

LAW OF LANDLORD & TENANT

SOME REFLECTIONS

by Mark Jewett

WITH THE POSSIBLE EXCEPTION of the Criminal Law, perhaps no other branch of law has been so much in need of reform as the law of Landlord and Tenant. From a selfish point of view alone, the legal profession would do well to take a long look — and soon — at this highly visible relic of feudal times.

While discussions of law reform go on, an interim remedy is needed. One remedy is group action by tenants, or some group representing tenants. In university communities, the university itself wields enough influence to bargain on behalf of its students and faculty, if it were so inclined.

The formation of a successful Tenants' Association could lead to a more nearly equitable relationship between landlord and tenant. The main barrier to success would be landlords' opposition to any undermining of their secure and privileged position. They must come to realize that good-faith bargaining is not always against their best interests. To overcome landlords' recalcitrance, publicity and organization are necessary.

Basically, the goal of the Tenant's Association is a stable organization dealing directly with the landlord on a continuing basis. The success of the Association will ultimately depend upon judicial tolerance of its activities and upon its bargaining power with the landlord.

While landlords will resist vigorously if their profits are threatened, the landlord should have no objection if better housing can be provided for his tenants without changing total expenditure.

VANDALISM, CHILDREN'S WEAR AND TEAR, harassment by Building Code and other inspectors, rent skips, high turnover, frequent collections — all of these are costs that the landlord must cover by charging higher rent for less housing. The tenants themselves, acting through a Tenant's Association, can help reduce operating costs. A Tenant's Association may be in a position to reduce the high rates of turnover and rent skips. The Association might, for example, arrange for reduced rent if the tenants do certain repairs themselves.

The Association must be realistic — a landlord must make a profit to justify his investment. The landlord's required rate of return takes account of:

- (1) the return presently available on safe investments (e.g. Government Bonds);
- (2) the probability that the property will continue to generate income;
- (3) the property's equity (how easily it can be sold and the collateral value of the property); (from Hollebaugh, *Income Approach To Value*, in the *Encyclopedia of Real Estate Appraising*, 54, at 60-63 (E. Friedman ed. 1969))

If the Association can reduce some of these risks and uncertainties by stabilizing landlord-tenant relations, it can exert a downward pressure on the landlord's required rate of return.

The landlord must be convinced that good faith bargaining is not always against his interest. The Association derives its strength from the only source available to it — collective action; i.e., it must control all the buildings the landlord owns, or, at least, the Association must represent all the tenants in one particular building.

THE FOLLOWING IS AN EXAMPLE of the kind of agreement a Tenants' Association might reasonably be expected to achieve as a result of negotiations with a landlord. The Agreement contains:

1. an Association commitment to oversee and encourage tenant efforts towards responsible maintenance;
2. a landlord commitment to bring his building or buildings up to the standards of appropriate Code and other requirements within a reasonable period of time;
3. machinery for the regular transmission of tenant complaints and demands to the landlord;
4. the creation of a Fact-Finding Panel to resolve disputes over grievances;
5. a procedure for rent withholding for breach of the Agreement;
6. recognition of the Association as exclusive bargaining agent for the Tenants;
7. an agreement by the Landlord not to discriminate against Association members.

(Comment, *Tenant Unions*, 77 Yale L.J. 1368, 1395 (1968)).

Housing Authority

by David MacNaughton

The existing housing crisis makes it essential that a UNB housing authority be set up. The present conditions in which students live are intolerable.

Examples of this include 5 girls living in a 2 bedroom basement apartment paying \$250 per month, a landlord who did his own wiring until an intelligent tenant called in the fire inspector and had the situation changed, a landlord who forces tenants to pay 12 months rent in 8 months and others who rent apartments with poor plumbing of inadequate fire exist and safety precautions.

Many of the students in such circumstances feel helpless.

They are unsure of their rights as tenants and in fact because of the negligence of municipal and provincial governments are not adequately protected.

The N.B. landlord-tenant Act has its origins in English Commons Law of 300 years ago when the Act was designed to protect the landlord. Some provinces in Canada, Ontario is one example, have recently amended their landlord-tenant acts to prevent landlords from taking advantage of tenants.

This proposed authority could investigate and document instances of students housed in unsafe residences with un-

reasonable landlords.

The administration could then be urged strongly to eliminate these conditions by pressuring landlords to improve their accommodations or be refused listing by the accommodations bureau.

The Authority will, however need student co-operation in assuring that the information received is both extensive and factual.

If you have problems with a landlord who you think has been unreasonable or is renting a room or apartment which is unsafe contact David MacNaughton through the Brunswickan office. Be sure your information is factual. Any investigations done into specific examples will not endanger your standing with your landlord. In past many students have remained silent for fear they would be evicted or harassed by their landlord. In order for this effort to be successful student co-operation is necessary.

Students party to blame ?

Students attending university in Fredericton this year are finding it increasingly difficult to locate suitable accommodations, but Joseph Mullaly, rental officer for the Fredericton office of Central Trust of Canada says that this is at least partly the students' fault.

The majority of students are fine, but a small minority give the university a black eye," said Mr. Mullaly.

"Most owners who won't rent to students have had a bad experience with student tenants," he explained.

For example, Mr. Mullaly said that three female university students staying at 180 John Street last year painted their refrigerator with blue enamel and their washroom black. The owner was quite upset and will no longer rent to female students.

On Hanson Street, Mr. Mullaly said, a student holding 12 month lease left town without fulfilling his obligation.

"We don't mind so much that he left owing money, but we didn't appreciate the fact that he left the apartment open; windows, doors, everything," asserted Mr. Mullaly.

When asked to comment on the high rents in Fredericton, he referred to supply and demand. "This is a business operation and as students are

Spicer thinks it's easy

Although many students might disagree, Mrs. Spicer of the Accommodations Bureau seems to think that finding a suitable place of accommodation in Fredericton is not difficult.

In an interview with the Brunswickan Mrs. Spicer asked, "If a student isn't satisfied with his room why doesn't he move?"

When asked how many students had lodged complaints about their landlords Mrs. Spicer said, "So far this year there have been only two and they were so poorly expressed I was embarrassed to show them to anyone. There are always plenty of complaints from the landlords about students though."

Mrs. Spicer did express some fears concerning the present housing situation however. She suggested that in some instances houses accommodating 15 to 20 students are sub-standard as far as building and fire regulations are concerned.

However, since legally only the building and fire inspectors can enter a home on demand policing of the quality of the accommodations listed by the university is somewhat difficult.

If students are required to pay any significant increase in housing costs this year they aren't telling anybody.

The Bank of Montreal (campus branch) has not heard students complaining about rising housing costs. Neither has the Provincial Department of Youth.

Both the number of Canada Student Loans approved and their value have increased this year, but the increase is not significant and is only normal.

According to the manager of the campus bank, Miss R.E. Watson, student financial problems number "A few more than last year."

She attributed this to the lack of summer employment for many students.

And, according to the Deputy Minister of Youth, J. Ernest Anderson, students are getting more money this year.

He stated that students are receiving "Something around \$100.00 more this year than

here only eight months of the year; rents are higher to make up for the other four months."

He did, however, agree that some Frederictonians demand unreasonable rates for the services provided. He suggested that perhaps students are trying to "get even" when they start kicking down walls.

Mr. Mullaly is also a landlord with accommodations in his own home. He said that many people in Fredericton would not own their own homes if they didn't have student boarders to finance it.

Although very much against the non-smoker, non-drinker stipulations made by some landlords, he does restrict his tenants to visitors of the same sex. He seemed to say that to allow a member of the opposite sex in a boarder's bedroom would be offending the dignity of his home.

"I don't judge a prospective tenant by the clothes he wears or the length of his hair...as long as he is clean," said Mr. Mullaly more encouragingly.

Perhaps the blame for the housing shortage is being placed on the wrong parties. As Mr. Mullaly asked "Is not the university responsible for having 'X' number of rooms for 'X' number of students?"

last." And, like the bank, his department has "Noticed that summer savings and student employment are down from last year."

Miss Watson thought that housing was just one of the many financial problems that the student was confronted with this year.

While the students were getting more money on loans, they did not state any particular reason, such as housing, for needing the increase.

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