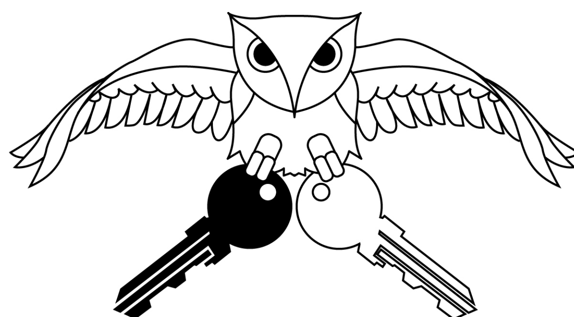
Annual Report on the Activities of the Rental Officer

April 1, 2020, to March 31, 2021

Submitted by:
Adelle Guigon
Chief Rental Officer
October 4, 2021



Rapport annuel des activités de la Régie du logement

Du 1er avril 2020 au 31 mars 2021

Soumis par:
Adelle Guigon,
régisseuse en chef,
le 4 octobre 2021

Le présent rapport contient un résumé en français.

If you would like this information in another official language, call us.
English

Si vous voulez ces informations dans une autre langue officielle, contactez-nous.
French

Kīspin ki nitawihtīn ē nīhīyawihk ōma ācimōwin, tipwāsinān.
Cree

Tłı̨chǫ yatı k’ę̀ę̀. Dı wegodı newǫ dè, gots’o gonede.
Tłı̨chǫ

ʔerıhtł’ís Dëne Sųłıné yatı t’a huts’elkër xa beyáyatı theɂą ɂat’e, nuwe ts’ën yółtı.
Chipewyan

Edı gondı dehgáh got’ı̨e zhatıé k’ę́ę́ edatł’éh enahddhę nıde naxets’ę́ edahłí.
South Slavey

K’áhshó got’ı̨ne xədə k’é hederı ɂedı̨htl’é yerınıwę nídé dúle.
North Slavey

Jii gwandak izhii ginjìk vat’atr’ijąhch’uu zhit yinohthan jì’, diits’àt ginohkhìi.
Gwich’in

Uvanittuaq ilitchurisukupku Inuvialuktun, ququaqluta.
Inuvialuktun

ᑖᒃᑯᐊ ᑎᑎᖅᑲᐃᑦ ᐱᔪᒪᒍᕕᒋᑦ ᐃᓄᒃᑎᑐᓕᖅᓯᒪᓗᑎᒃ, ᐅᕙᑦᑎᓐᓄᑦ ᐅᖄᓚᔪᓐᓇᖅᑐᑎᑦ.
Inuktitut

Hapkua titiqqat pijumagupkit Inuinnaqtun, uvaptinnut hivajarlutit.
Inuinnaqtun

Department of Justice: 867-767-9256 ext. 82082

CONTENTS

Executive Summary / Sommaire 4
- Information Services 4
- Dispute Resolution 4
- Legislative Changes - COVID-19 Pandemic 5

Year in Review / Résumé de l'exercice 10
- Staffing 10
- Office Location 10
- Professional Development 11
- Policies and Procedures 11

Statistics 16
- Applications Filed 16
- Applications Heard 16
- Applications Withdrawn or Dismissed 17
- Remedies Provided to Landlords 17
- Remedies Provided to Tenants 18
- Termination and Eviction Orders 18
- Monetary Compensation Ordered 19
- Elapsed Time 19
- Method of Hearing 20
- Abandoned Personal Property 21

Issues 21
- Authority to Rescind Previous Orders 21
- Sections 58 and 59 - Method of Termination of Tenancy 23
- Section 51(4) - Termination of Subsidized Public Housing Tenancy Agreements 24
- Remedies for Improper Termination 26
- Definition of Rent 27
- Unlawful Distraint and Seizure 29
- Section 91 Summary Offences 29
- Assignment and Subletting 30
- Roommates 30
- Provision of Receipts 31
- Transitional Housing 31

Appendix A 33

Executive Summary

The annual report on the activities of the Rental Officer is prepared pursuant to subsection 74.3(1) of the *Residential Tenancies Act*.

The Rental Office serves the Northwest Territories, providing information and dispute resolution services to landlords and tenants in residential tenancies in accordance with the *Residential Tenancies Act* and *Residential Tenancies Regulations*.

Information Services

The Rental Office is a convenient and accessible resource for landlords and tenants to obtain information regarding their rights and obligations. Many landlord-tenant disputes can be resolved by providing the parties with information clarifying their respective rights and responsibilities.

The Rental Office maintains a toll-free telephone number accessible from anywhere in Canada. The Rental Office provides written information to the public, including easy-to-read booklets and fact sheets detailing major aspects of the *Residential Tenancies Act*. Standard forms are also available in hard copy and on the Rental Office website. The website is maintained by the Department of Justice on behalf of the Rental Office, and includes links to the legislation and a searchable database of Rental Officer decisions.

The Rental Officer is also available upon request to make presentations or participate in forums with tenants, property managers, and others interested in residential tenancy issues. These information sessions are provided free of charge in recognition that informed landlords and tenants are more likely to respect each others' rights and obligations and are less likely to end up in a conflict situation.

Dispute Resolution

The *Residential Tenancies Act* specifically requires the Rental Officer to encourage landlords and tenants to attempt to resolve their disputes themselves. The provision of information regarding landlord and tenant rights and obligations is the first step for landlords and tenants to successfully reach their own resolution.

The Rental Office cannot provide direct advice to landlords and tenants for how to go about resolving their disputes. It is suggested that parties may wish to seek legal advice if they remain uncertain about how to proceed with resolving their dispute, including whether or not to file an application to a rental officer. To meet this need the Rental Office often provides contact information for the Outreach Legal Aid Clinic.

Where the parties are unable to resolve a dispute themselves, they may make an application to bring the matter to a hearing and have the dispute resolved by a Rental Officer. The majority of disputes require that an application be made for the Rental Officer to provide dispute resolution services.

A Rental Officer will dismiss an application when it is determined that the reasons for the application are trivial, frivolous, or vexatious, or that the application was not made in good faith. A Rental Officer will dismiss an application that has been made more than six months after the described situation arose, unless the Rental Officer is satisfied it would not be unfair to either party to grant an extension to the time for making the application. Otherwise, a hearing before the Rental Officer is scheduled for all applications.

In the event the parties resolve the dispute themselves before the Rental Officer makes a decision on the matter, the applicant may withdraw their application. In most cases the hearing proceeds as scheduled – either because the parties cannot agree or because one of the parties wants a decision which can be enforced if the other party fails to comply with its terms. The parties will have the opportunity at the hearing to present their respective cases and, after hearing the evidence and testimony of both parties, the Rental Officer will render a decision. A written order will follow.

Rental Officer orders are binding on the parties and can be made enforceable by filing them in the Registry of the Supreme Court of the Northwest Territories. Once filed, the order is deemed to be an order of the Supreme Court.

Legislative Changes - COVID-19 Pandemic

By March 2020 the World recognized the risks of the new COVID-19 coronavirus on the population. Effective March 19, 2020, the Rental Office complied with the Government of the Northwest Territories' pandemic response to begin working from home. Although the physical office was closed to the public, the availability and operation of the Rental Office continued. Voicemails were returned and emails were replied to as expeditiously as possible. All in-person hearings scheduled between March 19th and April 30th were postponed by the Chief Rental Officer and most telephone hearings scheduled for that period were postponed at the request of the applicants. All of those hearings were re-scheduled to be heard by teleconference starting in May. The Rental Office's physical space re-opened to the public in mid-August 2020.

As will be seen in the statistics to follow, the total number of applications filed in the 2020-2021 fiscal year fell dramatically compared to the 2019-2020 fiscal year as a direct result of the pandemic response. The first two months of the fiscal year had the lowest number of applications filed, which allowed for the Rental Office to catch up on the postponed hearings and keep up with inquiries. The number of filed applications began to increase again in July 2021, although they continued to average well below the previous fiscal year.

On April 9, 2020, the *Residential Tenancies (COVID-19) Regulations* (COVID-19 Regulations #1) came into effect. The COVID-19 Regulations #1 were created in response to concerns for the potential increase in homelessness as a result of tenants being unable to pay their rent due to the pandemic restrictions affecting their income. These regulations effectively prohibited the consideration of applications for termination orders when the tenant had given their landlord written notice that their income had been directly affected by the pandemic and they were unable to pay their rent as a result. The COVID-19 Regulations #1 did not forgive the rental arrears; rather they provided for the payment of the rental arrears to be deferred without risk of being evicted. At the same time, although not because of the COVID-19 Regulations #1, the Sheriff's Office temporarily suspended the execution of eviction orders.

On February 1, 2021, the *Residential Tenancies (COVID-19) Regulations, No. 2* (COVID-19 Regulations #2) came into effect. The COVID-19 Regulations #1 were repealed effective January 31, 2021. The COVID-19 Regulations #2 were designed to evolve with the pandemic response and decrease the burden on the landlord by establishing a repayment plan option for the rental arrears accumulated between March 18, 2020, and January 31, 2021. Applications for termination orders due to rental arrears accumulated between those dates cannot be considered where a COVID-19 Regulations #2 repayment plan has been entered into.

The extent of the uptake on the options offered under both Regulations are unclear as there is no reporting requirement to the Rental Office. The onus for notifying the landlord of the pandemic effect on a tenant's income lies with the tenant. The onus for entering into a repayment plan lies with either the landlord or the tenant. The Rental Office would not learn of the options being used until or unless an application to a rental officer was made. There were seven such applications made before January 31, 2021, which were stayed under the COVID-19 Regulations #1. Two of those applications remain stayed under the COVID-19 Regulations #2. There have been no new applications made since the COVID-19 Regulations #2 came into effect.

Sommaire

Le Rapport annuel sur les activités du régisseur est préparé conformément au paragraphe 74.3(1) de la Loi sur la location des locaux d'habitation.

La Régie du logement sert les Territoires du Nord-Ouest en fournissant des services d'information et de résolution de différends aux locateurs et aux locataires de locaux d'habitation, conformément à la Loi sur la location des locaux d'habitation et au Règlement sur la location des locaux d'habitation.

Services d'information

La Régie du logement est une ressource pratique et accessible offrant aux locateurs et aux locataires des renseignements sur leurs droits et obligations. Bon nombre de différends sont résolus lorsque les deux parties sont clairement informées de leurs droits et responsabilités respectives.

La Régie du logement a un numéro de téléphone sans frais pour tout le Canada. Elle fournit de la documentation écrite à l'intention de la population, notamment des livrets et des fiches de renseignements accessibles qui résument les principaux aspects de la Loi sur la location des locaux d'habitation. Elle offre également des formulaires standard, en version papier et en version électronique sur son site Web. Ce dernier est tenu à jour par le ministère de la Justice et contient, entre autres choses, des liens vers les documents législatifs et une base de données interrogeable sur les décisions du régisseur.

Le régisseur peut, sur demande, faire des présentations ou participer à des forums réunissant des locataires, des gestionnaires d'immeubles et d'autres parties concernées par les questions de location. Ces services sont offerts gratuitement, car les locateurs et locataires qui sont bien informés ont plus tendance à respecter les droits et obligations de chacun et sont moins susceptibles d'entrer en conflit.

Règlement des différends

La Loi sur la location des locaux d'habitation impose précisément au régisseur d'encourager les locateurs et locataires à tenter de résoudre eux-mêmes leurs différends. L'offre d'information sur les droits et obligations de chacun est une première étape pour l'atteinte de cet objectif. La Régie du logement ne peut conseiller directement les locateurs et locataires sur la façon de régler leurs différends. On suggère aux parties d'obtenir un avis juridique si elles demeurent incertaines quant à la façon de procéder, notamment en ce qui concerne la pertinence de présenter une demande au régisseur. C'est pourquoi la Régie transmet souvent les coordonnées du service communautaire d'aide juridique.

Si les parties sont incapables de s'entendre, elles peuvent présenter une demande au régisseur, afin qu'il tienne audience et résolve le différend. La plupart du temps, une demande est nécessaire pour obtenir ce service.

La demande est rejetée si les motifs de la demande sont futiles, frivoles ou vexatoires ou que la demande est de mauvaise foi. Le régisseur refusera également toute demande présentée plus de six mois après que la situation a eu lieu, à moins qu'il ne soit convaincu qu'il ne serait pas injuste pour l'une ou l'autre des parties de prolonger le délai de présentation de la demande. Autrement, le régisseur planifie une audience pour tous les dossiers.

Si les parties règlent leur différend avant que le régisseur ait pris une décision, le demandeur peut retirer sa demande. Dans la plupart des cas, l'audience se tient comme prévu, soit parce que les parties ne parviennent pas à s'entendre, soit parce que l'une des parties veut une décision exécutoire en cas de non-respect de l'entente par l'autre partie. Les deux parties présentent alors leur dossier et leur témoignage, après quoi le régisseur rend une décision. Il publie ensuite une ordonnance écrite qui en précise les motifs.

Les ordonnances du régisseur lient les parties et peuvent être rendues exécutoires par leur dépôt à la Cour suprême des Territoires du Nord-Ouest; elles sont alors considérées comme des ordonnances prononcées par ce tribunal.

Changements législatifs - Pandémie de COVID-19

En mars 2020, partout, la population du monde a pris conscience des risques sanitaires du nouveau coronavirus. À partir du 19 mars 2020, la Régie du logement a respecté les consignes du gouvernement des Territoires du Nord-Ouest, en généralisant le télétravail. Le bureau physique a été fermé au public, mais la disponibilité et les activités de la Régie du logement n'ont pas été affectées. Les messages vocaux et les courriels ont continué de recevoir une réponse dans les plus brefs délais. Toutes les audiences en personne ont été reportées à la requête des demandeurs. Elles se sont déroulées en téléconférence à partir de mai. À la mi-août 2020, les locaux de la Régie ont rouvert.

Comme en témoignent les statistiques qui suivent, le nombre total de demandes reçues à l'exercice 2020-2021 a dégringolé par rapport à l'exercice 2019-2020, une conséquence directe de la crise de la COVID-19. Pendant les deux premiers mois de l'exercice, la Régie du logement a enregistré un nombre très bas de demandes, ce qui lui a permis de reprendre les audiences reportées et de continuer de répondre aux demandes de renseignements. Le nombre de demandes déposées a commencé à remonter en juillet 2021, même si la moyenne se maintenait bien en deçà de celle de l'exercice précédent.

Le 9 avril 2020, le Règlement sur la location (COVID-19) des locaux d'habitation (Règlement COVID-19 no 1) est entré en vigueur. Le Règlement COVID-19 no 1 a été établi pour répondre à la potentielle hausse d'itinérance découlant de l'incapacité des locataires à s'acquitter de leur loyer, leur revenu ayant reculé à cause des restrictions de la pandémie. Ce règlement a efficacement bloqué l'examen des demandes d'ordonnances de résiliation lorsque le locataire avait donné au locateur un avis écrit indiquant que son revenu avait reculé à cause de la pandémie et qu'il était, par conséquent, incapable de s'acquitter de son loyer. Le règlement no 1 n'a pas supprimé les arriérés de loyer; il prévoyait plutôt d'en reporter le paiement sans risque d'expulsion. Parallèlement, mais sans lien avec le règlement, le Bureau du shérif a temporairement suspendu l'exécution des ordonnances d'éviction.

Le 1er février 2021, le second Règlement sur la location (COVID-19) des locaux d'habitation (Règlement no 2 COVID-19) est entré en vigueur. Le règlement COVID-19 no 1 a été abrogé le 31 janvier 2021. Le Règlement COVID-19 no 2 a été conçu pour évoluer parallèlement à la lutte contre la COVID-19 et diminuer la charge du locateur en établissant une option de programme de remboursement pour les arriérés de loyer accumulés entre le 18 mars 2020 et le 31 janvier 2021. L'exécution d'un programme de remboursement du Règlement COVID-19 no 2 proscrit donc le traitement des demandes d'ordonnances de résiliation découlant des arriérés de loyer accumulés entre ces dates.

On ignore combien de personnes ont bénéficié des options offertes par les deux règlements, car il n'y a pas d'obligation de rapporter ces données à la Régie du logement. Il incombe au locataire d'informer le locateur de l'effet de la pandémie sur ses revenus. L'exécution d'un programme de remboursement revient soit au locateur, soit au locataire. Pour que la Régie du logement connaisse les options utilisées, il faut qu'une demande soit faite auprès d'un régisseur. Sept demandes de ce type ont été faites avant le 31 janvier 2021 et ont été suspendues en vertu du Règlement COVID-19 no 1. Deux de ces demandes restent suspendues en vertu du Règlement COVID-19 no 2. Aucune nouvelle demande n'a été faite depuis l'entrée en vigueur du Règlement COVID-19 no 2.

Year in Review

Staffing

The Rental Office is currently served by an Office Administrator, the Chief Rental Officer, and two Rental Officers.

Adelle Guigon has been a Rental Officer since April 1, 2013, and the Chief Rental Officer since April 1, 2016. The Chief Rental Officer and the Department of Justice agreed that a permanent part-time Rental Officer should be retained to improve the time lines for holding hearings after the filing of the application and for producing orders after the hearing, to provide alternates where a conflict arises, and to provide the Chief Rental Officer with the time necessary to research and develop policy and procedural changes to the operational administration of the office in order to increase overall efficiencies.

After unsuccessful attempts to secure a permanent part-time Rental Officer, retired Rental Officer Hal Logsdon agreed to return on a limited, short-term basis in January 2018. He remains a Rental Officer under appointment and continues to graciously provide assistance.

In January 2019, Janice Laycock joined the Rental Office team as a part-time Rental Officer. She has continued to show herself to be a competent, thoughtful, and fair adjudicator, and her ongoing assistance is appreciated.

Alana Hjelmeland started in the position of Rental Office Administrator in October 2019. She conducted her duties with professionalism and attention to detail which is vital in the Rental Office. Ms. Hjelmeland accepted a transfer assignment in October 2020. The Chief Rental Officer covered the Rental Office Administrator duties until a term replacement for Ms. Hjelmeland could be found. The ongoing pandemic response has made hiring qualified replacement staff challenging. Roxanne Penney started in the position in January 2021, having a background in office administration. She has been a welcome asset to the Rental Office team.

Office Location

The Rental Office is located on the third floor of the YK Centre East building in Yellowknife. This location provides for two offices in addition to the office administrator's work space, enhanced on-site storage, and a security conscious front counter area to address safety and security concerns. Although the space remains a tight fit, we are optimistic that with the implementation of and support for electronic storage of materials we will be able to further relieve some congestion over time. However, the current administration space layout does not provide for either an adequate secondary work station or sufficient workspace. A request has been made to re-design and re-organize the administrative area to provide for two work stations in an open concept with file storage tops to provide an ergonomically appropriate workspace. It is my understanding that this request has been included in the departmental office space planning that was initiated in the Fall of 2019.

The current office location also does not provide for a dedicated hearing room. Whenever a space is required to hold hearings for parties to appear in person, the Rental Office reserves whatever suitable boardroom is available. This is not an issue for hearings in communities other than Yellowknife, but the vast majority of in-person hearings are held in Yellowknife. The in-person hearings in Yellowknife are usually booked in the boardrooms of other departments, in buildings other than where the Rental Office is located.

Although there is no cost to the Rental Office for using GNWT boardrooms, it is inconvenient and time consuming for the Rental Officer to leave the office for hearings within Yellowknife. The accumulated time spent travelling between locations effectively results in an inefficient use of resources. Having a dedicated hearing room directly attached to the Rental Office would provide for increased productivity. On days when there are no hearings scheduled, the room could be utilized as an additional office space for one of the Rental Officers, or for meetings with the public and other stakeholders.

It is recognized and understood that the COVID-19 pandemic response has effectively put departmental office space plans in limbo and we are not expected to be a priority when revisiting those plans until the Rental Office re-introduces in-person hearings.

Professional Development

As an Associate Member of the Canadian Council of Administrative Tribunals (CCAT), I usually participate in their Annual Symposiums. Due to the COVID-19 pandemic, the 36th Annual Symposium was cancelled. The CCAT did introduce virtual workshops, webinars, and courses throughout the year, but I was unable to participate due to the workload and staffing issues experienced at the Rental Office.

Policies and Procedures

As previously mentioned and will be seen in the following statistics, the number of applications filed has decreased by 35 percent this fiscal year as a direct result of the pandemic response. The percentage of applications heard regarding complex issues has increased, resulting in more time spent on hearings and producing written reasons for decision. The decrease in the percentage of applications heard is partially balanced by the increase in applications withdrawn and dismissed, and otherwise is proportional to the effects of the pandemic response.

Despite the effects of the pandemic response, the wait times between the date an application is filed and the date it is heard have largely remained consistent with the last fiscal year. It remains unlikely that the wait times could be further improved given the responsibility to ensure the Respondent has a fair amount of time to prepare a defence to the allegations prior to the scheduled hearing date.

The Office Administrator's workload remains reasonably balanced at this time, although there remains further administrative changes being pursued to modernize operations and continue streamlining processes and procedures. Despite the pandemic response, during the 2020-2021 fiscal year the Rental Office was able to limit and quickly resolve any backlogs that arose.

The overall improvements in wait times to hearing dates and production of written orders and reasons for decision have reached a threshold which provides for the previously elusive time to invest in revamping policies and procedures, and substantively investigating operational changes towards modernizing the Rental Office. The effects of the pandemic response did interfere with the progress on these efforts, both with the department's ability to review and consider requested technological upgrades and with the lengthy period of time without the services of the Office Administrator. Training of the term Office Administrator has also contributed to delays in the progress of operational updating and modernization efforts.

Résumé de l'exercice

Dotation en personnel

Actuellement, le personnel de la Régie du logement se compose d'une administratrice, de la régisseuse en chef et de deux régisseurs.

Adelle Guigon occupe le poste de régisseuse en chef depuis le 1er avril 2016; elle occupait auparavant celui de régisseuse depuis le 1er avril 2013. La régisseuse en chef et le ministère de la Justice ont convenu qu'un régisseur permanent à temps partiel était nécessaire pour réduire le délai entre le dépôt des demandes et la tenue des audiences et entre les audiences et la rédaction des ordonnances, pour trouver d'autres solutions en cas de conflit, ainsi que pour laisser à la régisseuse en chef le temps requis pour faire des recherches et préparer des changements aux politiques et aux procédures liées aux activités administratives de la Régie, en vue d'accroître son efficacité globale.

Après plusieurs tentatives infructueuses de la Régie pour pourvoir le poste de régisseur permanent à temps partiel, Hal Logsdon, régisseur à la retraite, a accepté en janvier 2018 d'assumer cette fonction à court terme. Il est encore en poste et continue d'offrir son aide.

En janvier 2019, Janice Laycock s'est jointe à l'équipe de la Régie du logement à titre de régisseuse à temps partiel. Elle continue de se montrer une arbitre compétente, réfléchie et juste dont l'aide est appréciée.

Alana Hjelmeland occupe le poste d'administratrice du bureau depuis octobre 2019. Elle s'est acquittée de ses fonctions avec professionnalisme et en portant attention aux détails, ce qui est essentiel au bureau de la Régie. Mme Hjelmeland a accepté une affectation provisoire en octobre 2020. La régisseuse en chef a assuré les fonctions d'administratrice du bureau de la Régie jusqu'à ce que Mme Hjelmeland ait été remplacée. Le recrutement de personnel de remplacement qualifié n'a pas été chose facile en raison de la pandémie en cours. Roxanne Penney est entrée en poste en janvier 2021 après avoir suivi une formation en administration de bureau. Elle a été un atout précieux pour l'équipe du bureau de la Régie.

Adresse du bureau

La Régie du logement se situe au troisième étage de l'immeuble Est du YK Centre de Yellowknife. Elle y dispose de deux bureaux, d'un espace de travail pour l'administratrice et d'un espace de conservation des documents amélioré, et un comptoir d'accueil permet d'assurer la sécurité. Bien que nous soyons encore à l'étroit, nous avons bon espoir que la mise en place d'un système de stockage numérique des documents et l'aide fournie à cet égard nous permettront de désencombrer l'espace petit à petit. Toutefois, l'aménagement actuel des locaux de l'administration ne permet pas d'installer un poste de travail secondaire adéquat.

Une demande a été présentée pour réaménager et réorganiser l'aire de l'administration pour accueillir deux postes de travail selon un concept d'aire ouverte avec des espaces de rangement superposés pour les dossiers afin d'obtenir un espace de travail ergonomique. Je comprends que cette demande a été incluse dans la planification des locaux du ministère lancée à l'automne 2019.

La Régie du logement n'a pas accès à une salle d'audience. Chaque fois qu'une salle est nécessaire pour la tenue d'une audience en personne, la Régie du logement réserve l'une des salles de conférence disponibles. Ce n'est pas un problème pour les audiences dans les collectivités autres que Yellowknife; la grande majorité des audiences en personne ont cependant lieu dans la capitale. À Yellowknife, les audiences en personne ont généralement lieu dans une salle d'un autre ministère, située dans un autre immeuble que le nôtre.

S'il n'en coûte rien à la Régie du logement pour utiliser les salles du gouvernement des Territoires du Nord-Ouest, les déplacements de la régisseuse pour se rendre aux audiences dans Yellowknife sont peu pratiques et chronophages. Les pertes de temps entre ces différents endroits représentent un usage inefficace des ressources. Disposer d'une salle affectée aux audiences, sur le site même des bureaux de la Régie du logement, permettrait d'accroître la productivité du bureau : les jours où aucune audience n'est prévue, la salle pourrait être utilisée comme bureau supplémentaire pour l'un des régisseurs, ou comme salle de conférence pour des réunions avec le public ou d'autres parties prenantes.

Il est évident que la crise de la COVID-19 a mis en suspens les plans d'aménagement des bureaux des ministères et que nous ne sommes pas censés être une priorité au moment de la révision de ces plans jusqu'à ce que le bureau de la Régie recommence la tenue d'audiences en personne.

Perfectionnement professionnel

En tant que membre associé du Conseil des tribunaux administratifs canadiens (CTAC), je participe habituellement aux symposiums annuels. Or, en raison de la pandémie de COVID-19, le 36e symposium annuel a été annulé. Le CTAC a mis en place des ateliers virtuels, des webinaires et des cours tout au long de l'année, mais je n'ai pas pu y participer en raison de la charge de travail et des problèmes de personnel auxquels la Régie du logement a été confrontée.

Politiques et procédures

Comme cela a été mentionné précédemment et comme le montrent les statistiques suivantes, le nombre de demandes déposées a diminué de 35 % au cours de cet exercice, ce qui est une conséquence directe de la crise provoquée par la COVID-19.

Le pourcentage de demandes entendues concernant des questions complexes a augmenté, ce qui a entraîné une augmentation du temps consacré aux audiences et à la rédaction des motifs de décision. La diminution du pourcentage de demandes entendues est partiellement compensée par l'augmentation des demandes retirées et rejetées et est par ailleurs proportionnelle aux effets de la réaction à la pandémie.

Malgré les effets de la réaction à la pandémie, les temps d'attente entre la date de dépôt d'une demande et la date d'audience sont restés en grande partie constants par rapport à ceux de l'exercice précédent. Il est peu probable que les temps d'attente puissent être améliorés davantage étant donné qu'il faut s'assurer que l'intimé dispose d'un délai raisonnable pour préparer une défense aux allégations avant la date d'audience prévue.

La charge de travail de l'administratrice du bureau reste raisonnablement équilibrée à l'heure actuelle, bien que d'autres changements administratifs soient en cours pour moderniser les opérations et continuer à rationaliser les processus et les procédures. Malgré la crise, la Régie du logement a été en mesure de limiter et de résoudre rapidement les arriérés qui sont apparus au cours de l'exercice 2020-2021.

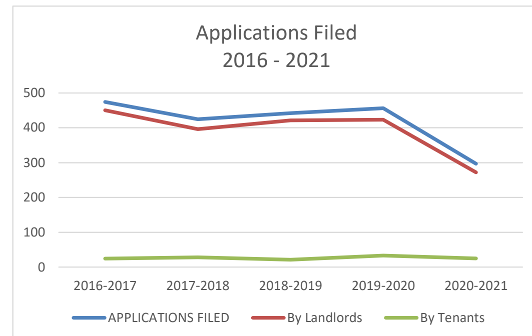
La réduction globale des temps d'attente pour les dates d'audience et l'émission des ordonnances et des motifs de décision nous permet maintenant de consacrer du temps à la refonte des politiques et des procédures et à l'étude approfondie des changements opérationnels nécessaires pour moderniser la Régie du logement, chose auparavant impossible. Les effets de la pandémie ont entravé l'avancement de ces efforts, tant en ce qui concerne la capacité du Ministère à examiner et à prendre en compte les mises à niveau technologiques demandées qu'en ce qui concerne la longue période passée sans les services de l'administratrice du bureau. La formation de l'administratrice du bureau nommée pour une période déterminée a également contribué à retarder l'avancement des efforts de mise à jour et de modernisation des opérations.

Statistics

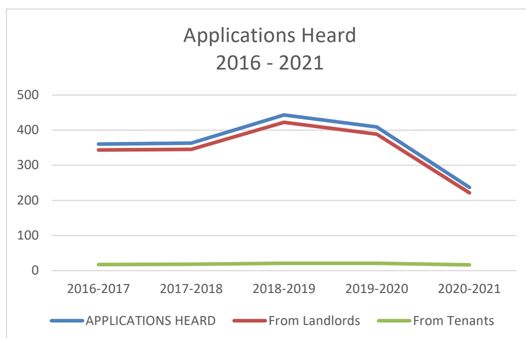
As previously mentioned, the total number of applications filed in the 2020-2021 fiscal year has substantially decreased as a direct result of the pandemic response. The average rate of decline over five years from 2015 to 2020 was 4.4 percent per year. The pandemic response has skewed the average rate of decline for the five years from 2016 to 2021 to 8.6 percent per year.

Applications Filed

The total number of applications filed in the 2020-2021 fiscal year represents a 34.9 percent reduction directly attributable to the pandemic response. Of the 297 applications filed in the 2020-2021 fiscal year, 60.6 percent of them were regarding subsidized public housing tenancies. Landlords filed 91.6 percent of the applications and tenants filed 8.4 percent, representing a 1.2 percent decrease for landlords and 1.2 percent increase for tenants over the last fiscal year.



Applications Heard

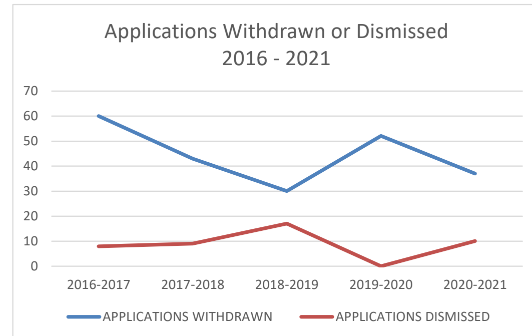


The number of applications that were heard in the 2020-2021 fiscal year decreased by 41.6 percent compared to the 2019-2020 fiscal year. However, that may not be a fair comparison given the effects of the pandemic response. It may be of more value to compare the percentage of applications that were heard against the applications that were filed, in which case there would be a decrease of 9.2 percent of applications heard in the 2020-2021 fiscal year compared to the 2019-2020 fiscal year.

It remains important to note that files scheduled for more than one hearing date (i.e. adjourned or postponed) are not reflected in these numbers. While 239 files were heard, 32.2 percent of them had been scheduled for more than one hearing date, and 50 of those were filed in the 2019-2020 fiscal year. Of those 50 applications, 35 were filed in February and March 2020, which were the applications immediately impacted by the initial pandemic response.

Applications Withdrawn or Dismissed

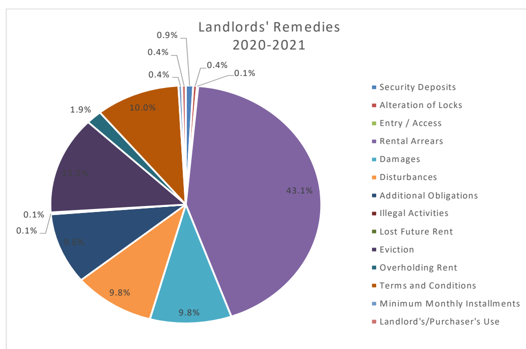
Applications withdrawn by the applicant increased by 1.1 percent in the 2020-2021 fiscal year over the 2019-2020 fiscal year. Applications dismissed by the Rental Officer increased over the same period by 3.4 percent.



Applications are usually withdrawn by the applicant when the dispute has been resolved by the parties prior to the hearing being held. Applications are usually dismissed by the Rental Officer when the applicant fails to serve the filed application on the respondent, the applicant fails to appear at a scheduled hearing, or the application has been filed outside the six-month time limitation set out in the Act.

As in previous years, the 2020-2021 numbers for withdrawn applications remain consistent in suggesting that more landlords and tenants are resolving their disputes, negating the need for a hearing. That being said, in most cases – particularly with major landlords – even when the parties have come to an agreement about a situation, the applicant will often choose to continue seeking an order that they can enforce if the respondent does not comply with the agreement.

Remedies Provided to Landlords



Applications filed by landlords continue to represent the majority of filed applications, and the majority of those applications continue to primarily involve claims for rental arrears, even in this pandemic year. The majority of the claims for rental arrears were undisputed or undefended by the tenants.

Although most of the claims for damages and disturbances are undisputed by tenants, there is a trend emerging with more tenants disputing the claims. These applications are treated as complex from the outset and more time is set aside to hear and consider those matters.

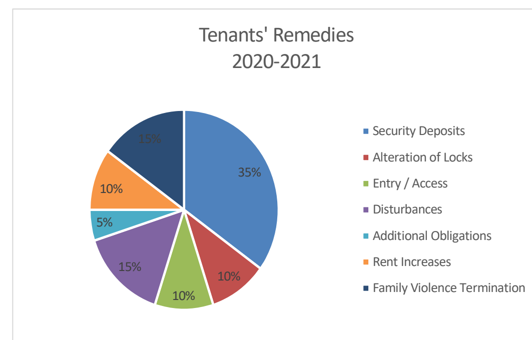
The landlord success rate compared to last fiscal year in obtaining orders regarding rental arrears decreased by 5.3 percent, which is expected given the pandemic response. The landlord success rate in obtaining orders regarding additional obligations, damages, and disturbances increased by 1.8 percent, 2.9 percent, and 4.6 percent, respectively. It is worth noting that many applications were made in relation to multiple breaches.

Additional obligations includes claims regarding the failure of tenants to maintain the ordinary cleanliness of the rental premises. Other common additional obligations include failing to report household income for subsidized public housing tenancies and failing to pay for utilities.

Applications to terminate tenancies for the landlord's or purchaser's use as a residence for themselves or their immediate family members increased in 2020-2021 by 0.3 percent over the 2019-2020 fiscal year. There were no applications made to terminate tenancies for demolition of the rental premises, for change of use to other than a rental premises, or for extensive repairs or renovations to the rental premises.

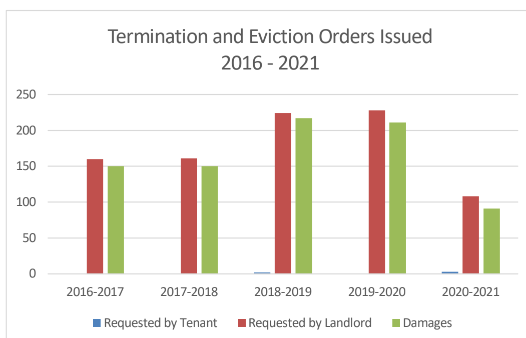
Remedies Provided to Tenants

Tenant applications remain primarily about security deposits, of which this year seven were successful. Three tenants were successful in obtaining orders against their landlords regarding disturbances, and there were three successful applications to terminate the tenancy due to family violence.



I would note that while the Rental Office receives many inquiries from tenants regarding the landlord's obligations under section 30 of the Act, very few tenants follow through with making an application to a rental officer regarding those issues. This is likely due to the amount of work the tenant would be required to do to provide reasonable evidence to support their claim, although it is possible the tenants and landlords resolved the disputes themselves.

Termination and Eviction Orders



In 2020-2021, the number of orders issued terminating a tenancy agreement at the request of the landlord decreased compared to previous years, representing 46.4 percent of all applications heard. The number of eviction orders issued also decreased, representing 38.1 percent of all applications heard. These results are not unexpected given the effects of the pandemic response.

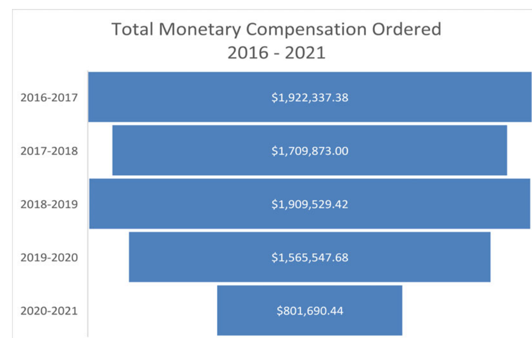
Landlords may apply for both an order terminating a tenancy agreement and evicting a tenant in one application. The eviction order expires six months after the date it takes effect, unless it is filed in the Registry of the Supreme Court of the Northwest Territories within that time frame.

Both termination orders and eviction orders may contain conditions which act to invalidate the order if the conditions are met. An eviction order may be issued to only take effect if the conditions of the termination order are not met. Conditional termination and eviction orders are more common for subsidized public housing tenancies than for private housing tenancies.

The majority of eviction orders were issued in conjunction with termination orders, and 67.6 percent of those were conditional termination and eviction orders. This is a decrease of about 8 percent compared to last fiscal year directly attributable to the pandemic response.

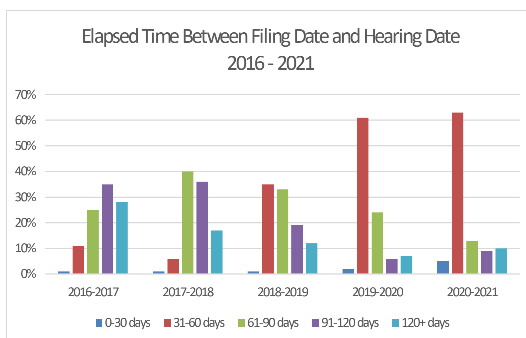
Monetary Compensation Ordered

In the 2020-2021 fiscal year, 191 orders granted monetary compensation representing 79.9 percent of all orders issued; this is a decrease of 4.9 percent from the 2019-2020 fiscal year. The average value of monetary compensation ordered amounted to $4,197.33, which is a decrease of 7 percent from the previous fiscal year.



Although we do not keep a breakdown of the monetary values ordered by reason, the majority of the compensation ordered continues to primarily consist of rental arrears with costs of repairs remaining a distant second. I expect the costs of repairs have increased during the pandemic response period.

Elapsed Time



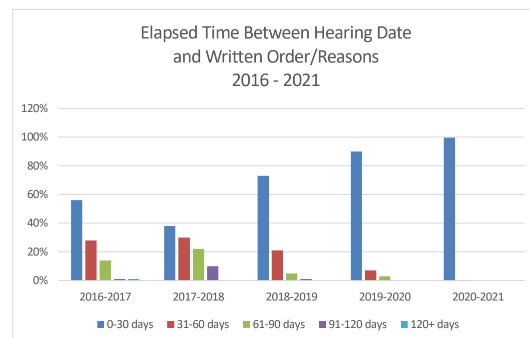
The length of time between the date an application is filed and the date it is heard depends on a number of factors, many of which are outside the control of the Rental Office. Once the application is filed, the applicant must serve a filed copy on the respondent.

With the amendments to the Act which took effect in September 2019, subsection 76(1) was reworked to require the applicant to serve the filed copy of the application package on the respondent at least five business days before the hearing date or otherwise as specified by the Rental Officer.

Prior to June 2017, hearings would not be scheduled until the applicant had provided the Rental Office with proof of service of the filed application on the respondent. Now, when an application is received in the Rental Office it is filed and scheduled for hearing at the same time, and the filed applications and notices of attendance are returned in one package to the applicant for service on the respondent. The applicant must serve the entire package on the respondent and provide the Rental Office with proof of service no later than five business days before the scheduled hearing date.

This procedural change combined with the availability of three Rental Officers to adjudicate hearings continues to be the foundation of the Rental Office's success in reducing and stabilizing the wait time to hearing dates. Files heard within 60 days of filing have increased over the last three fiscal years by 29 percent, 27 percent, and 5 percent, respectively.

Another amendment to the Act that took effect in September 2019 makes the issuance of written reasons for decision discretionary on the Rental Officer where those reasons for decision have been rendered on the oral record. The expectation of this amendment to further significantly improve the average turn-around time for issuing written orders is borne out in the provided statistics.



This fiscal year 100 percent of all written orders and reasons for decision were written within 60 days of the hearing date, with 99.6 percent being written within 30 days. On average, all written orders and reasons for decision were produced within 6 days of the hearing date, reserved decisions were written within 8 days of the hearing date, and only 1 decision required more than 30 days to write. Reserved decisions can sometimes take substantially longer to write if the decision is pending receipt of additional evidence from the parties or is of a particularly complex nature.

Method of Hearing

There are three ways a hearing may be held: in-person, by teleconference, or by three-way teleconference. Hearings by written submission were introduced in April 2019 specifically for applications made under sections 58 and 59 of the Act.

Hearings in Yellowknife and Behchoko are usually held in person. In-person hearings in other communities are only held when a significant number of applications are made at approximately the same time.

Teleconference hearings are scheduled in communities where there is more than one but fewer than ten applications filed at approximately the same time; a hearing room will be rented in the community for the parties to attend to in person, and the Rental Officer will call in from Yellowknife.

Three-way teleconference hearings are scheduled for the hearing of single applications. This method could be used either because the parties are resident in different communities, because there is only one application to be heard in the community, or because a party has left the jurisdiction.

Given the expected longevity of the pandemic restrictions, all hearings for the foreseeable future will by default be scheduled to be heard by three-way teleconference. In-person hearings will only be considered when specifically requested by a party for accessibility to justice reasons and if a suitable venue is available to accommodate compliance with the Chief Public Health Officer's orders and recommendations and WSCC's rules for social distancing in the work place.

All hearings since March 19, 2020, were held by three-way teleconference, except one. The one in-person hearing was scheduled in Behchoko to accommodate an Elder requiring an interpreter. All necessary pandemic precautions were used. No hearings were held by written submission in this fiscal year as no applications were made

Abandoned Personal Property

The process for handling and disposition of abandoned personal property by the landlord is set out under sections 64 and 65 of the Act. An application is not required to be made under those sections, but there are requirements to report to and request permission from the Rental Officer when dealing with any abandoned personal property of value.

There were 14 inventories of abandoned personal property reported to the Rental Officer in the 2020-2021 fiscal year, and 10 authorizations from the Rental Officer to dispose of stored abandoned personal property. There were no submissions of proceeds of the sale of abandoned personal property.

If the owner of abandoned personal property believes the landlord has wrongfully sold, disposed of, or otherwise dealt with any of the abandoned personal property, they may make an application to a rental officer to hear the arguments and make a determination under section 66 of the Act. There were no such applications this fiscal year.

Issues

Authority to Rescind Previous Orders

Subsections 84(1) and 84(2) of the Act permit the Rental Officer to make an order for monetary compensation which includes a minimum monthly payment plan. Subsection 84(3) permits the Rental Officer to rescind that order and replace it with an order to pay any compensation still owing from the previous order in a lump sum. There are no provisions in the Act authorizing the Rental Officer to rescind any other types of orders.

In situations where the circumstances of a dispute have changed after the issuance of an order, effectively making any part of that order unnecessary or excessive, there is no avenue for a Rental Officer to rescind or replace the previously issued order.

A primary example occurs when an order has been issued for a tenant in subsidized public housing to pay unsubsidized rent because they have failed to report their household income in accordance with their tenancy agreement. As soon as the tenant reports that household income (after the order has been issued) the landlord recalculates the rent to account for eligible subsidies, and as a result the quantum of rental arrears drops substantially. The original order, however, remains in effect and enforceable for payment of the rental arrears at the much higher value. In this regularly recurring scenario it would be most efficient for all concerned if the Rental Officer could rescind and replace the previous order with an order that reflected the adjusted rental arrears.

Another common example is when an order has been issued for payment of rental arrears, the order gets filed with the Supreme Court but is not enforced, the tenant accumulates additional rental arrears, and the landlord files another application requesting an order for payment of the new balance of rental arrears. When a Certificate of Satisfaction has not been entered at the Supreme Court regarding the previous order, that order remains active and enforceable. Usually, the Rental Officer will account for the active status of the previous order and issue a new order for the difference between the current balance and the amount of the previous order. Again, it would seem to be more efficient to rescind the previous order and replace it with a new order reflecting the current balance of rental arrears.

I would request continued consideration of an amendment to the Act permitting the Rental Officer to rescind previously issued monetary orders. I am aware that the Department of Justice had put some thought towards this request given that it has been made in previous annual reports, and I am aware that it would likely require a more complex legislative change than initially anticipated. Despite the complexity, I appreciate the Department’s efforts to address this request. I also appreciate that during the pandemic response this issue is unlikely to be a current priority for the legislation division to review.

To be clear, I am not suggesting an amendment that would authorize a Rental Officer to review Rental Officer decisions; to my mind such reviews should remain in the realm of the Supreme Court of the Northwest Territories. Rather, I am suggesting only an amendment to authorize a Rental Officer to re-assess monetary values of arrears at a hearing under a new application and to rescind previously issued monetary orders as appropriate to accommodate the issuance of a replacement monetary order. The decision itself made at the previous hearing would not be open to reconsideration; only the monetary value of the arrears themselves would be open to re-evaluation.

Sections 58 and 59
Method of Termination of Tenancy

Sections 58 and 59 of the Act provide for the landlord to make an application for an order to terminate a tenancy agreement where:

- the landlord requires possession of the rental premises for use as a residence by himself and/or his immediate family members;
- the landlord has entered into an agreement of sale of the property which requires delivery of vacant possession of the rental premises for use as a residence by the purchaser and/or their immediate family members;
- the landlord requires possession to demolish the property;
- the landlord requires possession to change the use of the property to other than a rental property; or
- the landlord requires vacant possession to make repairs or renovations so extensive as to require a building permit.

In the case where the landlord has sold the property, the landlord must provide proof of the sale and confirmation from the purchaser of their intended personal use of the premises as a residence. In the case where the landlord intends to demolish the rental premises, change the use, or make extensive repairs or renovations, the landlord must prove that they have obtained all the necessary permits or other authorizations that may be required.

Usually the Rental Office does not receive many applications under sections 58 and 59, although there has been an increase in both calls for information and applications filed under these sections during the COVID-19 pandemic. The best case scenario which is encouraged by this office is for the Landlord and Tenant to negotiate a mutually agreeable termination date and to put that agreement in writing in accordance with section 50 of the Act. This scenario is often not an option, usually due to the parties being unable to agree to the aforementioned mutually agreeable termination date.

The requirement to make an application to a rental officer to terminate a tenancy when the parties are unable to come to an agreement is often seen by landlords as an onerous and unnecessary process. I suspect many landlords bank on their tenants not knowing that the landlord is obligated to make an application if they can’t come to an agreement. However, the Rental Office has also been receiving more inquiries from tenants who are questioning whether or not their landlord is treating them in accordance with the Act.

I agree that going through the application process for these circumstances is largely unnecessary, even within the continuing pandemic response. Often tenants voluntarily vacate the rental premises after being served with the filed application, resulting in the landlord withdrawing the application before the scheduled hearing. The requirement to file an application before it is necessary creates an administrative burden on both the applying landlord and the Rental Office.

To my mind it would be sufficient for the landlord to give the tenant written notice to terminate the tenancy in accordance with the established time frames, along with copies of the required documents proving the reasons for the termination. The tenant could still have the option to vacate early as currently provided for under subsections 58(2) and 59(2), or the landlord and tenant could still exercise their option under section 50 to agree in writing to a termination date. If the tenant does not vacate the rental premises by the termination date, or the landlord does not believe that the tenant will vacate the rental premises by the termination date, the landlord could then file an application for an eviction order. The tenant would have the opportunity at the hearing regarding the application for eviction to challenge the validity of the landlord's notice to terminate the tenancy.

I would request consideration of an amendment to sections 58 and 59 of the Act to allow landlords to terminate tenancies in the described circumstances by giving the tenants advance written notice in accordance with the established time lines.

Section 51(4)
Termination of Subsidized
Public Housing Tenancy Agreements

Subsidized public housing landlords benefit from several specific provisions in the Act. Most appear reasonable given the nature of subsidized public housing tenancies. Subsection 51(4) to my mind is the exception.

Subsection 51(4) of the Act specifies that subsidized public housing fixed-term tenancy agreements of 31 days or less terminate on the specified end date. The specificity of the termination of this type of tenancy agreement under this section renders it exempt from the automatic renewal provisions under subsection 49(1) at paragraph 49(2)(b).

Subsection 51(4) says:

> 51. (4) Notwithstanding subsection (3), where a tenancy agreement for subsidized public housing specifies a date for termination of the agreement that is 31 days or less after the commencement of the agreement, it terminates on the specified date.

Section 49 says:

> 49. (1) Where a tenancy agreement ends on a specific date, the landlord and tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with section 47.

(2) Subsection (1) does not apply
   (a) where the landlord and tenant have entered into a new tenancy agreement;
   (b) where the tenancy has been terminated in accordance with this Act; or
   (c) to rental premises provided by an employer to an employee as a benefit of employment. [emphasis mine]

In my experience to date, 31-day-or-less fixed-term tenancy agreements appear to be used less frequently by subsidized public housing landlords than was the case some years ago. However, when I have learned about their use it seems to be with a punitive purpose involving multiple back-to-back 31-day-or-less fixed-term tenancy agreements. Usually the landlord in these situations will effectively hold the consecutive termination dates over the tenant's head in an attempt to control their behaviour. Because section 51(4) of the Act simply terminates the tenancy agreement without any cause being necessary, the tenant does not benefit from an opportunity to dispute the termination. To my mind, section 51(4) operates contrary to the security of tenure principles otherwise provided for throughout the legislation.

Subsidized public housing landlords already benefit from subsections 51(3) and 51(5) of the Act, which allow them to give a tenant at least 30 days' written notice to terminate a tenancy agreement for the last day of a period of the month-to-month tenancy or the last day of a fixed-term tenancy. The subsidized public housing landlord may exercise this option whether or not there is cause to terminate the tenancy agreement (i.e. the tenant has breached an obligation), and they are not required to apply for an order to terminate the tenancy. If the tenant refuses to leave the rental premises after being given a notice under either of these sections, then the landlord would be required to apply for an order to evict the tenant, which in turns gives the tenant the opportunity to dispute whether or not the tenancy was terminated in accordance with the Act. Other landlords do not have the benefit of subsections 51(3) and 51(5) of the Act; they must apply for an order to terminate a tenancy agreement for cause.

Subsidized public housing landlords also benefit from the provisions under paragraph 57(b) of the Act, which allows the landlord to apply for an order to terminate the tenancy agreement where the tenant has ceased to meet the requirement for occupancy of the rental premises. This is a reasonable provision that requires the landlord to prove how the tenant no longer meets the eligibility requirements and provides the tenant with an opportunity to dispute the landlord's claim.

Along with other landlords, subsidized public housing landlords also have the option to employ subsection 54(1) of the Act, which provides for a landlord to give a tenant at least 10 days' written notice to terminate a tenancy agreement under specific circumstances. Commonly used circumstances include where the tenant has repeatedly and unreasonably caused disturbances, where the tenant's actions (or lack thereof) have seriously impaired the landlord's or other tenants' safety, or the tenant has repeatedly failed to pay the full amount of rent when due. The landlord exercising the notice provided for under this section is also required to apply for an order terminating the tenancy agreement. Consequently, if the tenant wishes to dispute the reasons given for terminating the tenancy agreement under section 54 they will have the opportunity to do so at a hearing before the Rental Officer.

No matter which section of the Act is relied on to terminate a tenancy, the landlord cannot forcibly remove a tenant from the rental premises without an eviction order issued by the Rental Officer. Even if the tenancy agreement is terminated under subsections 51(3), 51(4), or 51(5), if the tenant does not voluntarily vacate the rental premises the subsidized public housing landlord will have to file an application to a rental officer seeking an eviction order. Subsection 63(5) of the Act provides for the reinstatement of the tenancy where the Rental Officer denies an application for eviction as unjustified specific to when the tenancy was terminated under subsections 51(3) or 51(5), which allows for the Rental Officer to consider the reasons why the landlord terminated the tenancy. Tenancies terminated under subsection 51(4) are not included under subsection 63(5), which means there is no real avenue to consider why the tenancy was not renewed.

The Rental Office does have an expedited hearing dates policy which provides for an application to be heard within a short period of time after an application is filed. Written requests for expedited hearing dates will only be considered where immediate and/or emergency safety concerns exist, and a significant risk of harm to the landlord, tenant, other tenants in the residential complex, and/or the property is evident.

Subsection 51(4) strikes me as unnecessary, redundant, and excessive, providing an unreasonable amount of power to subsidized public housing landlords. I would request that consideration be given to repealing subsection 51(4) of the Act.

Remedies for Improper Termination

Subsections 51(2) and 52(2) permit a landlord who has rented out their only residence in the Northwest Territories to terminate the tenancy agreement by giving the tenant at least 30 days' advance written notice to terminate a fixed-term tenancy on the last day of the fixed-term or at least 90 days' advance written notice to terminate a month-to-month tenancy on the last day of a given month. The landlord in these cases is not required to make an application for an order to terminate the tenancy.

As previously mentioned, section 54 of the Act provides for a landlord to give a tenant at least 10 days' advance written notice to terminate a tenancy agreement where the tenant has committed a substantial breach of their obligations as specified under that section. Section 54 requires the landlord who gives this notice to file an application to a rental officer for an order to terminate the tenancy.

Again as noted previously, sections 58 and 59 of the Act each provide for a landlord to terminate a tenancy agreement for specific reasons other than the tenant breaching an obligation by making an application to a rental officer for an order to terminate the tenancy. Service of the filed application on the tenant effectively constitutes notice to the tenant of the landlord's desire to terminate the tenancy, and the tenant has the option to either voluntarily vacate the rental premises before the anticipated termination date or to appear at the hearing to have their say in the matter.

Section 60 of the Act provides for a tenant whose tenancy is terminated under section 58 or 59 to apply for compensation for losses suffered where it turns out the landlord did not in good faith require the rental premises for the purpose specified in the application.

There have been instances (and likely more than I am aware of) where a tenant who was not given proper notice to terminate the tenancy under the referenced sections 51, 52, and 54 has vacated the rental premises under duress and despite disagreeing with the reasons for the termination and/or the inconvenience of an unexpected move on short notice. These tenants have no recourse to recover losses suffered because there are no remedies provided in the Act for a tenant to make such a claim.

I would request consideration of amendments to the Act to provide for remedies similar to those provided for under section 60 to a tenant who suffers monetary losses when a landlord fails to provide proper notice to terminate a tenancy agreement in accordance with sections 51, 52, and 54 of the Act.

Definition of Rent

Subsection 1(1) of the Act defines "rent" as including:

> the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises**, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing**; [emphasis mine]

The above emphasized statement creates a paradox in relation to subsections 47(1) and 47(2) regarding rent increases, which say:

> 47. (1) Notwithstanding a change in landlord, no landlord shall increase **the rent** in respect of a rental premises until 12 months have expired from
> (a) the date the last increase in rent for the rental premises became effective; or
> (b) the date on which rent was first charged, where the rental premises have not been previously rented.
>
> (2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective. [emphasis mine]

Subsection 1(1) of the Act also defines "services and facilities" as including:

> furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air-conditioning facilities, utilities and related services, and security services or facilities

Generally speaking, changes to the rates charged for the referenced services and facilities are largely out of the landlord's control. In particular, charges for such services as electricity and heating fuel can fluctuate dramatically on a monthly basis. Because separate charges for services and facilities are defined as being part of the rent, the landlord technically is unable to charge the tenant for any service usage that exceeds the amount charged in the first month of the tenancy because they can only increase the rent once in a 12-month period.

There is a workaround for this problem in that the tenant's responsibility for services and facilities can be set out in a written tenancy agreement as an additional obligation, but that is not an option for oral or implied tenancy agreements. Also, as long as the definition of rent remains as is, even if the written tenancy agreement includes the additional obligation for the tenant to pay services and facilities but requires the tenant to pay those bills to the landlord, then the landlord still technically cannot charge any amounts to the tenant that exceed the amount charged in the first month of the tenancy without giving the tenant at least three months' written notice of the rent increase. And the landlord still can only institute the rent increase once in a 12-month period.

In an effort to address this paradox, I request consideration be given to amending the definition of “rent” by striking out “whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing”. I believe doing this would require the landlord who wants to recover the costs of utilities from the tenant to either charge an amount of rent that already accounts for those costs or to prepare a written tenancy agreement that includes the additional obligation that the tenant is independently responsible for the named utilities.

Unlawful Distraint and Seizure

Subsections 3(1) and 35(1) of the Act prohibit the landlord from seizing and distraining (holding) a tenant’s property for any breach of the Act, including the obligation to pay rent. However, there are no remedies available to a tenant for losses suffered as a direct result of a landlord contravening either subsection 3(1) or 35(1). The prohibitions in sections 3 and 35 are also not included as summary offences under section 91 of the Act.

This issue rarely arises, but I would still request consideration be given to amending the Act to include remedies for breaches under sections 3 and 35.

Section 91 Summary Offences

Paragraph 91(1)(a) of the Act recognizes the contravention of sections 14, 14.1, 14.2, 17, 18, 33, 42, 47, and 54.1 as summary offences punishable by a fine upon conviction. Sections 14, 14.1, 14.2, 17, and 18 deal with security deposits and pet security deposits. Section 33 deals with providing vital services. Section 42 deals with damages to the rental premises caused by the tenant. Section 47 deals with rent increases. Section 54.1 deals with terminating tenancies due to family violence.

The sections regarding security deposits, vital services, damages, and rent increases all include remedies by application to a rental officer. However, these considerations are specific to individual tenancies and do not address repeated breaches over multiple tenancies. I am less concerned in this regard for the offences respecting damages caused by tenants than I am about the other three offences committed by landlords.

Paragraph 91(1)(a) is the only option which could be considered to punish a landlord who repeatedly and purposely continues to improperly retain the security deposits, interfere with the provision of vital services, or improperly increase rents. Unfortunately, pursuing charges of this nature are unusually difficult to apply, are largely ineffective, and on the exceedingly rare occasion when the charge is pursued the resulting fine is of such little value that it fails to serve as a deterrent.

My predecessor has recommended, and I continue to concur, that establishing within the Act the ability to issue summary offence tickets with minimum voluntary fines for specified violations such as those I have referenced above may be a more effective deterrent to persistent violations of the Act by landlords than a full prosecution before the court.

On that note, there currently is no enforcement officer or established procedure to pursue charges under section 91 of the Act. This would need to be addressed for any of the offences listed under section 91 of the Act to be effective.

Assignment and Subletting

Subsection 22(2) of the Act specifies that an assignment/sublet is not valid unless the landlord has given written consent. It also specifies that the landlord may not unreasonably withhold that consent.

Subsections 22(3) and 22(4) permit a tenant who has been unreasonably refused consent to assign/sublet their tenancy agreement to request an order from the Rental Officer permitting the assignment or sublet without the landlord's written consent.

There is no other remedy available for a tenant who has been unreasonably denied consent for an assignment/sublet. Unfortunately this does not address situations where the unreasonable denial has resulted in the prospective assignee/sublessee losing interest in the assignment/sublet, unfairly leaving the tenant in a position that may be financially challenging for them. In this scenario other remedies would be desirable, such as requiring the landlord to compensate the tenant for losses suffered as a direct result of the landlord's breach and/or early termination of the tenancy agreement.

I would request consideration of an amendment to the Act to provide for additional remedies where a landlord unreasonably withholds consent for an assignment or sublet.

Roommates

In the Northwest Territories it is not unusual for people to rent out spare rooms to other individuals. The high cost of living in the North often necessitates this extra source of income. Generally speaking this is not an issue, and where the person renting out the room owns the premises the tenancy is governed by the Act. However, where the person renting out the room is renting the premises from another party, the Act does not apply.

Subsection 1(1) of the Act defines a landlord as including:

> the owner, or other person permitting occupancy of rental premises, and his or her heirs, assigns, personal representatives and successors in title and a person, **other than a tenant occupying rental premises**, who is entitled to possession of a residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; [emphasis mine]

The Act is designed to set out the rights and obligations of landlords and tenants, and to provide resolution services for disputes *between landlords and tenants*. Effectively, what I will refer to as "tenant-tenant" residential tenancies are specifically exempt from the Act, because there is no provision including them. The contract between the tenant renting out a room and the person renting the room would be considered a civil contract, and should any disputes arise out of this type of contract the Rental Office currently suggests the parties make inquiries regarding filing a civil claim in the Territorial Court.

To my mind, in consideration of the common practice of parties renting rooms from other tenants in the North, it may be appropriate to give some thought to how those tenant-tenant relationships can be better protected and perhaps brought within the Act. This may be as straightforward as striking out "other than a tenant occupying rental premises" from the definition of "landlord".

Provision of Receipts

Subsection 36.1(1) of the Act requires the landlord to produce receipts for the payment of any rent, security deposits, or other amount to a tenant or former tenant who requests it. However, there is no remedy available for the tenant whose landlord fails to produce the requested receipts. Nor is failing to comply with subsection 36.1(1) listed as a punishable offence under subsection 91(1) of the Act.

I would request consideration of an amendment to the Act to provide for either a remedy to a tenant for a landlord failing to provide receipts upon request or for the offence to be listed as punishable under subsection 91(1) of the Act.

Transitional Housing

A Rental Officer decision made in November 2019 which found a local transitional housing tenancy agreement was not exempt from the Act was overturned in November 2020 by the Supreme Court of the Northwest Territories on appeal as the finding relied on too narrow an interpretation of the exemptions provided for under subparagraphs 6(2)(d) and 6(2)(e) of the Act.

While I appreciate the guidance the Supreme Court's findings provide, I remain of the opinion that a definition of transitional housing in the Act, along with a specific exemption, would provide clarity for all parties. I also continue to believe that transitional housing landlords and tenants could benefit from being brought under the umbrella of the Act provided that special provisions permit the program to operate as designed, similar to those provided for subsidized public housing programs. I would request consideration of either of these options for amendment to the Act.

Adelle Guigon
Chief Rental Officer

Appendix A

Statistics for the 2020 - 2021 Fiscal Year

APPLICATIONS FILED					
	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Total	474	424	442	456	297
By Landlords	450	396	421	423	272
By Tenants	24	28	21	33	25

APPLICATIONS HEARD					
	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Total	360	363	443	408	239
From Landlords	343	345	422	387	221
From Tenants	17	18	21	21	18

APPLICATIONS WITHDRAWN OR DISMISSED					
	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Total	68	52	47	64	47
By Applicants	60	43	30	52	37
By Rental Officer	8	9	17	12	10

TERMINATION AND EVICTION ORDERS					
	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Termination Orders Requested by Tenant	0	0	2	0	3
Termination Orders Requested by Landlord	160	161	224	228	108
Termination Orders as Percentage of Applications Heard	44.4%	44.4%	51%	55.9%	46.4%
Evictions Ordered	153	150	217	211	91
Eviction Orders as Percentage of Applications Heard	42.5%	41.3%	49%	51.7%	38.1%

*Note: These numbers include orders which terminated a tenancy agreement or evicted tenants only if specific conditions were not met.

REMEDIES PROVIDED TO TENANTS 2020-2021	
Security Deposits	7
Alteration of Locks	2
Entry / Access to Rental Premises	2
Landlord Disturbances	3
Additional Obligations	1
Rent Increases	2
Family Violence Terminations	3

REMEDIES PROVIDED TO LANDLORDS 2020-2021	
Security Deposits	6
Alteration of Locks	3
Entry / Access to Rental Premises	1
Rental Arrears	296
Damages	67
Disturbances	67
Additional Obligations	66
Illegal Activities	1
Termination: Landlord's/Purchaser's Use	3
Lost Future Rent	1
Evictions	91
Overholding Rent	13
Terms and Conditions	69

*Note: Many orders contain multiple remedies. Therefore, the total remedies applied exceed the total number of orders. For example, there are three available remedies which may be applied for non-payment of rent. Often an order for non-payment of rent provides for more than one remedy.

MONETARY COMPENSATION ORDERS					
	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Total Orders Granting Monetary Compensation	314	314	363	347	191
Total Value of Orders Issued	$1,922,337	$1,709,873	$1,909,529	$1,565,547	$801,690.44
Average Value	$6,122	$5,445	$5,260	$4,511	$4,197.33

ELAPSED TIME BETWEEN FILING AND HEARING										
	2016-2017	%	2017-2018	%	2018-2019	%	2019-2020	%	2020-2021	%
0-30 days	5	1%	2	1%	3	1%	7	2%	11	5%
31-60 days	39	11%	24	6%	153	35%	251	61%	149	63%
61-90 days	91	25%	145	40%	148	33%	98	24%	30	13%
91-120 days	125	35%	131	36%	83	19%	24	6%	21	9%
120+ days	100	28%	61	17%	56	12%	29	7%	24	10%

ELAPSED TIME BETWEEN HEARING AND WRITING ORDER										
	2016-2017	%	2017-2018	%	2018-2019	%	2019-2020	%	2020-2021	%
0-30 days	204	56.7%	138	38.0%	324	73%	369	90%	234	99.6%
31-60 days	103	28.6%	110	30.4%	95	21%	30	7%	1	0.4%
61-90 days	51	14.2%	80	22.0%	22	5%	10	3%	0	0%
91-120 days	1	0.3%	35	9.6%	2	1%	0	0%	0	0%
120+ days	1	0.2%	0	0.0%	0	0%	0	0%	0	0%