said to govern, it should not have been necessary to have to engage in such considerations.

In addition, Parts II and III of the Manitoba Act use the word "determination" as equivalent to termination. Sections 103(6) and (7) also used "determination" as the equivalent to adjudication. Unlike creative writing, it is better to use the same word, in different sections, when no change in meaning is intended.

5. *Renewal of Tenancies.*

Potentially, the amendment most likely to have the greatest practical impact is the provision that the tenant's right to renew the tenancy agreement, "after it has expired", is no longer subject to the tenant giving prior notice of his intention to do so before the end of the tenancy agreement.²⁹

As amended, the wording does not, it is submitted, alter the position of a tenant from period to period. As was noted in Part I, there is no concept of renewal in the case of a periodic tenancy.³⁰

In addition, the choice of language used in section 103(6) is questionable, if it is intended that it apply to cases where notice of termination has been given by a landlord, pursuant to sections 103(3.1) and (4). By giving a right of renewal "after the tenancy agreement has expired", there should have been a clear indication whether the word "expired" included both expiry by effluxion of time and termination by notice.

In Section 94(2.1)³¹ the words "termination" and "expiration" of the tenancy agreement, are treated as two different events whereby a tenancy agreement is said to be at an end. In Section 103(6) only the word "expired" is used. It does not seem possible that it was intended to limit the right of renewal only to cases where the term of the tenancy

29. R.S.M. 1970, c.L70 (C.C.S.M. Cap. L.70), s.103(6), as amended by S.M. 1972, c.39, s.4. When addressing the Legislature, in connection with the amendments, Mr. Mackling does not appear to have commented on this fundamental change.

30. Part I, n.58, referring to, Williams, *Canadian Law of Landlord and Tenant* (Third edition), at p. 118.

31. Discussed in n.16 and n.17, *supra*.

agreement expired by effluxion of time. Yet, by using the word "expired", there is some indication that the reference is only to expiry by effluxion of time. Similarly, inappropriate language is employed in sections 103(6) and 103(7), where the words "determination" and "determined" are used to include an adjudication by the rentalsman. Given the earlier use of the word "predetermined", in conjunction with the words "expiry date", and the use of the word "terminate", as related to the termination of a tenancy agreement, it might have been better to avoid possible difficulties by the choice of more apt language.³² In the circumstances, how is a court to interpret section 103(6) where the word "expiration" alone is used?

Nor do the amendments address themselves to the apparent means of circumventing section 103(6), through the expedient of imposing an exorbitant rent increase.³³

In amending section 103(7), it is now provided that the landlord, if successful, on an appeal from the rentalsman, as to the tenant's right to renew, under section 106(3), need not give further notice to the tenant.

Section 103(9), provides for a number of hardship cases, where any residential tenancy, falling within that subsection, may be terminated on the giving of one month's notice, together with a medical certificate, where applicable. Formerly notice was to be given in accordance with the then provisions for termination of tenancies.³⁴ Again, it is questioned why the nature of one month's notice was not spelled out, as in section 103(3).³⁵

The most recent amendments, changed the word "and" in the second line of clauses (a) and (b) of section 103(a) to read "or", so that the provisions are now disjunctive.

6. *Failure to Pay Rent as Ground for Termination of Tenancy*

Section 104 has been amended by reducing the period for payment of rent by a tenant, on demand, before a landlord could terminate the tenancy, to three from seven days, and by requiring the demand for payment to be made in writing.

32. Also see commentary on "Termination of Tenancies" at pp. 5 and 6, *supra* where reference is made to the variety of language used throughout the Act, where the same meaning was likely intended, when apparently dealing with the time when a lease may be said to be no longer in existence. Reference is also made to Part III of the Manitoba Act where the word "determined" is used in section 70.

33. See, Part I, at pp. 64-66.

34. Section 103(9) as enacted by S.M. 1971, c.35, s.15.

35. That is: when is the notice to be effective? Any questions which might arise would have been answered by use of more specific language. Also, how are disputes under the section to be adjudicated? See generally n.39, *infra*.

7. *Claims Enforceable at Procedure on Adjudication*

Section 107(4) was amended by adding, as an enforceable claim, during occupancy, *after termination by notice*:

"(c) for damages caused to the premises by the tenant or by any person allowed on the premises by the tenant while the tenant is in occupancy of those premises;"

It is not clear why the Manitoba Legislature did not take the necessary steps, when a claim was brought by a landlord for relief, pursuant to the summary procedures provided for, to insure that the court should have a mandate to dispose of *all* claims between the landlord and the tenant arising out of the tenancy agreement and the Act. Instead there will likely be a continuing need for a multiplicity of proceedings, if a tenant wishes to pursue a claim, arising under the Act or the tenancy agreement. One of the most often criticized aspects of the common law of landlord and tenant was its refusal to see the tenancy agreement as a contract made up of dependent duties and obligations. The evil of this ancient law was almost universally condemned.³⁶ Apart from the shameful result of permitting a landlord to terminate a tenancy, while he was in breach of important lease obligations, it required an expensive multiplicity of actions, where a tenant wished to pursue his "independent" claims against his landlord, notwithstanding that they arose out of a single tenancy agreement. Experience disclosed that such independent rights of action were rarely pursued.³⁷ It is therefore puzzling to witness the enactment

36. In *Highway Properties Ltd. v. Kelly, Douglas & Co. Ltd.* (1971), 17 D.L.R. 710, (S.C.C.) Laskin, J. summarized judicial impatience with the state of the law when he said at p. 721:

"It is no longer sensible to pretend that a commercial lease . . . is simply a conveyance and not also a contract. It is equally untenable to persist in denying resort to the full armoury of remedies ordinarily available to redress repudiation of covenants, merely because the covenants may be associated with an estate in land. Finally, there is merit here as in other situations in avoiding multiplicity of actions that may otherwise be a concomitant of insistence that a landlord [or a tenant] engage in installment litigation against a repudiating tenant [or a landlord]."

Although decided in the case of a commercial lease, there is here no reason for maintaining an artificial distinction between residential and non-residential tenancies. Prior to the Supreme Court of Canada decision, in the *Highway Properties* case, several provincial legislatures had already enacted reforms along similar lines in the case of residential tenancies. As was noted in the Ontario Law Reform Commission's *Report on Review of Part IV, The Landlord and Tenant Act*, at pp. 33-34, the reforms were not only specific: importing of the contract law of frustration and the obligation to mitigate damages, but general: the importing of the contract rules relating to the interdependency of covenants in a lease.

In its said Report, the Ontario Law Reform Commission recognized the importance of providing for the protection of the tenant's claims, arising out of a landlord's breach of lease covenant, subject to certain safeguards to the landlord's claim, so that a tenant's claim could be adjudicated upon at the same time as that of the landlord's and so that a needlessly expensive and time consuming multiplicity of actions might be avoided. The Manitoba Act has not explicitly provided for such a result. The overwhelming thrust of the common law, which resulted in the inability of tenants to avoid the expense of multiple actions, requires explicit language to fashion appropriate remedies. It is submitted that this has not been accomplished. (see n.39, *infra*).

37. No doubt such factors as: ignorance of law on the part of tenants; the traditional lack of interest of the legal profession in recommending court action in small but legally complicated claims; the expense involved; along with the apparent inability of the courts to find jurisdiction (see n.39, *infra*), and the remarkable paucity of tenants' rights at common law, combined to perpetuate the failure to pursue tenant claims in separate proceedings.

of further amendments to the procedures for adjudication, which, by their language appear to perpetuate an unjust common law rule,³⁸ in that they neglect, at the same time, to specifically provide a forum for adjudicating the tenant's claims.

Section 110(1) (dealing with claims for arrears and compensation), has been amended to include a claim by the landlord for "damages caused to the premises by the tenant or by any person allowed on the premises by the tenant . . .", that is, during the currency of the term.

A situation now exists where, on the one hand, the number of lease and statute related matters, which the landlord may have adjudicated under the summary procedures, has been, with some justice, increased. On the other hand, no clear mandate is provided for, at the same hearing, disposing of all lease and statute related claims by the tenant, whether by way of simple defence, set-off or counterclaim. It is unlikely that tenants of limited means will be in any better position, procedurally, to pursue their newly created statutory remedies, where a landlord proceeds by way of summary application.³⁹

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38. S.M. 1972, c.39, s.6, amending s.107(4)
 S.M. 1972, c.39, s.8, amending s.109(2)
 S.M. 1972, c.39, s.9, amending s.110

Also see n.39, *infra*, for a brief examination of the reasons why tenant claims rarely, if ever were protected by the summary proceedings.

39. The summary procedures which were available to landlords of residential premises, under Part III, of the Manitoba Act, prior to the enactment of Part IV, are similar to summary procedures developed in other provinces. One might conclude that, under such summary procedures, a tenant who had a cause of action against his landlord, even if it arose under the landlord and tenant relationship, had to continue to pay rent, in full, to his landlord, and then sue his landlord in a separate proceeding. Such a requirement contained all the worst elements of the landlord and tenant procedures, discussed above. Only in those rare instances where a true set-off existed could a tenant cause a reduction in his obligation to pay rent. In all other cases, it appeared that rent had to be paid, unabated, on pain of having the tenancy terminated. In an action for a declaration that a tenancy had been terminated and for arrears of rent, if it should have been open to a tenant to counterclaim, (a) for relief against forfeiture, (b) for damages for breach of covenant and (c) to move for a stay of proceedings of the landlord's claim until the tenant's claim could be adjudicated. In the result, because such application could be granted on terms that rent in arrears and for subsequent occupancy be paid into court until completion of adjudication, the interests of the parties could be reasonably protected. On the one hand the tenant would not be subjected to the possibility that his claim for damages would become a mere paper judgment in the event of his landlord's insolvency and, as well, the right to relief against forfeiture could be preserved. On the other hand, the landlord would be secured against loss of rent through the imposition of terms for the stay of proceedings.

With the introduction of the new reforms the problem now ceases to be academic. In Ontario, in a proceeding brought by a landlord for possession and arrears of rent, there is, apparently, as suggested by the Ontario Law Reform Commission (see n.36 at p.37 *supra*) a provision for a dispute to the landlord's claim being filed by a tenant. (S.O. 1973, c.123, s.3, being substituted for R.S.O. 1970, c.236, s.106). Such a conclusion would have been less open to question if it were made clear that the tenant's claim might include any matter arising under the tenancy agreement or the Act, which it is claimed gives rise to a cause of action against the landlord.

"There is some evidence of county court judges so interpreting the Ontario Act: *Herbold v. Pajelle Investments Limited* (1972) unreported, Macrae J., Co. Ct. Jud. Dist. York and *Ernest Baril et al v. L. Zabielski* (1973) unreported, Ball J., Co. Ct. Jud. Dist. York."

The idea that a tenant could counterclaim for relief from forfeiture and, as well, for other relief, should not appear strange (see *Driscoll v. Church Commissioners for England and Others* [1956] 3 All E.R. 802 (C.A.) at p. 809, where Hodson L.J., noted that in the case of a counterclaim for relief from forfeiture the "... relief relates back" to the time of commencement of the proceeding, and relied (at p. 808) on *Dendy v. Evans* [1910] 1 K.B. 263 affirming a decision of Darling J., in the Queen's Bench:

One must also wonder how the provision for the adjudication, by the rentalsman, of the landlord's responsibility for effecting repairs, under section 119, can be reconciled with the court's obligation to enter into, what might be an almost identical examination under section 110(1)(i). That is, where a landlord bases his claim under section 110(1)(c.1), on damage caused by the tenant, and the tenant proceeds before the rentalsman under section 119, claiming the same matters as part of the landlord's statutory obligation to repair. This appears to be another example of the right and left legislative hands functioning at cross-purposes.

"... the effect of the order for relief was to restore the lease as if it had never become forfeited . . ."

and see *Borzak v. Ahmad* [1965] 1 All E.R. 808 (Q.B.). In equity, the proviso for re-entry on non-payment of rent was regarded as merely a security for the rent and equity always provided relief where the lessor or any other interested persons could be restored to the status quo ante. See *Ostaneck v. Schwartz* [1943] 1 W.W.R. 506 (B.C.); and see *Bowser v. Colby*, (1841), 1 Hare 109; 11 L.J. Ch. 132; 66 E.R. 969; *Hyman v. Rose* [1912] A.C. 623; *Warden and Governors of Sir Roger Cholmeley's School at Highgate v. Sewall and Others* [1893] 2 Q.B. 254; *Christopher et al v. Shone et al* [1949] 3 D.L.R. 560 (B.C.) per Wood J., at p. 563.

Nor is it a novel proposition that a court may order a stay of proceedings in order to enable justice to be done, even in a summary proceeding for possession. In *Kane v. Helston* (1946), 54 M.R. (C.A.) Dennistoun J.A. at p. 280 acknowledges the jurisdiction of the Courts of Manitoba to make such an order, not where it would be charitable to do so, but where it is required in order "to enable justice to be done". See *Manitoba Queen's Bench Act*, section 63(10) and s.65 and see *Manitoba Queen's Bench Rules* rule 88 and rule 83. (that is where a claim recognized in law, has been bona fide put forward by a tenant.)

As to relief from forfeiture: in the case of *Ewerth & Ewerth v. Siraky et al* [1955] O.W.N. 13, the then Senior Master, Mr. Marriott, observed (at p. 14) that, in a foreclosure action, a purchaser who had counterclaimed for relief from forfeiture was entitled to a stay of proceedings for possession until disposition of his claim.

If the Manitoba summary procedures under Part IV, leading to possession, are no broader than Part III proceedings, it would seem open to a tenant to proceed, as above outlined. Section 73, of the Manitoba Act, contemplates the transfer of summary proceedings under Part III to a judge of the Court of Queen's Bench and by section 72 *The Queen's Bench Act* applies to Part III applications, unless varied by Part III. See, *Kruciak v. Antoniuk and Antonuik* (1946) 3 W.W.R. 252 (Man. C.A.) per Bergman, J.A., at p. 278.

If it was held that the summary proceedings under Part IV limit the tenant to matters of defence and do not permit the raising of a counterclaim, this would still permit the raising of a cross-action including a counterclaim for relief from forfeiture, and the making of an application for consolidation under *The Queen's Bench Rules*, rule 281. Even though one of two cross-actions will not be stayed, where they do not arise out of the same transaction (*Leonard v. Wharton*, (1921) 50 O.L.R. 609 at 610), a form of consolidation has been permitted where cross-actions, between the same parties, arising out of the same subject matter, have been commenced, where the courts stay one action directing the plaintiff in it to bring forward his case by way of defence, set-off or counterclaim (*McKenzie v. Cramer* [1947] 3 O.R. 196). In summary proceedings under Part IV, complete justice could only be done if a stay of the application for possession could be obtained, in order that the counterclaim could be disposed of, on its merits, on terms, such as: that any arrears be paid into court pending final adjudication.

Unfortunately, the problem of providing an inexpensive forum, where the various disputes between landlord and tenant can be adjudicated, without retaining the peculiar and unjust rules of independency of lease covenants has been largely avoided in the Manitoba Act. If the court does manage to find a way to circumvent the need for prolix multiple proceedings, it will only be as a result of an acceptance of an argument along the lines above discussed. A more direct legislative mandate could have avoided such problems, so as to achieve a result as was obtained in *Sherwood v. Lewis* [1939] 2 W.W.R. 49 (B.C.C.C.) at p. 52. Although the reasoning of this case is suspect, the conclusions are not. Such amendments, as have been recently enacted, may have aggravated an already deteriorating situation. (cf. *Steers Limited v. Dakin* (1949-50, 24 M.P.R. 239 at 240 (S.C. Nfld.))

There does not seem to be a serious question concerning the court's jurisdiction to entertain an application, from a tenant, as above noted, either on the basis of inherent exercise of its powers or under specific statutory authority. Because the court, in the exercise of authority rooted in equity, would be primarily concerned with the landlord's receipt of money (or satisfaction of some other lease covenant) and not with the premature forfeiture of the term, as in actions for possession in mortgage actions), a tenant would have a very strong claim to being relieved from a forfeiture of the term, even if he did not succeed on his other relief sought by

Section 110, in its present form, preserves the inequities of the old summary proceedings for possession, restricted as they are to a very limited number of claims open to tenants. In the result, the unhappy experience of the past could be repeated. That is, once an order for possession is granted, in the absence of the right to either reduce or extinguish the claim of the landlord for rent at the time of the first hearing, future legal action will rarely be proceeded with.⁴⁰ Until a procedure is developed for the full and fair adjudication of matters arising under the Act and tenancy agreements which is inexpensive, fast, and is capable of dealing with all legitimate claims of both landlord and tenant before one forum, the real value of new substantive provisions will remain, to a considerable degree, unrealized.

Manitoba, it must be emphasized, does not stand alone in its failure to implement meaningful procedures to better realize newly created substantive rights under its landlord and tenant statute.⁴¹ It must also be stressed that the suggestions here contained do not impose a single additional substantive burden upon landlords. Unfortunately, at this time, the language employed by the draftsman, can only serve to prevent meaningful access to adjudication and vindication of the underlying pur-

counterclaim (See *Driscoll v. Church Commissioners for England supra*) and see (23 Hals (3rd ed.) p. 681 para. 1409). If successful, the tenant would be entitled to return of any monies paid into court, as a term of granting a stay. If partially successful, an order for relief from forfeiture could be made, on terms that any balance owing for rent be paid.

A claim for arrears of rent has never represented the only claim for which only a limited number of true defences were available, as distinguished from a right to bring a cross-action. In non-landlord and tenant cases the injustice of permitting the realization upon a judgment by the plaintiff, where success, by the defendant, in a cross-action, might reduce the amount claimed, prompted the growth of the power of equity to stay proceedings on the judgment. In the case of landlord and tenant law there is the additional factor of the tenant's right to be relieved from forfeiture which ought to be considered.

One of the factors tending to distort the availability of tenant remedies, in landlord and tenant law was the extremely limited number of rights available to a tenant. The covenants: (a) for quiet enjoyment and (b) not to derogate from the grant, were ordinarily the only covenants in favour of the tenant.

In those rare instances where there was a duty to repair, imposed upon the landlord, there existed a special rule permitting the tenant to effect urgent repairs and to set-off the claim against rent (See *Brown v. The Toronto Trustees of the General Hospital*, (1893), 23 O.R. 599 (C.A.) at pp. 604-4 but cf. *Williams, op cit.* at p. 210). This right would tend to further reduce the possibility of the procedure which I suggest was open to tenants under summary proceedings commenced by a landlord, (or in a non-summary action for possession).

An example of a case where execution of a judgment for rent was stayed (on terms) pending trial of a counterclaim (in that case for breach of the landlord's covenant to repair) is *Pembrey v. Lamdin*, [1940] 2 All E.R. 434, (C.A.) at p. 435.) It is also noteworthy that the *prima facie* measure of damages, as stated in *Hewitt v. Rowlands (supra n.7)* was approved.

40. See n.39 *supra*.

41. At this time, the criticism levelled at the Manitoba Act, because of its failure to provide for adjudication, which can overcome the burden imposed by judicial reasoning derived from pre-reform concepts, is equally applicable to the other provincial landlord and tenant acts. If I may be permitted to introduce a mildly cynical observation: it may, for some, represent an unsettling prospect, to have a system of remedial substantive rights which can be realized by anyone within the contemplation of the statute, without having to engage in expensive, slow and confusing procedures, which tend to dissipate much of the statutory promise.

poses of the statute. Nothing contained in the most recent amendments can be seen to have altered the situation for the better.⁴²

A D D E N D U M

"Its Rentalsman"

Although this paper was not intended to be an examination of the office of rentalsman, the central position, occupied by that office, in vindicating the purposes of the Manitoba Act, requires some comment.⁴³ If the Manitoba Act is to deliver its promise it is essential that the realization of landlord's and tenant's remedies not be unreasonably postponed by the functioning of the office of rentalsman, in the performance of the statutory responsibilities assigned to it.⁴⁴ In particular, it is necessary for the proper functioning of the repair and fitness obligation section of the Manitoba Act,⁴⁵ that there be machinery available for the speedy and thorough investigation of complaints by specially trained investigators, with training and a demonstrated competence in building inspection. One of the traditional shortcomings of the public enforcement of housing code violations has been the lack of sufficient staff.⁴⁶ Another, has been the freedom of those in authority to ignore complaints made by tenants.⁴⁷ Lacking, in most cases, the means for securing adequate professional inspection, the tenant must have the right to investigation and inspection of complaints of violations of section 98(1), and a means of securing a satisfactory response where such complaints are found to be (as often will be the case), not the responsibility of the landlord.⁴⁸

Failure, on the part of a landlord, to provide rented premises "in a good state of repair and fit for habitation"⁴⁹ being a matter of urgency

42. No landlord and tenant statute can operate in isolation from its matrix of economic and social realities. A dreadful social situation, while it cannot be overcome by willing it, through the mere enactment of landlord and tenant legislation, can be positively affected by a combination of policies which promote the creation of economically available housing (including rental housing) together with a substantive and procedural basis for protecting the basic needs and interests of those who are involved in the landlord and tenant relationship.

43. See Part I, pp. 83-88.

44. In *Housing Code Enforcement in New York City*, Teitz and Rosenthal, cited in Part I, n.43, there is an excellent description of the failure of traditional housing code enforcement mechanisms.

Also see *Interim Report on Landlord and Tenant Law applicable to Residential Tenancies — Ontario Law Reform Commission op. cit. at pp. 39-44.*

45. Section 98(1) Manitoba Act.

46. *Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies op. cit. at pp. 39-44.*

47. *Id.* at p. 39, where reference is made to the fact that no private right of action is given to tenants under such by-laws, which relate to minimum housing standards. In the case of the Manitoba Act, the tenant will, in most cases, be unable to compel the rentalsman to even attend at the rented premises to inspect the physical facts of a complaint arising under section 98(1). It appears that very few such inspections have been conducted by the rentalsman's staff. See n.52 *infra*. The statistics, however, are not sufficiently detailed to be of real assistance.

48. Shortage of trained staff may be difficult to overcome. In such cases there could be other expedients. Discussed, *infra* at p. 12.

49. Section 98(1) Manitoba Act.

requires remedies which are truly responsive to such urgency. One of the principal shortcomings of the public enforcement of housing code violations has been the length of time required for enforcement, once the process of enforcement is undertaken.⁵⁰ In a very real sense such enforcement has been a classic example of the maxim "justice delayed is justice denied".

In Manitoba with a population of 988,000,⁵¹ the rentalsman has a staff of 8 assigned to landlord and tenant related matters. In addition there are 5 additional staff who are available, on a part-time basis — however, their responsibilities, deal primarily with non-landlord and tenant consumer problems.⁵² Because the rentalsman's staff is stationed in Winnipeg it is necessary, in almost all landlord and tenant cases to restrict the services of the rentalsman to non-personal contact. On occasion, although very rarely, one of the rentalsman's staff attends on complaints outside Metropolitan Winnipeg.

In a situation where it is not possible to effectively carry out necessary inspection, there is some merit in on site personal inspection by the presiding officer called on to adjudicate landlord and tenant disputes. If hearings could be conducted in the evening, and if younger lawyers were appointed to hear the disputes, on an *ad hoc* basis, there would likely be a greater willingness to view the site that is the subject of the evidence. The alternative is a reliance on inadequate members of staff who cannot possibly deal with more than the tip of the iceberg of landlord and tenant problems arising out of the enforcement of section 98(1).

Information obtained concerning the operation of the office of rentalsman in the enforcement of section 98(1) obligations, under the provisions of section 119 disclose, that even in cases from Winnipeg, an initial telephone assessment of the validity of a tenant's complaint is often made without any on site inspection. This is unfortunate because what may, on first impression, be a matter of "ordinary cleanliness", and therefore the responsibility of the tenant under section 98(2) of the Manitoba Act, may on inspection be seen to be the result of a breakdown in facilities for which the landlord is responsible. In this category would fall plugged sinks and toilets which resulted from either defective sys-

50. **Housing Code Enforcement in New York City**, *supra* n.43.

51. As at June 1, 1971, see **Report of the Ombudsman** for the period Jan. 1, 1971 to December 31, 1971, presented to the Manitoba Legislature, pursuant to **The Ombudsman Act**, R.S.M. 1970, Cap. 0-45 s.42.

52. The writer is much indebted to Mr. Gene Zazelenchuk, a third year student in the Faculty of Law, University of Manitoba, who conducted the primary research concerning the functioning of the office of rentalsman for use in this article. Results of his research are in part based on personal interviews with members of the staff of the rentalsman. Such interviews were required in order to obtain further details, where possible, of matters found in **The Report of the Rentalsman and the Director Consumers Bureau, for the year 1972**. The writer would also like to thank Professor A. B. Bass, Faculty of Law, University of Manitoba for his assistance in the preparation of this article.

tems or acts of previous occupants. Advice received is that such complaints are often treated, out of hand, as tenant responsibilities.

When a tenant complaint is accepted for investigation it is processed by way of having the tenant fill out a form provided by the rentalsman's office, one copy of which goes to the landlord and one copy of which is sent to the rentalsman. If the landlord fails to remedy the complaints and feels that he ought not to be made responsible for the repairs, he can attend on one of the rentalsman's staff to discuss the matter. It would appear that, to this point, no one from the rentalsman's office makes a physical examination of the tenant's allegations.

It is also unclear what training the rentalsman's staff has in such areas of construction inspection as: plumbing, heating, ventilation, strength of materials, electricity, water quality, etc.

This latter subject is of considerable importance where an appeal is brought by the landlord, under section 119(6), to a judge of the county court. If the tenant is to have the benefit of the determination of the rentalsman it will often be necessary to have available the person who performed the inspection on behalf of the rentalsman or the matter will truly have been returned to square one. It ought to be possible to provide for a system of adjudication where appeals could be limited to questions of law only and in this way remove factual questions from further dispute. It was not clear what role would be played by the rentalsman in the case of an appeal under section 119(6).

From information received it would appear that from the time of the making of a request for repairs, as provided for in section 119(1), to the decision on an appeal under section 119(6), several months could elapse. Because of the *de novo* nature of the appeal, provided for, much of the value of section 98(1) could be dissipated, for a tenant, where the landlord refused to renew the tenancy at the time of its expiry.⁵³

The provisions could also create problems for landlords, where rent payments are tied up in the hands of the rentalsman, pending adjudication.

53. See Part I, n.13. It should be noted that according to **The Report of the Rentalsman op. cit.**, at p. 5, there were a total of 342 cases involving section 98(1) of the Manitoba Act, out of the total of 1902 registered complaints, from January 1, 1972 to December 31, 1972. Of the 146 personal visits and inspections recorded from April 1, 1972 to December 31, 1972, there is no breakdown of the number relating to enforcement of the landlord's repair obligation. Nor is there any record of the number of repair related complaints which were not formally filed, out of over 50,000 telephone calls received. No information could be obtained as to the number of appeals brought pursuant to section 119(6) of the Manitoba Act. This could represent a remarkable record of achievement or failure on the part of the rentalsman, depending on how you view the figures. To permit the reader to make his own evaluation "Table C" and "Table C1" from the **Report of the Rentalsman**, are reproduced as "Appendix C" and "Appendix D" respectively, being a "record of activity under **The Landlord and Tenant Act**". Significantly, only one arbitration has been conducted pursuant to section 120(1)(d) of the Manitoba Act.

It would seem that the interests of landlords and tenants would be best served by a system of adjudication which provided for a speedy on site inspection so that the true state of physical facts can be brought home to the adjudicator. With the best will in the world the landlord's witness, who also happens to be the landlord's regular plumber, electrician, carpenter, etc., is apt to find it difficult to view the question of state of repair with sufficient objectivity. In the usual absence, however, of any independent evidence on behalf of the tenant, and in the further absence of any on site inspection by the adjudicator, the landlord's evidence will usually suffice.⁵⁴

54. It is unfortunate that it was not possible to obtain information as to the training received by consumer services officers in the inspection of complaints under section 98 and in the law of landlord and tenant.

It is also unfortunate that professional legal assistance has not apparently been made available to tenants under **The Legal Aid Services Society of Manitoba Act, R.S.M. 1970, c.L105**. Mr. Zazelenchuk attended on Mr. Robert Freedman who is in charge of records under the legal aid statute. It was indicated by Mr. Freedman that he was unaware of any legal assistance granted in landlord and tenant matters under the Manitoba legal aid statute.

The legal aid service, operated by students in the Faculty of Law at the University of Manitoba disclosed that 50 files relating to landlord and tenant matters were opened from September 1, 1972 to August 1, 1973.

As above indicated one might conclude from an examination of the evidence that all was well (or at least reasonably well) on the landlord and tenant front. The question remains — for whom?

55. Every reasonable effort was made to obtain accurate information concerning the operation of the office of rentalsman, to verify statistical information, and to obtain additional information, where this was necessary to obtain a better understanding of the rentalsman's office. In order to allow for the necessary follow-up of matters of record, Mr. Zazelenchuk (see m.52 *supra*), attended upon members of the rentalsman's staff (including the deputy rentalsman) on numerous occasions and where questions arose out of any particular answer requiring clarification, the matter was pursued further, to the point where no further information was volunteered. Unfortunately, in many cases, this still left a number of important questions only partially answered. For example:

1. Appendix D, shows 342 registered complaints specifically based on "repairs". Appendix C, shows 146 "Personal Visits and Inspections from April, 1972". When asked how many of these "visits and inspections" arose out of complaints by tenants based on an alleged violation of section 98(1) of the Manitoba Act, the first response of the deputy rentalsman was: "146". On a subsequent attendance the answer given was that the number of such "visits and inspections" was in the proportion that the number of such cases bore to the total of all complaints (except no. 17 School Tax Credit 282). The figure would therefore be $342/1620 \times 142 = 30$ "personal visits and inspections". For reasons, which must be apparent, this response remains suspect as to its accuracy. A request for permission to examine original records was refused. Court records, of actions commenced, are not closed to public inspection. In establishing another tribunal, it would be unfortunate if public scrutiny could thus be foreclosed.

2. When questions were put to the deputy rentalsman by Mr. Zazelenchuk, as to the specific construction background of the officers assigned to landlord and tenant matters, it was only possible to obtain information that the deputy rentalsman and one other staff member had construction experience. The nature of such experience was not disclosed. It was learned from the deputy rentalsman that some of the occupations represented on staff were: ex-policeman, ex-businessman, ex-rental agents.

3. It was not possible to learn what training was given to such officers on the rentalsman's staff other than that they were hired on a six month probation period. Some two months was spent, in large measure, reading closed files. The next stage of training was to monitor other officers handling of telephone and personal interviews. From that point the officer would be gradually assigned to various duties of greater complexity. Mr. Zazelenchuk was advised that an officer would be given individual responsibilities after a period of between one year and eighteen months.

No information could be obtained as to specific material available to officers to make them familiar with the law they were administering.

As judicial clarification is obtained concerning the meaning of the various provisions in the Act, it will be necessary to insure that such changes as become necessary in the practice of the rentalsman's office be immediately made known to those responsible for administration. It was not possible to obtain information as to what view of the law is taken by the rentalsman's office and what materials are available to the rentalsman's staff by way of guidance.

By way of further explanation it should be added that a comparison of experience in obtaining information from the rentalsman's office was made with the research staff of the Legal Research Institute of the University of Manitoba. In all substantial areas the information obtained was the same.

Unfortunately, unlike Superman, Rentalsman does not have X-ray vision and when he rushes into a phone booth, it is usually just to make a phone call.

M. R. GORSKY*

APPENDIX "A"

Sections of R.S.M. 1970, c.L.70 amended by S.M. 1972, c. 39:

Return of security deposit.

86(1) Where a landlord or anyone on his behalf receives from a tenant a security deposit, the landlord shall, subject to section 87, within fourteen days after expiration or termination of the tenancy return the security deposit with interest thereon of at least four per cent per annum compounded annually and calculated for the time elapsed between

- (a) September 15, 1970, or the date on which the security deposit is made by the tenant, whichever is later; and
- (b) the date of expiration or termination of the tenancy or the date on which the tenant goes out of possession of the premises, whichever is the later.

Disposal of worthless chattels.

94(2.1) Notwithstanding subsection (2), where the landlord is of the opinion that chattels left on a premises by a tenant who has abandoned the premises or has gone out of possession of the premises upon termination or expiration of a tenancy agreement, have no value or that the storage of the chattels or any part thereof would be unsanitary, he may with the consent of the rentalsman dispose of the chattels immediately in such manner as the rentalsman may authorize.

Sale of chattels.

94(3) Where the tenant or any person claiming title to the chattels has not claimed the chattels after three months have expired, the landlord may by public auction sell them or any part thereof, and

- (a) after the sale the landlord shall be entitled to recover back from the proceeds of the sale any actual expenses accrued in respect of the storage and cost of sale and the amount of any judgment given under section 110;

Failure to fulfil obligation.

98(3) A failure by a landlord or a tenant to fulfil any of his obligations or responsibilities under this section shall be sufficient reason for the non-offending party to terminate the tenancy agreement in accordance with section 100 but where the failure is by a tenant in respect of his obligations under clause (b) or (c) of subsection (2), the landlord, notwithstanding any other provision of this Act, may terminate the tenancy agreement to take effect on the fifth day following the date on which notice to terminate is given to the tenant by the landlord.

Creating a nuisance or disturbance.

98(4) Where a tenant or any person who is permitted on the premises by the tenant, causes a nuisance or disturbance to other residents in the building, the landlord of his own volition, or upon complaint made to him by any person resident in the building, shall, if he is satisfied that the complaint is justified, request the tenant or the person causing the nuisance or disturbance to discontinue the nuisance or disturbance; and if it is not discontinued upon request, the landlord or the complaining resident in the building may lay an information before a magistrate against the offending tenant or person, or both of them.

Offence and penalty for creating nuisance or disturbance.

98(5) Where a magistrate who hears an information laid under subsection (4) finds that a nuisance or disturbance was caused as alleged and that the tenant or

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person failed upon request by the landlord to discontinue the nuisance or disturbance, the tenant, or the person who caused the nuisance or disturbance is guilty of an offence and on summary conviction is liable to a fine of not less than twenty-five dollars or more than one hundred dollars for a first offence and not less than fifty dollars or more than two hundred dollars for any subsequent offence committed on the same premises.

Failure to supply services.

98(7) Where under the terms of a tenancy agreement, the landlord is responsible for the provision of heat, water and electric power services, or any one or more of them, and the landlord fails or neglects to fulfil his obligation to provide these services, or it appears that a tenant may be deprived of any of those services due to the failure of the landlord to meet his obligation to the vendor of any of those services, the tenant shall, upon the instruction of the rentalsman, pay the rent as it falls due to the rentalsman.

Disposition of rent.

98(8) Where the rent is paid to the rentalsman under subsection (7), the tenant shall not be held to be in arrears of his rent and the rentalsman may

- (a) hold and continue to receive rents until the landlord provides for the use of the tenant heat, water or electric power services as the case may be; and
- (b) where necessary, pay the vendor of heat, water or electric power services from the rent received, an amount sufficient to ensure the supply of those services to the landlord by the vendors.

Payment of excess rents to landlord.

98(9) Where the rentalsman has collected rents in excess of any amount required to be paid under clause (b) of subsection (8), he shall refund the excess to the landlord.

Notice to terminate a tenancy with no predetermined expiry date.

103(3) Where a tenancy agreement has no predetermined expiry date, a notice to terminate shall be given by the landlord or the tenant on or before the last day of any rental payment period to be effective on the last day of the ensuing rental payment period.

Notice to terminate tenancy less than twelve months.

103(3.1) Where the term of a tenancy agreement is less than twelve months, a notice to terminate shall be given by the landlord or tenant at least one month prior to the predetermined expiry date of the tenancy agreement to be effective on the predetermined expiry date of the tenancy agreement.

Notice where tenancy exceeds twelve months.

103(4) Where the term of a tenancy agreement is twelve months or more a notice to terminate shall be given by the landlord or tenant at least two months prior to the predetermined expiry date of the tenancy agreement to be effective on the predetermined expiry date of the tenancy agreement.

Landlord to advise tenant to give notice.

103(5) Where the term of a tenancy agreement is twelve months or more the landlord shall in writing advise the tenant at least three months prior to the predetermined expiry date of the tenancy agreement of the tenant's responsibility to give notice in accordance with subsection (4) if the tenant wishes to terminate the tenancy agreement and where a landlord fails to comply with this subsection the tenant may at his option

- (a) terminate the tenancy agreement on the predetermined expiry date of the tenancy agreement without notice; or
- (b) continue the tenancy subject to subsection (6).

Right to continue occupancy.

103(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.

Appeal.

103(7) Where a landlord or tenant is aggrieved with the decision of the rentalsman under subsection (6), the landlord or tenant within thirty days after the date of determination by the rentalsman may appeal the decision to a court for review but pending the appeal decision, the landlord shall not be entitled to possession of the premises in dispute.

Inability to pay rent.

103(9) Notwithstanding any other provision of this Act where

- (a) the tenants are a married couple and because of the deterioration of health or physical condition of the spouse who pays the rent, the tenants are unable to pay their rent; or
- (b) the tenant is unmarried or a widow or widower and because of the deterioration of health or physical condition of the tenant he or she is unable to pay the rent; or
- (c) the tenants are a married couple and one of the spouses dies and the income of the surviving spouse is insufficient to pay the rent; or
- (d) the tenant is unmarried or a widow or a widower who dies during the term of tenancy agreement;

the tenant, his heirs, assigns or legal personal representative may terminate the tenancy agreement by giving one month's notice, accompanied, where applicable, by a medical certificate, to the landlord; and thereafter the tenant, his heirs, assigns or legal personal representative is relieved of any liability under the tenancy agreement after the date of the termination thereof.

Failure to pay rent constitutes termination of tenancy.

104(1) Where a tenant fails to pay his rent within three days from the date on which the rent falls due and payable and refuses or neglects on demand made in writing to pay the rent the failure, refusal or neglect constitutes at the option of the landlord a termination of the tenancy agreement effective on the date when the rent fell due and payable, for the purposes of sections 108 to 110.

Enforcement of claim.

107(4) A landlord's claim

- (a) for arrears of rent; or
- (b) for compensation for use and occupation of a premises by a tenant after the expiration or termination of tenancy agreement; or
- (c) for damages caused to the premises by the tenant or by any person allowed on the premises by the tenant while the tenant is in occupancy of those premises;

shall be enforced by summary application in accordance with the procedure set out in section 108.

Application for order of possession.

108(1) Where a tenant, after his tenancy has expired or has been terminated, does not go out of possession of the premises held by him, the landlord may apply to a judge of the County Court in the district in which the premises are wholly or partly situated for an order for possession; but where the application is made by reason of the failure of the tenant to pay rent, the application shall not be accepted by the Court until four days have elapsed following the date on which the landlord made demand for payment in writing.

Manner of service of application.

108(4) The application along with the supporting affidavit shall be served on the tenant

- (a) by personally delivering a copy thereof to the tenant; or
- (b) by sending a copy thereof to the tenant by registered mail with postage prepaid, enclosed in a package addressed to the tenant, and having attached thereto an official "Acknowledgement of Receipt" form.

Substitutional service.

108(5) Where the court is satisfied that the tenant cannot be served in accordance with subsection (4), substitutional service, in such manner as the court may direct may be made.

Reckoning time.

108(6) In reckoning the time allowed for making an application or serving an application under this section, Sundays and holidays shall be excluded.

Claim for arrears and compensation.

109(1) The application of the landlord may also include a claim for arrears of rent and for compensation for use and occupation of the premises by the tenant after the expiration or termination of the tenancy, and for damages caused to the premises by the tenant or by any person allowed on the premises by him during the tenant's occupancy.

Contents of supporting affidavit.

109(2) Where a claim is made under subsection (1) the affidavit in support of the application shall also show

- (a) where a claim is made for rent, the amount of rent in arrears and the time during which it has been in arrears; and
- (b) where a claim is made for compensation, particulars of the use made of the premises; and
- (c) where a claim is made for damages caused to the premises by the tenant or any person allowed on the premises by him during his occupancy, particulars of the damage so caused and the value thereof.

Hearing of application.

110(1) Upon hearing the application, or, where it is opposed, upon hearing and considering, in a summary way, the oral and affidavit evidence of the parties and their witnesses, the judge may

- (c) where a claim for compensation is made, give judgment in such amount as the judge may determine
 - (i) for the use and occupation of the premises after the expiration or termination of the tenancy, having regard to the nature and use and occupation and the rent payable during the tenancy; and
 - (ii) for any damages or charges that the landlord is or may become liable to pay to a prospective tenant to whom the landlord had obligated himself to let those premises, because of the wrongful use and occupation of the premises by the present tenant after the expiration or termination of the tenancy; and
- (c.1) where a claim for damages caused to the premises by the tenant or any person allowed on the premises by him during his occupancy is proven, give judgment for the value of the damages so proven;

Effect of order for possession.

111(1) An order under section 110 granting possession

- (b) shall state that if the order is not obeyed by the specified date or within the specified time an order for eviction will issue without any further notice.

Payment as a stay of order.

111(4) Where a tenant, before the execution of an order for eviction pays the rent in arrears, together with any amount awarded as compensation or damages under section 110 and all costs, the proceedings shall be stayed and the tenant may continue in possession as of his former tenancy.

Order to correct offence.

117(3) Where a person is found guilty of an offence under subsection (1), the court may in addition to imposing a fine

- (a) where the offence arises out of a failure to pay monies, order the offender to pay such monies forthwith; and
- (b) where the offence arises out of the doing of anything forbidden under the Act, order the offender to take such action as may be necessary to correct the offence.

Order to pay money.

117(4) Where an order made under subsection (3) requires payment of monies by the offender, the order may be filed in the County Court of the district in which the offence occurred; and when so filed, the order shall for all purposes be deemed a judgment of the County Court and enforceable as such.

Payment of remuneration.

121(2) The members of a board appointed under subsection (1) may be paid such remuneration and out-of-pocket expenses as may be approved by the Lieutenant Governor in Council.

APPENDIX "B"

Sections of *The Manitoba Landlord and Tenant Act R.S.O. 1970, c.136*, not amended by S.M. 1972, c.39 and which are referred to in Part II.

Restrictions on and relief against forfeiture.

18(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, by action, entry, or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

Relief against forfeiture.

19(1) Where a lessor is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action or summary application to a judge of the Court of Queen's Bench brought by himself, apply to the court for relief; and the court may grant such relief, as having regard to the proceedings and conduct of the parties under section 18 and to all the other circumstances, the court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the court may deem just.

Lessee's position continues.

19(5) Where relief is granted under this section the lessee shall hold and enjoy the demised premises according to the lease thereof made without any new lease.

Application to judge for writ of possession.

70(1) Where a tenant after his lease or right of occupation, whether created by writing or by parol, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in any lease agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects upon demand made in writing to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply, upon affidavit, to a County Court judge of the County Court district in which the demised premises are wholly or partly situated, whether in term or in vacation and wherever the judge may be, to make the inquiry hereinafter provided for.

County Court judge may refer.

71 A County Court judge may, upon any such application being made to him, or at any time thereafter pending the proceedings, having regard to the convenience of the parties, the costs of the proceedings and other considerations, and subject to such conditions as may to him seem just, direct that the case be referred to a judge of the Court of Queen's Bench to be heard and determined.

Queen's Bench rules apply.

72 Except as otherwise varied by this Part, The Queen's Bench Act applies to applications made and proceedings had under this Part.

Summary procedure for possession on failure to pay rent.

77(1) If a tenant fails to pay his rent within three days of the time agreed on, and wrongfully refuses or neglects upon demand made in writing, to pay the rent or to deliver up the premises demised, which demand shall be served upon the tenant or upon some grown-up person upon the premises, or, if the premises are vacant, be affixed to the dwelling or other building upon the premises or upon some portion of the fences thereon, the landlord or his agent may file with the clerk of the County Court of the County district in which the premises are situated, or partly situated, an affidavit setting forth the terms of the demise or occupancy, the amount of rent in arrears and the time for which it is so in arrear, producing the demand made for the payment of rent or delivery of the possession, and stating the refusal of the tenant to pay the rent or to deliver up possession, and the answer of the tenant, if any answer was made, and that the tenant has no right of set-off or reason for withholding possession.

Order by court for money payments.

79(1) Where, in any proceedings before him under this Act, a judge of a County Court finds that any net amount, not exceeding two thousand dollars, is due from any party to the proceedings to any other party thereto after making allowance for any amount found to be due from that other party to the party first mentioned, the judge may make an order for the payment of the net amount so found by the party by whom it is payable, together with the costs, if any, payable by him as fixed by the judge.

Frustration.

90 The doctrine of frustration of contract applies to tenancy agreements and The Frustrated Contracts Act applies thereto.

Covenants inter-dependent.

91 Subject to this Part, the common law rules respecting the effect of the breach of a material covenant by one party to a contract on the obligation to perform by the other party apply to tenancy agreements.

Notice of termination of tenancy.

100 A tenancy agreement may be terminated by either the landlord or the tenant upon notice to the other and, unless otherwise agreed upon at the time when the notice is given, the notice

- (a) shall meet the requirements of section 101;
- (b) shall be given in the manner prescribed by subsection 102; and
- (c) shall be given in sufficient time to give the period of notice required by section 103.

Notice.

101(1) A landlord or a tenant may give notice to terminate either orally or in writing, but a notice by a landlord to a tenant is not enforceable under section 103 unless it is in writing.

Content of notice.

101(2) A notice in writing

- (a) shall be signed by the person giving the notice, or his agent;
- (b) shall identify the premises in respect of which the notice is given;

- (c) shall state the date on which the tenancy is to terminate or that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice; and
- (d) shall state the reason for the termination of the tenancy.

Saving.

101(3) A notice may state both

- (a) the date on which the tenancy is to terminate; and
- (b) that the tenancy agreement is to terminate on the last day of the rental payment period as defined in section 103, following the date on which the notice is given in accordance with that section;

and if it does state both, and the date on which the tenancy is to terminate is incorrectly stated, the notice is nevertheless effective to terminate the tenancy as provided under clause (b).

Forms of notice.

101(4) A notice need not be in any particular form, but a notice by a landlord to a tenant may be in Form 5 of the Schedule and a notice by a tenant to a landlord may be in Form 6 of the Schedule.

No fee for notice to vacate.

101(5) A landlord shall not charge his tenant any fee for a notice to vacate residential premises.

Manner of giving notice.

102(1) Notice by a tenant to a landlord may be given personally to the landlord, or his agent, or may be sent to him by registered mail at the address where the rent is payable; and notice by a landlord to a tenant may be given personally to the tenant or may be sent to him by registered mail at the address of the tenant.

Substitutional service.

102(2) Where a tenant cannot be given notice by reason of his absence from the premises, or by reason of his evading service, the notice may be given to the tenant

- (a) by giving it to any adult person who apparently resides with the tenant; or
- (b) by posting it up in a conspicuous place upon some part of the premises; or
- (c) by sending it by registered mail to the tenant at the address where he resides.

Application of subsec. (2).

102(3) Subsection (2) applies, mutatis mutandis, to service of a notice by a tenant.

Defences to proceedings for possession.

113(2) In any proceedings by a landlord for possession, if the court finds 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;

it shall refuse to grant an order for possession or an order for eviction and shall declare the notice to quit invalid and the notice to quit shall be deemed not to have been given.

Restricting against trading.

115 No landlord shall demand any payment or advantage from any tradesman or deliveryman in exchange for the privilege of exclusive access to any residential premises.

Offences and penalties.

117(1) Any person who contravenes section 84, 86, 88, 95, 96 or 97, subsections (1) and (4) of section 113, or section 114, 115 or 116, is guilty of an offence and on summary conviction is liable to a fine of not more than one thousand dollars.

Request by tenant for repairs.

119(1) Where a tenant requests his landlord or an agent of the landlord to carry out or make reasonable repairs to the residential premises occupied by the tenant and the landlord refuses or neglects to carry out or make those repairs, the tenant may notify the rentalsman for the area of the failure or refusal.

Failure to make repairs.

119(2) Upon receipt of a notification under subsection (1), the rentalsman shall endeavour to resolve the problem between the landlord and the tenant and if the rentalsman fails in his attempt to have the landlord carry out or make the repairs that the rentalsman considers to be reasonable, the tenant shall pay the rent as it falls due to the rentalsman to be held in trust by him until the repairs are carried out or made.

Effect of payment to rentalsman.

119(3) Payment of rent under subsection (2) to the rentalsman and not to the landlord does not constitute a violation or failure by the tenant to pay his rent.

Notification by rentalsman.

119(4) Where, under subsection (2), a tenant pays rent to a rentalsman, the rentalsman shall in writing notify the landlord that he has received the rent.

Retention and payment of moneys by rentalsman.

119(5) Upon receiving rent under subsection (2) the rentalsman shall estimate the cost of repairs in respect of which the matter arose and that the rentalsman considers reasonable, and as the rent is paid shall retain

- (a) one month's rent; or
- (b) twice the estimated cost of the repairs;

whichever is the greater, until the repairs are completed to his satisfaction, and shall forward the amount retained to the landlord when the repairs are completed to the satisfaction of the rentalsman, and shall forward any excess rent received by him to the landlord within thirty days of receipt thereof.

Appeal.

119(6) Where pursuant to subsection (2) the rentalsman makes a determination and the landlord or tenant, as the case may be, is dissatisfied with the determination, he may within thirty days of the date of the determination appeal the determination to a judge of the County Court; and the judge may make such order with respect to the determination as to him seems just and reasonable.

Return of deposit to tenant.

119(7) Where under this section a landlord is requested to make reasonable repairs to residential premises occupied by a tenant and the time for appeal under subsection (6) has expired or an appeal taken by the landlord is unsuccessful and the landlord fails or refuses or neglects or continues to fail, refuse or neglect to make the repairs, the rentalsman shall make or cause the repairs to be made and pay the costs thereof from the moneys retained by him under subsection (5) and forward any surplus moneys to the landlord.

Disputes generally.

120(1) In the event of any dispute between a landlord and a tenant, either the landlord or the tenant or both may refer the dispute to the rentalsman for the area who shall

- (a) endeavour by mediation to settle the dispute; or
- (b) with the written consent of the landlord and the tenant arbitrate the dispute.

APPENDIX "C"

*"TABLE C" of the Report of the Rentalsman and the Director
Consumers' Bureau for the Year 1972.*

LANDLORD AND TENANT STATISTICAL REPORTS

| <i>Comparative Statistics</i> | January 1, 1971 to December 31, 1971 | January 1, 1972 to December 31, 1972 |
|---|---|---|
| Carry Over (after breakdown April 1, 1971) | 75 | 204 |
| Complaints Registered (after breakdown April 1, 1971) | 1,111 | 1,902 |
| Complaints Closed* (after breakdown April 1, 1971) | 982 | 1,612 |
| Complaints Outstanding (after breakdown April 1, 1971) | 204 | 494 |
| Complaints in city (after breakdown April 1, 1971) | 912 | 1,585 |
| Complaints outside Winnipeg (after breakdown April 1, 1971) | 178 | 269 |
| Complaints out of Province (after breakdown April 1, 1971) | 21 | 48 |
| Telephone Calls Received (after breakdown April 1, 1971) | 22,853 | 49,603 |
| Telephone Calls Received (Collect) (after breakdown April 1, 1972) | — | 768 |
| Office Interviews (after breakdown April 1, 1971) | 1,144 | 2,167 |
| Personal Visits and Inspections (after breakdown April 1, 1972) | — | 146 |
| Charges | | |
| Carry Over | 0 | 0 |
| Charges Laid | 5 | 11 |
| Dealt With | 5 | 8 |
| Outstanding | 0 | 3 |
| Security Deposits | | |
| Carry Over | — | 75 |
| Filed (from April 1, 1971) | 258 | 464 |
| Closed | 183 | 335 |
| Outstanding | 75 | 204 |
| Premises Repairs Complaints | | |
| Carry Over | — | 4 |
| Filed | 16 | 39 |
| Closed | 12 | 27 |
| Outstanding | 4 | 16 |
| *Disposition of Closed Complaints | | |
| 1. Settled Satisfactorily (from April 1, 1971) | 644 | 1,201 |
| 2. Unsettled (from April 1, 1971) | 48 | 60 |
| 3. Legal Action Recommended (from April 1, 1971) | 22 | 21 |
| 4. Unjustified (from April 1, 1971) | 46 | 55 |
| 5. Transferred (from April 1, 1971) | 2 | 3 |
| Total | 762 | 1,340 |
| 6. Record Only | 220 | 272 |
| Total | 982 | 1,612 |

APPENDIX "D"

*"TABLE C1" of the Report of the Rentalsman and the Director
Consumers' Bureau for the Year 1972.**Comparative Statistics
Category Breakdown of Landlord and Tenant Registered Complaints*

| | January 1, 1971 to December 31, 1971 | | January 1, 1972 to December 31, 1972 |
|--|---|------------------------------------|---|
| 1. Security Deposit Disputes | 364 | (after breakdown April 1, 1971) | 663 |
| (Funds paid to Rentalsman) | (258) | " | (464) |
| 2. Damage by Tenant | 16 | " | 24 |
| 3. Repairs | 226 | " | 342 |
| (Rent actually redirected) | (16) | " | (39) |
| 4. Privacy | 35 | " | 25 |
| 5. Noise | 50 | " | 47 |
| 6. Lockouts and Locking Systems | 25 | " | 28 |
| 7. Distraint | 45 | " | 28 |
| 8. Rent Increases | 39 | " | 75 |
| 9. Notice | 105 | " | 98 |
| 10. Discrimination | 2 | " | 1 |
| 11. Sub-letting | 12 | " | 11 |
| 12. Retaliatory Notice | 4 | " | 4 |
| 13. Tenancy Agreements | 64 | " | 87 |
| 14. Punitive Rent Increases | 2 | " | 0 |
| 15. Miscellaneous | 92 | " | 93 |
| 16. Abandonment | 30 | " | 78 |
| 17. School Tax Credit | — | | 282 |
| 18. Arbitration — Section 120 | — | | 1 |
| 19. Inspections by Public Authorities | — | | 12 |
| 20. Non-Payment Utilities | — | | 3 |
| TOTAL | <u>1,111</u> | | <u>1,902</u> |

